

**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 III: Testimony and Exhibits 1-3

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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.

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Arthur S. Flemming, *Chairman*

Stephen Horn, *Vice Chairman*

Frankie M. Freeman

Manuel Ruiz, Jr.

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UNITED STATES COMMISSION ON CIVIL RIGHTS

Friday, August 25, 1978

The U.S. Commission on Civil Rights met in the Ceremonial Building, Seattle, Washington, Arthur S. Flemming, Chairman, presiding.

PRESENT: Arthur S. Flemming, Chairman; Frankie M. Freeman, Commissioner; Paul Alexander, Assistant General Counsel; and Linda Huber, Fred Kaplan, and Marvin Schwartz, Staff Attorneys.

PROCEEDINGS

CHAIRMAN FLEMMING. I will ask the hearing to come to order, please.

On October 20, 1977, the U.S. Commission on Civil Rights recessed the hearing that was being held here in Washington State until the regional team of the Federal Task Force on Washington State Fisheries had completed its task. This has now happened. Today's session is therefore a continuation of the hearing that began in October.

The function of the U.S. Commission on Civil Rights is to investigate deprivation of equal protection of the law and to submit its findings to the Congress and to the President, along with recommendations for corrective action. To enable the Commission to fulfill these duties, the Congress has empowered it to hold public hearings and issue subpoenas for the attendance of witnesses and for the production of documents.

This hearing is being held under the authority of the Civil Rights Act of 1957, as amended. As required by law, notice of the hearing was published in the *Federal Register* on July 26, 1978. A copy of this notice will be introduced into the record at this point as Exhibit No. 1.

The purpose of this hearing is to listen to evidence relative to Indian tribes and tribal people and non-Indian governments and people and also to consider evidence relative to Indian governments and non-Indian governments working together to arrive at constructive solutions of common problems.

The Commission on Civil Rights is an independent bipartisan agency of the U.S. Government established by Congress in 1957. Its duties are the following: to investigate sworn allegations that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, or national origin; to study and collect information regarding legal

developments which constitute denial of equal protection of the laws under the Constitution in such fields as voting, education, housing, employment, use of public facilities, transportation, or in the administration of justice; to serve as a national clearinghouse for information with respect to denial of equal protection of the law because of race, color, sex, religion, or national origin; and, finally, to investigate sworn allegations of vote fraud in Federal elections.

The session we hold today will be a public session. The majority of the witnesses we will hear have been subpoenaed by the Commission, and the schedule, as you will note from the agenda, has been planned in advance. There will be, however, this afternoon, a session at which persons who have not been subpoenaed but who feel they have relevant testimony may appear and speak.

Under the law under which we operate, the Chairman of the Commission is authorized to designate two members of the Commission to hold a public hearing provided both political parties are represented. In connection with this hearing, I am joined by Commissioner Freeman. Commissioner Freeman is a resident of St. Louis. She has served on the U.S. Commission on Civil Rights longer than any other member, having been appointed by President Johnson and having served continuously since then. She is a recognized, outstanding trial lawyer from St. Louis. I am happy to recognize her at this time so that she can acquaint you with the rules and the procedures which will be followed in connection with the hearing. Commissioner Freeman.

COMMISSIONER FREEMAN. Thank you, Dr. Flemming.

At the outset, I should emphasize that the observations I am about to make on the Commission's rules constitute nothing more than brief summaries of the significant provisions. The rules themselves should be consulted for a fuller understanding. Staff members will be available to answer questions which arise during the course of the hearing.

In outlining the procedures which will govern the hearing, I think it is important to explain briefly a special Commission procedure for testimony or evidence which may tend to defame, degrade, or incriminate any person. Section 102(e) of our statute provides, and I quote:

If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall receive such evidence or testimony in executive session. The Commission shall afford any person defamed, degraded, or incriminated by such evidence or testimony an opportunity to appear and be heard in executive session with a reasonable number of additional witnesses requested by him before deciding to use such evidence or testimony.

When we use the term, executive session, we mean a session in which only the Commissioners are present, in contrast to a session such as this one in which the public is invited and present. In providing

for an executive or closed session for testimony which may tend to defame, degrade, or incriminate any person, Congress clearly intended to give the fullest protection to individuals by affording them an opportunity to show why any testimony which might be damaging to them should not be presented to the public. Congress also wished to minimize damage to reputations as much as possible and to provide persons an opportunity to rebut unfounded charges before they were well-publicized.

Therefore, the Commission when appropriate convenes an executive session prior to the receipt of anticipated defamatory testimony. Following the presentation of the testimony in executive session and any statement in opposition to it, the Commissioners review the significance of the testimony and the merit of the opposition to it. In the event we find the testimony to be of insufficient credibility or the opposition to it to be of sufficient merit, we may refuse to hear certain witnesses, even though those witnesses have been subpoenaed to testify in public session. An executive session is the only portion of any hearing which is not open to the public.

The hearing which begins now is open to all and the public is invited and urged to attend all of the open sessions. All persons who are scheduled to appear who live or work in Washington or within 50 miles of the hearing site have been subpoenaed by the Commission. All testimony at the public sessions will be under oath and will be transcribed verbatim by the official reporter. Everyone who testifies or submits data or evidence is entitled to obtain a copy of the transcript on payment of cost. In addition, within 60 days after the close of a hearing, a person may ask to correct errors in the transcript of the hearing of his or her testimony. Such request will be granted only to make the transcript conform to testimony as presented at the hearing.

All witnesses are entitled to be accompanied and advised by counsel. After the witness has been questioned by the Commission, counsel may subject his or her client to reasonable examination within the scope of the questions asked by the Commission. He or she also may make objections on the record and argue briefly the basis for such objections.

Should any witness fail or refuse to follow any order made by the Chairman or the Commissioner presiding in his absence, his or her behavior will be considered disorderly and the matter will be referred to the U.S. Attorney for enforcement pursuant to the Commission's statutory powers.

If the Commission determines that any witness' testimony tends to defame, degrade, or incriminate any person, that person or his or her counsel may submit written questions which, in the discretion of the Commission, may be put to the witness. Such person also has the right to request that witnesses be subpoenaed on his or her behalf.

All witnesses have the right to submit statements prepared by themselves or others for inclusion in the record, provided they are sub-

mitted within the time required by the rules. Any person who is not subpoenaed may be permitted, in the discretion of the Commission, to submit a written statement at this public hearing. Such statement will be reviewed by the members of the Commission and made a part of the record.

Witnesses at Commission hearings are protected by the provision of Title 18, U.S. Code, Section 1505, which makes it a crime to threaten, intimidate, or injure witnesses on account of their attendance at Government proceedings. The Commission should be immediately informed of any allegation relating to possible intimidation of witnesses. Let me emphasize that we consider this to be a very serious matter, and we will do all in our power to protect witnesses who appear at the hearing.

Copies of the rules which govern this hearing may be secured from a member of the Commission staff. Persons who have been subpoenaed have already been given their copies. Finally, I should point out that these rules were drafted with the intention of ensuring that Commission hearings be conducted in a fair and impartial manner. In many cases the Commission has gone significantly beyond congressional requirements in providing safeguards for witnesses and other persons. We have done that in the belief that useful facts can be developed best in an atmosphere of calm and objectivity. We hope that such an atmosphere will prevail at this hearing.

With respect to the conduct of persons in this hearing room, the Commission wants to make clear that all orders by the Chairman must be obeyed. Failure by any person to obey an order by Dr. Flemming or the Commissioner presiding in his absence will result in the exclusion of the individual from this hearing room and criminal prosecution by the U.S. Attorney when required. Federal marshals stationed in and around this hearing room have been thoroughly instructed by the Commission on hearing procedure and their orders also are to be obeyed.

This hearing will be in public session today, Friday, August 25. The session begins at 8:30 a.m. and will continue until about 6:00 p.m. with a 1-hour break for lunch. The time between 5:00 p.m. and 6:00 p.m. has been set aside for testimony from persons who have not been subpoenaed but wish to testify. As noted by Chairman Flemming, persons wishing to appear at the open session should be in contact with members of the Commission staff in Room 542 in this building.

Thank you.

CHAIRMAN FLEMMING. Thank you, Commissioner.

Counsel will call the first witness.

MR. ALEXANDER. James Waldo, please.

[James Waldo was duly sworn.]

TESTIMONY OF JAMES WALDO, ASSISTANT U.S. ATTORNEY, WESTERN
DISTRICT OF WASHINGTON

MR. ALEXANDER. For the record, could you please identify yourself, indicating your current position and what role you played with respect to the regional team of the Fisheries Task Force?

MR. WALDO. My name is James Waldo, W-a-l-d-o. I'm an Assistant United States Attorney in the Western District of Washington, and during the course of the task force I served as chief negotiator and senior staff member of the task force.

MR. ALEXANDER. Thank you. Before the task force began its operation, what was your position?

MR. WALDO. I was Assistant United States Attorney in charge of the *U.S. v. Washington* case, commonly known as the Boldt case.

MR. ALEXANDER. For what period of time?

MR. WALDO. Approximately 9 months.

MR. ALEXANDER. Is it fair to characterize that work as implementation of the basic decision?

MR. WALDO. Yes.

MR. ALEXANDER. What were your experiences during that time, in your view, as to the success or failure of the implementation process through the judicial process?

MR. WALDO. Well, as compared with many court decisions where there is no continuing jurisdiction, I guess the implementation was reasonably effective. If the judge was there, decisions that had to be made on an injunctive basis were able to be made.

So, in one sense, it was better than many court decisions. On the other hand, it was clear even during the 9 months that I was there that we were heading for a major State court-Federal court confrontation and that as a result of that, the State enforcement program was rapidly diminishing in its effectiveness and that there was no other Federal agency capable of stepping in.

I think all of the observers at the time felt a concern as to both the relations between the people here in the State and also concern for the future of the resource.

MR. ALEXANDER. At that point in time, during this 9-month period prior to the establishment of the task force, did you or anyone else that you are aware of in the U.S. Attorney's office make recommendations to Washington, D.C., Justice Department, or any other agency, as to a different role in relation to Federal enforcement or a more expanded role in relation to Federal enforcement of the decision?

MR. WALDO. Well, I think, certainly in terms of both the 200-mile bill where we had Federal enforcement authority and in terms of the IPSFC [International Pacific Salmon Fisheries Commission] which the Federal Government assumed at that point, we made recommendations that we thought the Federal Government ought to pick that role up, really for two reasons. One, that the State was having increasing problems handling the massive illegal fishing, and secondly, by maybe

taking some of the enforcement burden off them they might be better able to cope with the areas remaining under their jurisdiction.

At that time I don't remember any discussion about the Federal Government taking over the non-IPSFC, non-Regional Council enforcement. I think everybody at that point felt that that was still appropriate for the State and that probably could be done under the different sets of circumstances.

MR. ALEXANDER. The experience of this 9 months, in terms of the efficacy of achieving the results of the decision or mediating some of the impacts of the decision through the judicial process, did it, in any sense, lead to the creation of the task force or have an input into that decisionmaking process?

MR. WALDO. I think it certainly did, Mr. Alexander, as far as I was concerned.

MR. ALEXANDER. Okay. Tell us about that experience.

MR. WALDO. I think it became clear—I started the job on June 5, 1976, and I think I was in court the first time on June 7. Between then and November I was in court 29 times, including three or four weekends, Labor Day, etc., over one injunctive proceeding or another in the State or Federal court.

It became pretty clear to me that a court battle really was a tool that was being used by various participants in the fisheries to attempt to establish their claim on the fishery, and that the court system was really being used more as an outgrowth of more basic social and economic and racial and political controversy than being a court battle in and of itself where what the court said—the participants would, in fact, say, "Well, that's good; let's accept that," and leave.

MR. ALEXANDER. You used the term "racial, economic." In what sense is the conflict a racial or economic conflict?

MR. WALDO. You're dealing with an obviously very limited resource. It's a very valuable resource and the days are gone when anyone can go out and fish for whatever period of time they want, take whatever they want, and go sell it. The salmon is now very scarce, and the demands upon it both for commercial and recreational use are much higher than they have ever been. There is far more ability to harvest the fish out there than there are fish to harvest, which means that whoever gets access and opportunity is probably going to have a good income or a better income.

MR. ALEXANDER. Racial component?

MR. WALDO. I think there you have the same sort of things you would have in any other situation where you have a group that for years essentially was very dormant on the reservations and supported essentially by the Government and was very quiescent. Indians didn't bother anybody. They were sort of off by themselves. During the sixties they began to assert themselves, and in the process of asserting themselves displaced people. So, over and above the economic problem and the displacement, both of which are extremely real, I

think the fact that it was being done by another racial group just added to that conflict.

MR. ALEXANDER. Out of curiosity, you stated that you entered the job on Monday and were in court after coffee, or something to that effect. Was this your first experience in Indian law?

MR. WALDO. Yes.

MR. ALEXANDER. Particularly in fishing rights?

MR. WALDO. Correct.

MR. ALEXANDER. We were discussing your experiences and how you feel some of those perhaps lead into the task force, the fact that you viewed the court system as somewhat of an inefficient way to resolve some of the larger conflicts. During this period of time, towards the tail end of your experience in that 9-month period, did you meet with the congressional delegation or members of it concerning possible resolutions of the problem?

MR. WALDO. I think it would have been about in October or November, somewhere in there, I ran into Congressman Pritchard, who is a personal friend. At that point the conflict out on water was really at its height for that season, and the newspapers were filled daily with stories of problems, and so on and so forth. He asked me how things were going and whether it appeared that through the court system there was going to be a resolution. I said, "Well, I don't know what you mean by resolution. I think the court system can handle what we see out there today, but I don't know that we're moving towards resolution as opposed to moving towards more conflict."

That was really about the gist of it. Sometime later he called and asked if I would like to talk with him and Congressman Meeds about the whole situation. Essentially, what was concerning both of them was that at this point it appeared that the controversy was heading to a point where there were only one or two alternatives—either buy the Indians out or buy the non-Indians out, or let things keep going the way they were until there weren't any more salmon or steelhead. They didn't like any of the three alternatives.

MR. ALEXANDER. Three alternatives?

MR. WALDO. Well, just do nothing I guess is an alternative, maybe not a conscious one but sinning by omission and not commission. They said, "What can be done to create some other choices?" and I don't think any of us particularly had any answers, and that was the subject that everybody agreed ought to be explored with the participants in the fisheries to see what people felt was appropriate.

MR. ALEXANDER. Were there explorations with the participants that you were involved in or helped set up pre-task force?

MR. WALDO. There were a number, most of which I wasn't involved in. I think the delegation did them on their own. I talked to some representatives from some of the commercial fishing interests and some of the State officials and I helped set up a meeting with Congressman Meeds and representatives of the various tribes of the Tulalip Reservation to try and discuss what kinds of things could be done.

At that time I don't think anybody had any task force or anything specific in mind. It was more sort of everybody fumbling towards what could be done.

I think maybe it would have been January or February, with the advent of the new administration, that there began to be any serious talk about an executive branch effort.

AMR. ALEXANDER. Did you participate in any of these talks with officials in Washington or counterparts in other agencies in the region in this sort of transition of the administration period?

MR. WALDO. Certainly out in the region we all did. We knew the next season was coming upon us, and we knew that things were probably doing to be worse not better without really knowing how. There were many attempts, I think, through all the various government agencies, both in terms of what do we do about the next season and also what do we do about the long term. Of course people out in the region were trying to contact the people in Washington, D.C., who hear from everybody around the country about their terrible problems, and they'd all say, "Send us a memo," and we sent lots of missives off and—

MR. ALEXANDER. Was this a joint agency sort of—

MR. WALDO. Oh, no, it's more dependent on everybody's individual willingness to put their neck on the line and try to stir up a little dust back East. Some people would do a lot, some would do very little.

MR. ALEXANDER. Which agencies are we primarily talking about?

MR. WALDO. We're talking about Interior, Commerce, and Justice, primarily, and to a lesser extent the State Department through what was going to happen in the IPSFC.

MR. ALEXANDER. Was the Federal Regional Council or any other sort of coordinating Federal entities that exist in the region ever utilized in this pre-task force phase?

MR. WALDO. No. Again, that was right about the time of the changeover, so most of the people on the Regional Council were either looking for work or coming in and trying to find out how their own agency ran. These were more, I would say, career level people we're talking about rather than heads of various agencies.

MR. ALEXANDER. To your knowledge was the Community Relations Service of your Department, the Department of Justice, ever used in this pre-task force stage to attempt mediation or conciliation between the various interest groups and parties to the litigation?

MR. WALDO. No. They offered several times.

MR. ALEXANDER. Offered to the parties or to the Department?

MR. WALDO. To the Department, and I think maybe to the parties. I'm not exactly sure on that. But, frankly, one of the things we were trying to do even then is there were so many people involved, just government people, Federal or State, that we were trying to keep it down to somewhat less than 30 people that would have to be in the room if you were going to try and make a decision.

Anyway, I guess back East the discussion that sticks out most in my mind is about February of 1977. I was back East for a Department of Justice training session for Assistant U.S. Attorneys, and while I was back there, there were a number of discussions held between various members of the congressional delegation and their staffs and people in the Department of Interior and Department of Commerce and Justice over what could or should be done. I sat in on several of those sessions, and I think it was really out of that that the task force idea emerged within the administration.

MR. ALEXANDER. At that point in time how would you have defined the existence of the problem? You could define it as a failure of implementation, economic impact—there is a range of possibilities—but what was the understanding, at least that you had on your part, as to what problems were going to try to be solved by some outside entity, if you will, some new structure?

MR. WALDO. Well, I think maybe, in a nutshell, if you go back and try to assess blame it is probably pointless, but if you try to for the fisheries controversy, probably the blame falls on the State and Federal governments, not on the participants, either Indian or non-Indian. The Indians since the State was a territory maintained that their treaty right was a substantive right, not an access right. The State has consistently denied that, and the Federal Government for better than 80 years was willing to let that ride, not willing to attempt to establish what it did mean, if it meant something different than what the State claimed.

So, the Indians consistently maintained they had a treaty right and that it meant something more, and, essentially, by most governmental officials that was dismissed. So, you had literally generations of non-Indian fishermen decide that this was going to be their vocation, and then in 1971 in *U.S. v. Oregon* and 1974 in *U.S. v. Washington* the ground rules were suddenly changed on them. All of a sudden their livelihood was worth about half or less what it was prior to that.

Essentially, the position that those of us who are regional employees took is that you had a situation where there was a claim of right on each side and those claims of right couldn't be satisfied within the status quo.

MR. ALEXANDER. Could you clearly define the claim of right on each side as you saw it?

MR. WALDO. Let's say on the treaty side they signed a contract. The contract says, "We give you clear title to all this land except what we reserve for reservation, in return for which we want to retain certain things, particularly fishing." For 100 years or more with the exception of *U.S. v. Taylor* and *U.S. v. Winans* and *Tulee* in 1945, there was very little done to substantiate that claim. And then they go through the court system, as we're supposed to do in this country, and they establish what that right means, and at the beginning of that case everybody is excited about it. The U.S. Government is excited, the State's excited, the tribes are excited. We're going to finally have a

definitive answer, and we're no longer going to be deciding these questions within the context of a criminal prosecution for illegal fishing, in which one court says there is no treaty defense and the next court says there is.

The decision comes out and the tribes say okay, "It is now final and has been supported by the ninth circuit; *cert.* has been denied by the Supreme Court; we've established our rights and we'd like to have them fulfilled."

I think as an advocate attorney I could make a good case on that side. Furthermore, the tribes make the point that, "We're not asking for damages, assuming this is the quantum of our treaty right, and we haven't had it for 100 years. Potentially we're entitled to what's been denied us, but we'll forget that. We just want to go ahead and do what has to be done in the future fairly." In my opinion, a compelling case.

On the other side, you have people who are—many of whom, much like the Indian fishermen, want to fish and don't want to be warehouse employees or anything else. They want to fish. As I'm sure you've probably discovered being out here, it takes a certain breed of person who wants to do that, and when they want to do it, that's what they really choose to do.

There are instances in which people have told us that, "When I got into this business back in the forties or fifties, there were questions about these Indian treaty fishing rights, and I'd ask people in government who were supposed to know, 'what do these things mean?' and, 'No, it doesn't mean anything. That was back 100 years ago and it just meant that they could fish like you could.'"

Based, in a sense, on what you might almost call detrimental reliance on what the governmental officials were telling them, these people committed their life to being a fisherman. In many cases their boat, if they are a purse seiner or a large troller, may be worth more than their home. The Federal Government as well as the State is encouraging them to get into fisheries. We're paying low-cost loans for trollers—"Get out and be a troller"—when Boeing crashed. "The best thing you can do in life is go be a fisherman. We'll give you low down, low interest payment, low return."

So, the fishermen ultimately say, the non-Indian fishermen say, "Look, a few of us are paying the cost for a treaty that's to benefit everyone. One generation of fishermen are bearing the brunt of something that was designed to benefit everyone. We knew nothing about it when we got into this business, and is that fair? We don't have the benefit to the land title. It may be a benefit to the government and citizenry as a whole, but to us it's of no particular benefit."

I think, again as an advocate, I wouldn't mind having that side of the case either. Given the history of what has happened to the resource, in terms of competing claims, from multiple use needs for water and lack of concern about the fisheries, lack of knowledge about the fisheries, you can't satisfy both those claims in the present context.

One or the other has to be sacrificed, unless you can somehow figure out how to change the status quo and try to accommodate more fully than is possible now those competing interests.

MR. ALEXANDER. You say in about January the notion of some sort of entity began to be kicked around by the executive branch. Was it clear to you around that time or shortly thereafter that you would be playing a role in this process?

MR. WALDO. Frankly, I don't remember at what point—it was discussed, I believe, for a while whether or not—One possible route would have been to have gone with some sort of a blue ribbon panel of nongovernment, or at least nongovernment-agency-involved people, in terms of this problem. The other alternative would have been to pick people who were familiar with the problem and involved with the problem. I don't remember exactly when that was resolved in favor of participation by agencies who were directly involved. I think whatever point it was in January or February that that decision was made, it was pretty obvious that I was going to be involved.

MR. ALEXANDER. The task force from Washington, D.C., operated under four guidelines according to the final report?

MR. WALDO. That's right.

MR. ALEXANDER. Were there any other detailed memoranda or walking orders that one got from the administration?

MR. WALDO. I think the only other major one, other than the four substantive guidelines, were that we were under what I consider and I think the other regional members considered to be a heavy obligation to bend over backwards in terms of participation. In other words, this was not something that we were supposed to go off in a corner somewhere and divine. A restriction was laid on us to start essentially with no preconceived plan and simply approach all of the participants and say, "What do you think the problems are and what do you think the solutions are?" and go from there within the context of trying to meet the four guidelines, which is sort of a fisheries equivalent to the Ten Commandments.

MR. ALEXANDER. For the task force?

MR. WALDO. Yes.

MR. ALEXANDER. In terms of liaison from the regional task force level, your level, were you permitted to relate directly to the top officials in the State government, or did that have to go through Washington at all?

MR. WALDO. I think we had a remarkable degree of freedom as to who we could talk with.

MR. ALEXANDER. Would this include the congressional delegation from this area, or did that have to clear through your respective congressional liaison office?

MR. WALDO. No. It included the State officials of Washington and to a certain extent of Oregon. It included, although we never particularly utilized it, the IPFSC commissioners for the Fraser River Fishery,

the congressional delegation from this State, the congressional committee people and their staffs from the key committees who, for instance, Congressman Yates sent a staff member out here to investigate and spent a lot of time with us and whom we kept apprised of what was happening.

MR. ALEXANDER. Was there a great deal of freedom to directly relate to whoever you felt appropriate without going through the normal clearance procedures?

MR. WALDO. For instance, we also had free access to OMB [Office of Management and Budget] on each trip back there. Really, without any national task force members the regional team—they obviously authorized it and thought it was a good idea, but we would go in and sit down with budget examiners from the areas we were involved in and say, “Here’s what it looks like. Here is how we’re proceeding. We don’t want to surprise you at the end.” It was phenomenal.

MR. ALEXANDER. Unusual. When you started, what was your initial role in your process? You had an acting U.S. Attorney at the time. Was Mr. Hough in place yet?

MR. WALDO. I think John had just started, maybe 2 or 3 weeks.

MR. ALEXANDER. Dr. Alverson?

MR. WALDO. He had been at the center for quite some time; however, he had not been involved in this issue.

MR. ALEXANDER. What was the initial work for the task force and the senior staff person?

MR. WALDO. There were two things that sort of happened right away, both of which I think had a great deal of bearing on what followed later. The first was the decision to put together a staff of people out here who did not have any particular vested interest or past—who could have credibility across the board. In other words, we decided that we were going to try to pick staff, either through consultants or detail, who had both the expertise we needed, and we would essentially “name request” people or we would hire them from the outside.

Secondly, we began the first round of meetings, which lasted usually from 3 to 4 hours, with participants—leadership in the participants—in which we essentially said, “This is your opportunity. We want to just sit and listen and you tell us what you think the problems are and what you think, if you have any ideas on how we go about resolving this.”

That essentially took up a good part of the month of May. It was kicked off by a trip out here by Leo Krulitz, who met with State officials, the tribal commission, commercial and sports fishermen. Essentially, they said, “Here are the guidelines. This is what we’re trying to do. These are the people you’ll be meeting with. Don’t try to second-guess them. We want you to deal with them, and we will be out from time to time to see how things are going.”

MR. ALEXANDER. At that point of May or June, I guess, also somewhat in making your rounds of meetings, did you at that time make any tentative proposals or throw out suggestions to the various participants as to directions that a solution might go?

MR. WALDO. There was very little of that, as I remember it. To the extent that any ideas were thrown out, I can only remember one meeting in particular. It was more in the way of trying to see how they would respond to what we either knew, or presumed at that time to be the other side's viewpoint, just sort of, I would say, more of a probing nature. "This is what we heard from somebody else; what is your reaction?" Which really isn't a plan or proposal, per se, so much as, I guess, trying to get a sense of where people stood and what they really felt deeply about and what they didn't feel so deeply about and why.

MR. ALEXANDER. Did you, during this period, this initial phase, in a sense, indicate to the various participants what their constraints were, in a sense—the various proposed congressional legislation to abrogate treaty rights, the existence of the court decree? I'm sure you have heard advocacy positions from all participants.

MR. WALDO. I think that's fair to say, yes. In fact, there wasn't anyone who didn't take at least half a meeting to deliver what were often fairly eloquent statements of their position and their feeling of having been wronged for whatever period of time that was.

What we had numerous arguments about [was] concern from the tribes that we were essentially a front group for the congressional delegation to appeal the Boldt decision and challenges from the non-Indian fishermen that we were essentially a front group for the Boldt decision and simply trying to sugar coat the pill.

The tribes argued in many cases that you simply ought to take the Boldt decision and implement it—"Why are we bothering to talk about this task force approach?"—and non-Indian fishermen saying that, "Until you agree that the Boldt decision can be thrown out as part of this process, we don't want to talk to you."

Of course, everyone throughout the whole process always had in the back of their mind that there were other alternatives for change—the court systems, the congressional legislative route. One of the things they were always weighing, as best I can remember, is whether or not they wanted to deal with us or whether they wanted to tell us we could go talk to somebody else and that they had found a better way of achieving what they wanted.

MR. ALEXANDER. What came out of this first round of meetings? Did the work plan of the regional team of the task force change, or speed up, or focus?

MR. WALDO. I think one of the things—there were several things that came out. The first and most important was the lack of faith by all the participants in the data, which was something we had not planned on. I think we had felt that with some sprucing up you could simply take the Washington State figures and everybody would say, "Yes, that's an acceptable data base. Now let's get down to talking." That was far from the case. In fact, there was almost no one who was

willing to accept those numbers as being the valid numbers as applied to them.

So, essentially, during June and July we had to have anywhere from four to eight staff people, depending on the time period, constructing a new data base using State figures, Fish and Wildlife, NMFS [National Marine Fisheries Service] figures, and we circulated those to the 180 people whom we met with in the first round of meetings, and said, "Here is what we're thinking about for data base. If you don't agree with it as it applies generally or to you, we want to hear about it."

Ultimately, that led to the development of a computer model in order to be able to try to forecast what things would happen in the future, based on certain measures being taken, which was constructed out of that data effort, and I think, by and large, to the extent that we were able to move on, that was a key factor.

Secondly, it became evident that to put everybody in the same room at the same time at that point would have been counterproductive. The feelings were still so strong. There was no clear substantive issue you could begin with that would be sort of a basis of moving people forward as opposed to reopening old wounds.

MR. ALEXANDER. Would that preclude the team playing any sort of traditional mediation role, in a classic labor law sense?

MR. WALDO. That was our feeling at that time. It was a fairly conscious decision whether that was the next step—to put everybody in the room face to face or whether we ought to continue to deal with them on a group-by-group basis, not to play them off against each other, but simply to allow them to loosen up and not keep in the same rigid positions that everybody had spent a good 100 years getting themselves into. Our feeling was that we were nowhere near ready to have people move.

They knew where their people were behind them. They knew what they were comfortable with and what they weren't, and they wouldn't be about, in the middle of a room of various assorted other people, to even consider moving from that. So that was an outcome and, as it turned out later, a controversial one.

MR. ALEXANDER. What kind of a work plan developed after the first round of meetings—you cannot, in your view, play a traditional mediation role; you have a data base that nobody agrees to or has any faith in. What does the staff of the task force do now? What is your work plan?

MR. WALDO. Our plan at that time was to be through by November, which shows how we had our finger on the situation. Essentially, we foresaw a period of about 2 months of assembling the data base. During that time, we would be talking with people and attempting to sort of find out informally what kinds of things might be possible.

Following that, as it turned out and we had sort of envisioned at the time, would be a period where we would request formal proposals, and

the idea was that by talking with people informally and then requesting the formal proposals you try to get people to, on the record, move even a little bit, even one step; but it's on the record, it's not just a private discussion—they have got to see it in black and white, they have got to agree to take that step. And that was ultimately the way that next series of events worked out through about October, as it turned out.

MR. ALEXANDER. At that point in June or July, were any other points clear as to direction the task force would need to move in? For example, was it clear that you were going to be in the business of recommending significant enhancement programs as a portion of a solution?

MR. WALDO. Well, I think there were at least three or four things that were pretty clear. First was that we would have to give some real consideration to the data in the future. No matter what kind of settlement you have, it was clear that the inadequacies of the data and information system exacerbated the conflict.

A lot of people manipulate numbers or feel that the numbers were being manipulated against them, that they couldn't trust the management agencies, and as a result, not only didn't they like the decision, they had a feeling that the decision maybe was pretty shoddy or had been deliberately set up so that they would be the person to take the fall.

Secondly, it was pretty clear from our initial staff work that the fleet, the fishing effort, the total fishing effort, treaty licensed and State licensed, was too large for the resource. And from even a preliminary analysis of the figures, to carry on an enhancement program, which was, of course, one of our guidelines and one of the things everybody looked to, might deliver no benefit to the present fishermen at all. It might simply attract more people in to use what were now dormant or close to dormant licenses.

So, without knowing how we were going to solve that problem, I think it was pretty clear even by then, just looking at the history of the catch and the effort, the curve over the fleet, that we had a real problem there, a larger one than we had thought.

I think it was also clear that in the enhancement area it was not a panacea. Unfortunately, many of the people and public officials looked at it as a panacea. The more you got into it the more you realized that there were substantial disagreements between the biologists as to what was the most effective way to enhance, what were the limitations on enhancement, and what knowledge did you have to have in order to be able to do the enhancement appropriately. As a response to that, we created a special technical committee in the enhancement area, which was composed of different participants who had a biological background.

MR. ALEXANDER. Representing all parties of interest, government or nongovernment?

MR. WALDO. Correct. Not all, in the sense of one from every one. In other words, we tried to find State, several tribal—well, one from Fisheries, one from Game, two from the tribes, and one from the commercial industry, and one from the sports fishermen, and we had, of course—the chairman was a U.S. Fish and Wildlife official, Bob Azevedo. There were several other staff people taken from NMFS and NOAA [National Oceanic and Atmospheric Administration]. They were essentially charged with hammering out the guidelines for enhancement, the biological and technical guidelines for what would be minimum requirements, and I'm sure you probably looked at those—they are in the report.

The consensus that they hammered out I think, in the opinion of most all the biologists I talked to, was a much more stringent standard than presently exists, and it had the credibility of having everybody understand what the rules were and how the rules were derived and the fact that this wasn't done off in the corner somewhere or that people didn't have a chance to have access to that information while the technical standards were being put together.

MR. ALEXANDER. In the management area and the potential management of the resource, was the handwriting clear in the summer of '77?

MR. WALDO. No, I don't think so. I think at that point there were any number of possibilities, based on what people had recommended to us, that we had not yet had a chance to think through. It appeared on the face of them to have some merit. So I would say that there was nothing that we had fastened on.

The only thing that we really looked at that time, that we ultimately did not end up aborting, that I can remember being excited about at the time, was some sort of independent data bank source independent from the acting managers, in order to address that problem we talked about earlier. Really, other than that, I don't think it was at all evident what the best management entity or system would be.

MR. ALEXANDER. During this whole period did your responsibilities as an Assistant U.S. Attorney in the implementation phase of *U.S. v. Washington* continue?

MR. WALDO. They continued from about May—well, April, I guess, through about June when we decided for a variety of reasons to terminate those. At that time I was handling phase two of the Boldt decision, which was going to be a monumental piece of litigation. It was clear I wasn't doing justice to that job. I was also still somewhat involved, although less so, in the continuing jurisdiction of phase one. I was not particularly doing justice to that either.

And the response of the non-Indians to having me go into court and arguing a motion which was essentially detrimental to them and win and then come back the next day and say, "Well, I'm really interested in your welfare," was a little hard for them to swallow.

So in light of the fact that at that point we had more credibility with the tribes and less credibility with the non-Indians, the decision was

made that since I wasn't doing a very good job on it anyway, why don't we get somebody else.

MR. ALEXANDER. How serious was this perception of a conflict of interest, as far as you were aware of it, for the non-Indians?

MR. WALDO. I think it was very serious. Periodically they asked for my removal from the task force operation. I think June was about the first time that they formally sent a letter to the White House and the Cabinet officers and said that they'd certainly appreciate it if you'd remove Mr. Waldo from this effort.

MR. ALEXANDER. Did you perceive yourself in a conflict of interest, either in terms of your role in the task force vis-a-vis the Indians or vis-a-vis the non-Indians?

MR. WALDO. I didn't feel that way and I suppose that's partly your legal training, in terms of being able to separate your own personal views from what you're hired to do at that point. I suppose in large part because I began with the belief that if a settlement wasn't fair to everybody who was involved, there was no chance it could be accepted, and we knew from the beginning that any one major group of participants could kill the settlement. So there was no advantage in attempting to bias it one way or the other and simply result in failure.

I guess, knowing that from the beginning, I had no interest whatsoever in not being fair and openminded as far as everyone was concerned. It was the only chance we had of succeeding—slim, at best, as it's turned out.

MR. ALEXANDER. Would it be fair to say that this is at least a role that's unique to a Justice Department lawyer, as opposed to one in private practice, where the Department of Justice, at least in Indian affairs, is oftentimes on at least two sides of the issue?

MR. WALDO. I think it is somewhat unique to Justice, where you have the implementation of the trust responsibility on the one hand and you are also general counsel for the whole Government, trial counsel for the whole Government, on the other hand. Essentially, I guess, in the conceptual framework you could say I stepped from the trust responsibility to general trial or general representation responsibility in moving from the case to the task force.

MR. ALEXANDER. On the task force, in your view as a lawyer for the Government, you were not in any sense representing the trust responsibility the Federal Government has towards Indian tribes? Is that a fair statement?

MR. WALDO. I have never been able to find out just what the trust responsibility means, when you actually get down to specific cases. I felt that, and do feel that, the proposed settlement and the settlement process promises as much for the Indian future as for anyone else's. In that sense, I suppose you can say that's a dutiful execution of the trust responsibility.

MR. ALEXANDER. Assuming that the trust responsibility has, at least for the Department of Justice, some advocacy responsibilities—

MR. WALDO. Then, in that case, I was not being an advocate. That's the other way to look at it—in which case, no.

MR. ALEXANDER. In the 1977 fishing season, the U.S. Attorney's office went into Federal court and proposed a switch in the allocation formula to 55-45. Was that a decision that was made distinct from the negotiations process, or is it something that is related to the negotiation of the task force process?

MR. WALDO. It certainly was related. The subject came up, I guess, many times in many of the discussion sessions, and essentially what happened, where we brought it up with various treaty area councils and tribes, and I think made the mistake, the mistake was mine in the way it was phrased, and we said, "Would you agree to a 45-55?" Well, as you may know, in terms of tribal decisionmaking processes, the tribal chairman or fisheries manager cannot simply say, "I agree"; therefore that binds the tribe. You have to go back to the tribal councils or the fish committees and get a sort of a consensus decision. They have to agree.

Of course, that would be the equivalent of going to the Puget Sound gillnetters and asking them, "Would you like to take a vote on the validity of treaty rights?" When you've got someone who spent 100 years either being on the short end of the stick or the long end of the stick, depending on how they perceive it, as a voluntary matter they are not going to agree to give up what they think is theirs to somebody who they view as having been the principal reason they haven't got it.

So then we had to make a decision as to what would be the most appropriate means to proceed, and we made the decision that, this was sort of over the weekend, that the 45-55 was appropriate, and we attempted to get it cleared through the agencies back East and finally got clearance on Monday—sent a telegram to all the tribes and told them what our decision was. The hearing was on Wednesday. So that proceeded to touch off a storm, where the Indians wanted us fired.

MR. ALEXANDER. Did it, in a sense, provide you with more flexibility as a negotiator in dealing with non-Indian interests? I'm not sure negotiator is the proper word.

MR. WALDO. I understand. It did, I think, several things. It lost us most of our credibility with the tribes. They refused to deal with us for some extended period of time. On the non-Indian side I wouldn't exactly call it a clear gain, because they still basically thought we were out here to just kind of sugar this thing down, and many were suspicious that 5 percent was going to be it and that was the best they were going to get, and they didn't like that, and so on and so forth.

I think perhaps it did, in a sense that nobody expected us to do it on both sides. As I say, one side was negative and the other side, clearly, somewhat positive, but it did, I think, have some people come to the realization that we were serious about the problem and we were willing to take steps to try to resolve it.

MR. ALEXANDER. Let's go back to June through October and lay the process out. You were receiving proposals from the various interest groups and you drafted a proposal which was released, I believe, in January?

MR. WALDO. Well, there was first a report on what all those proposals had been, which was issued on November 3. We then had a series of meetings with all the participants, that essentially was most of the month of November and early December, about three to four meetings a day, in which we went over their submissions to us in terms of proposals, the document we had put out in early November, and any points that seemed to be coming up during the discussions on one side or the other where it looked like someone might have some room. Those were, I think, closed off, say, the end of the first week in December, and then we began to write and that report was issued in January.

MR. ALEXANDER. After that it was comments on your—

MR. WALDO. It took about 2 weeks to a month for everybody to recover from the shock of the January report. There was sort of a hiatus period there, and then beginning about mid-February I would say, more or less, people began to start saying, "How do we comment? What if we want to get changes? We can't live with it as it is, but if you can change it we might be able to." That in turn led to the State and the tribes deciding they didn't want to deal with us; they thought they could do much better by dealing face to face. The Cabinet agreed to an extension, which Andrus announced out here.

We then agreed on a deadline with the national task force, based on when that extension would be over, and during the interval both State and the tribes were negotiating on management, primarily enforcement and enhancement. We tried to concentrate on improving our buy-back and fleet reduction programs through a series of meetings with the commercial and sports fishermen, who at that time were not involved with the State-tribal negotiations.

MR. ALEXANDER. I have no further questions at this point.

COMMISSIONER FREEMAN. Mr. Waldo, I would like to go back to some of the testimony, or some of the statements that you made at the beginning of the testimony. I believe you stated that there was a court decision which defined the rights of the Indian tribes with respect to the fishing, but that it was your opinion that the court decision was an inefficient way of solving the problem?

MR. WALDO. It was ineffective at reaching all the aspects of the problem.

COMMISSIONER FREEMAN. Because the State of Washington did not comply with the court decision?

MR. WALDO. Well, it certainly didn't turn out that way. I think, in part what I was trying to say—let me expand on that. In hindsight—of course hindsight is perfect—I think the United States made a real mistake in not asking the U.S. Supreme Court the first time around

to review the case, the reason being that in our system of law, where you have a State and Federal court system, the decisions of a district court and an appellate court are not legally binding on a State court system. The State court system is supposed to pay deference to those decisions, as you well know, through comity, but it is not binding.

COMMISSIONER FREEMAN. Are you saying that there is no Supreme Court decision defining and declaring the fishing rights of Indian tribes?

MR. WALDO. What I'm saying is in the *U.S. v. Washington* case its determination of a 50-50 division and an allocation system that provided separate time and separate opportunity was not binding on the State court system. Where you have the State being the one that managed the fish and wildlife and the State court system trying up the State agency, which is essentially what has happened, the implementation ability just wasn't there. Why that was, you and I can each have our own theories.

COMMISSIONER FREEMAN. Are you also saying that when the State of Washington entered the Union, it made a commitment, did it not, to comply with the laws and Constitution, including any and all treaties?

MR. WALDO. Surely they agreed to that, but I guess what I'm saying is that the State courts were left freely to interpret those treaties, just like the Federal courts, and they, unfortunately, from the point of view of Federal and State court relations, interpreted them differently.

COMMISSIONER FREEMAN. The other statement that you made was that it then became necessary for the people to determine what they felt was appropriate. I'm troubled by this because of the implications that this kind of task force operation might have with respect to other minorities. If, for instance, a State does not want to accept the Federal court decision declaring the rights of minorities and then some other individual decides, "Well, we'll have a task force and decide those rights," this, to me, is a very dangerous precedent with respect to other minorities as well as for the rights of the Indian tribes.

MR. WALDO. I guess my response in the way this was attempted and the way we attempted to carry it out, obviously not necessarily to anybody's satisfaction at this point, but the attempt was to work out something that was acceptable to all of the participants, including the tribes. It was clear at that time and it is clear now that the tribes have the ability to defeat this plan as to any of the other major participants.

I guess to that extent I don't view it as dangerous. I view it, if you're looking at the choice, being—right now the choices are very limited. The Federal court can run the fisheries in perpetuity, or we are going to have to have some additional laws, State or Federal. It seems to me the best response the Federal Government can make is to say to the people who are involved, "Why don't you all agree on some sort of plan that provides you a better future than you have now?"

COMMISSIONER FREEMAN. Could you also consider another alternative, that is, that the State would enforce laws, existing laws, and the United States would enforce existing treaties?

MR. WALDO. Well, I think the United States in the last 3 years has done—executive branch—has done most everything it could within its power to enforce that court decision as to the Federal Government. As to the State, I think that for whatever combination of reasons, which I don't choose to speculate on, and I think if you have questions about that I think you ought to ask those individuals directly.

Through the State court system and through the State legislative system, they did not come at the ruling directly. What they did was to say that the agency had no authority to comply with the decision, and there is case law in the ninth circuit saying that the State supreme court is the highest court to determine what is the extent of State authority. That gets back to my earlier comment that, in hindsight, it's tragic that the U.S. Supreme Court did not review the case, because then it would have been binding on the State supreme court and we would not be in the position we are in today.

COMMISSIONER FREEMAN. Were you an employee of the Justice Department at that time?

MR. WALDO. At the time of the original case?

COMMISSIONER FREEMAN. Yes.

MR. WALDO. No. At the time the original case was decided, I was just about to graduate from law school. Following that, I worked in the Labor Department back East for 2 years before coming back out here to the Justice Department.

COMMISSIONER FREEMAN. Thank you.

CHAIRMAN FLEMMING. In connection with the *United States v. Washington*, the Supreme Court was petitioned to accept the case on appeal from the circuit court?

MR. WALDO. That's correct.

CHAIRMAN FLEMMING. And they decided against doing that?

MR. WALDO. That's correct.

CHAIRMAN FLEMMING. In the guidelines that govern the work of the Federal task force, I notice that the third guideline is a utilization of the fishery consistent with recognized treaty fishing rights reserved under the Stevens Treaty of 1854 and 1855.

What was the task force approach to the interpretation of the expression, "That recognized treaty fishing rights"? What court decisions governed their approach?

MR. WALDO. Well, we accepted as the current law the Federal court decisions in *U.S. v. Washington* and *U.S. v. Oregon* as the current law, which was one of the major items of controversy between us and the non-Indian fishermen for about the first 3 months of our existence.

In terms of our report and the substantive provisions of it and the various aspects of it, essentially our proposal to the tribes was, "If what we end up proposing to you provides a better future for you and your fishermen than the status quo, then you ought to accept it, and if it doesn't, then you shouldn't"—that there will be changes, we felt there probably would be, but there was never any particular doubt in

our minds or in any of the participants' minds what the present law is.

CHAIRMAN FLEMMING. Do you feel that the plan that is proposed is consistent with the current law?

MR. WALDO. It changes many of the aspects of both the Boldt and Belloni decisions, much like the Columbia River agreement entered into by the Columbia River tribes in the State of Oregon and the State of Washington changes Judge Belloni's initial ruling.

My assessment, I guess, is that in terms of being consistent, I think that there were two basic reasons why the tribes were motivated to try to get the Federal Government to bring the *U.S. v. Washington* decision. The first related to establishing it as a matter of principle, so that they wouldn't have to fight it year in and year out in criminal court, and sometimes you win and sometimes you lose.

Secondly, is the matter of the fisheries. They were being cut off for conservation, because they fish last in line and the fish were increasingly being taken farther and farther off the shore, and so by the time the fish got back to where most of the usual and accustomed areas were in the terminal fisheries, the department of fisheries would close them down and say, "We need the rest of this stock for spawning escapement." For those treaty fishermen who were marine fishermen, they saw this huge growth in the fleet over the course of the sixties and early seventies to the point where, as one individual told me one time, "I started to lay my net in front of another fisherman, and he blew his horn and I turned around and saw it was my brother." He said, "At that point I rolled up my net and went in and decided we have to do something different. This was just a miserable way to live."

So we tried to approach both of those problems, for instance, in our report—what do you do in terms of the terminal fishery per se in order to ensure that you don't go back to the old days and that it is recognized as a distinct fishery? That's one of the principles in our resource distribution scheme.

Secondly, we tried to look at the overall fleet size, in essence to try to get that back to a level where you could be back the way many of the treaty marine fishermen fished back in the fifties and sixties when they made a good living, by their own account.

CHAIRMAN FLEMMING. I gather it follows from what you have said that the implementation of the proposed plan would require steps to be taken to bring about a change in the current law?

MR. WALDO. It would, yes.

CHAIRMAN FLEMMING. Okay.

MR. ALEXANDER. In terms of your staff role in this process, if it were to be viewed in any sort of prototype sense for future resolution of various kinds of conflicts, are there any lessons learned or are there any things that should have been, in a very brief sense, done very differently in terms of organizational operation or staff role?

MR. WALDO. Just very quickly, I think the first thing that troubled us throughout was the—as I mentioned, we went with the attempt to get people detailed and outside contracts. I think that the process could have been quicker and perhaps more detailed in its response had there been a larger staff dedicated full time to the problem. I think the cost to the government would have been no more than it was by the time it got stretched out, and it probably would have been more satisfactory to the participants and to the the people working on the problem.

Secondly, I think that in any situation like this where you have this long history of conflicts, you're not just dealing with something that's a brand new problem or a brand new dispute. I think it is just critical that the decisionmakers in the executive branch, at the minimum, have got to make it absolutely clear to the participants what the extent of the authority of this group is.

One of the things, we were always being second-guessed as to whether anybody in the executive branch would even read our report, much less do anything about it. It is tremendously debilitating when you are dealing with people who have these absolutely fixed positions, if they have any doubt in their mind that you can produce what it is you say you will produce if each of them were to move.

I guess the last thing, which you and I talked about earlier, is the debate over whether an outside panel who is not from the area, who has no particular ties or vested interests to the area, is a better approach than having people who are intimately involved.

I still, I think on reflection, tend to favor the people who are involved. I think they have the ability to, as I think this regional team did, to really maximize a lot of support for this approach within government, and many of the interim things that were done, in the way of enhancement projects, management monies, could not have been done by an outside panel. They couldn't have even gotten the three agencies together much less have forced a decision with the rapidity with which, at least in the fisheries, decisions are needed.

In other situations perhaps it might be better, but in this case I think this was the most effective way to proceed.

CHAIRMAN FLEMMING. Thank you very, very much. We appreciate your being here.

Counsel will call the next witnesses.

MR. ALEXANDER. John Merkel, John Hough, Dayton Alverson.

[John C. Merkel, John D. Hough, and Dayton L. Alverson were duly sworn.]

INTERIOR; JOHN C. MERKEL, U.S. ATTORNEY FOR THE WESTERN DISTRICT
OF WASHINGTON

MR. ALEXANDER. Starting with Dr. Alverson, could you each identify yourself and your normal agency responsibilities?

DR. ALVERSON. I'm Dr. Alverson, and I'm with the National Marine Fisheries Service. I direct the Northwest and Alaska Fisheries Center which is a research group and a part of NOAA, Department of Commerce.

MR. ALEXANDER. Thank you. Mr. Merkel?

MR. MERKEL. John Merkel, United States Attorney—something hard to summarize.

MR. ALEXANDER. That's for sure. Mr. Hough?

MR. HOUGH. I'm John Hough. I'm Assistant to the Secretary of Interior Andrus, and I also direct a series of western field offices in Denver, Seattle, and Anchorage.

MR. ALEXANDER. Could you each, starting with Dr. Alverson, start by just briefly explaining how your normal responsibilities as Federal employees were affected by your participation on the task force? Dr. Alverson?

MR. MERKEL. Mr. Alexander, before we get into this we have a statement of all three of us which is somewhat lengthy. It's 15 pages. We want to at least either give it to you at this point or read it into the record.

MR. ALEXANDER. We'd gladly take it for the record, if you would like.

CHAIRMAN FLEMMING. Without objection we will be very glad to enter it into the record as Exhibit No. 2.

[Exhibit No. 2 was marked for identification and received into the record.]

MR. ALEXANDER. Mr. Merkel, would you briefly summarize the high points in a minute or two?

MR. MERKEL. Let me just tell you what it is. The first portion gives a background of the activity of the task force. Much of the material, I think, that was covered by Mr. Waldo is contained therein—the problems, the manner of gathering problems together, and potential solutions, that sort of material—and then a short section on the management system and problems that were confronted there, the various alternative methods, and a brief description of the system that finally was adopted by the task force. After that, a salmon resource distribution plan, of the problems encountered in that area, and finally a steelhead resource distribution plan.

COMMISSIONER FREEMAN. Do you have copies?

MR. MERKEL. We don't right now. We've got one.

MR. ALEXANDER. Dr. Alverson, the question was, your work on the task force and any impact it had on your normal responsibilities.

DR. ALVERSON. My basic job as director of the center was largely involved with the assessment of living resources, invertebrates, fish,

and marine mammals from southern California to the Arctic, the information base being utilized in terms of making management decisions at a national level and developing international treaties for the control of these resources, which I would classify as being a fairly demanding responsibility. And at the time I was appointed to the task force, I basically decided that I could not effectively conduct both of those jobs and essentially asked that my deputy take over as the acting director for the center at such times as I had commitments to this activity.

MR. ALEXANDER. For you, therefore, the task force membership was a basically full-time activity. Would that be correct?

DR. ALVERSON. I would say that I gave that first priority. There were times when I had opportunity to work with the center activities also.

MR. ALEXANDER. Would it be fair to characterize your role in the task force as one focusing on the scientific enhancement, and so forth, activities or was your role much broader?

DR. ALVERSON. I think the task force members relied fairly extensively on my technical background to assist them in certain technical documents and decisions that related to technical data base, but I think that I attempted to involve myself in all of the task force activities.

MR. ALEXANDER. Thank you. Mr. Merkel?

MR. MERKEL. Well, had the staff of the U.S. Attorney's office not been as good as it was when I became U.S. Attorney and devoted my attention to the task force, there would have been a considerable deal of problem with having a U.S. Attorney on a task force such as this. It takes up a tremendous amount of time, during which you can't devote full attention to the daily decisions that would have to be made both on the criminal side and civil side. I wouldn't want to do it again, simply because it is too hard to run the office and devote the amount of time that had to be devoted to this.

I suppose that my division of time was probably 60-40—60 for the task force and 40 going to the normal everyday running of the office. Usually in the decisionmaking side of the office, I probably spend now 80 percent of my time doing that and 10 percent doing some minor administrative problems and 10 percent of my time getting ready for various and sundry court actions.

This thing took just a tremendous amount of time that I needed to be able to sit down with the attorneys on the staff and make decisions of major cases. A lot of that was delegated out to the chief assistants. A lot of the responsibilities were mine, were necessarily delegated out to them. I felt comfortable with their abilities, but I didn't feel comfortable with having to operate the office like that.

As I say, it took up so much time that I'm not so sure that it would be something I'd want to engage in more than once in a term of office, that's for sure.

MR. ALEXANDER. Mr. Hough?

MR. HOUGH. I'd like to reinforce what Mr. Merkel said. This is a one-time experience. In retrospect, I don't think any of us would care to go through it again.

My time commitment was similar to those expressed earlier. At times it was all of the time and at other times it was part of the time. It was certainly a first priority. If I had to venture an estimate, I'd say that 60 to 70 percent of my time throughout the life of the task force was devoted to the duties and work required.

MR. ALEXANDER. Did any of your three agencies during the task force period provide you with supplemental staff or supplemental budget to pick up the additional responsibilities?

MR. HOUGH. Yes. The Interior Department provided us with each of our requests as we requested them. We did request staff support mostly by detailing key good people to the effort at some considerable expense, because, in many instances, these people were located in Portland, Oregon. With respect to funding, they supported every request that we made that I'm aware of.

MR. ALEXANDER. Dr. Alverson.

DR. ALVERSON. It depends what you mean by supplementary. We used members of our key staff as technical background, but that meant responsibilities they had were not being given attention to at that particular time. We had no additional new members to the staff. We did have the budget that provided us that was requested.

MR. MERKEL. There was never any problem with money or staff. That didn't affect us in the sense of time. The problem is that the more staff, the more money you have, the more materials generated, the more it becomes our turn to go through that material so it just—as staff increased our duties increased along with it.

MR. ALEXANDER. Now that you have prepared your final report and submitted it to the Washington, D.C., task force, do you have any continuing role in this controversy as a task force, as a group of people who have been intimately involved in the task force for the last 14 months?

MR. MERKEL. As the United States Attorney, our office is charged with the responsibility of enforcing the decision. The task force role, at least as far as I'm concerned, has been fulfilled. The materials have been shipped to people in Washington, and it is their turn to do something with it.

As far as the task force having any ongoing position, they never had a position in the lawsuit function. They never had an official position as a party litigant. The task force never had any role, so since that is what is being dealt with today, the court decision, the task force really has no business in it.

MR. ALEXANDER. Do either of the three of you conceive of yourself as an advocate now for the proposal that you drafted, either within the D.C. executive branch or within the halls of Congress?

MR. MERKEL. As I said, being an advocate—

MR. ALEXANDER. For the proposal?

MR. MERKEL. I don't have a pride of authorship, that it has to be this way or no way at all. I think the proposal was reasonable and fair to both sides, and it was the closest that anyone could humanly come to a compromise position that would not be weighted to one side or the other. People could come out fairly equally damaged and fairly equally benefited by the proposal.

In that sense I would say that this proposal, as opposed to a number of other proposals submitted by the parties, would be the fairest. I think there are probably ways the parties could make our proposal better for themselves and not have any effect on the other side of the issue. If they come up with ways like that I'd certainly have no objection to people changing the basic proposal.

MR. ALEXANDER. I guess what I'm trying to get at is, in terms of the negotiated type settlement or alternative settlement as opposed to your continuing role as U.S. Attorney in the litigation, do you view yourself in any continuing advocacy role or any continuing negotiation role for the phase one component?

MR. MERKEL. As a task force, I'd say no. The task force has attempted to get everybody to sit down and look at this thing reasonably. Everybody wants to take their shot with the next highest level. The task force never started out with any power to impose a settlement, and in the real world everybody wants to keep taking a shot at getting the best possible deal right up until the moment of truth, when somebody says this is going to be enacted into legislation or you're going to take this the way it is.

Given that that's a basic fact of life, I don't think the task force has any chance of sitting down and just going over the same issues that we've already gone over, fully presented, and getting anybody to turn around and say, "We're going to take this thing as it is." I don't blame them for that. If I were either in the Indians' or non-Indians' or State's shoes, I would be trying to get the thing changed to the way I would rather have it than what it is today, and I would attempt to do that right up until the last moment when it was time to put it into effect.

MR. ALEXANDER. Dr. Alverson?

DR. ALVERSON. I think I reflect fairly well what John has said. There are several sorts of caveats, however, I would like to make or elaborations on what he has said.

From the beginning I think that we had two goals as it relates to the document. One was an attempt to get a broad scale consensus of support of the report. The second, in essence, was that if that was not done, we made the comment to all the parties, that we would essentially pull together our best thoughts of what a fair solution would be and we'd submit them to the Presidential task force.

As regards to the first goal, I guess we would say, at least from my standpoint, we've risen to our level of incompetence, and we were unable to achieve that. I think it is very obvious by the response of the various user groups that there is no broad scale consensus of sup-

port to the conclusions we have reached. We have submitted our document to Washington as we have said we had. When I have had personal discussions with a number of the tribes, I think I was asked, would we promote that particular document on an advocacy basis to the United States Congress? I said no, and I have no intention of being a further advocate of the report that has been submitted. I will defend the document in the same manner I think Mr. Merkel has implied, that I think it's the best and the fairest document that we can come up with, but I do not intend to take an advocacy role.

I would want to make it clear to this group, however, that as a scientist I will continue to promote a solution to the problem, because I strongly feel that the lack of a solution would place a major resource in jeopardy—not necessarily this solution that has been submitted, but the need for a solution, whether it is this solution or a modification of it or some further ramifications of ideas that evolve from the tribes, from the State, and from the user groups. I think a solution is needed and relatively quickly if we are to protect that resource.

MR. ALEXANDER. You prefaced that statement by saying, "as a scientist." Could you expand on that by saying what particular focus of the problem or point of the problem you are directing your remarks to?

DR. ALVERSON. I think I'm basically looking at a concern for the resource itself and examining what appears to me to be a deteriorating resource and a deteriorating quality of resources that are a part of management problems, not just related to this issue, by the way, but a longstanding number of problems of management that has confronted the resources of this State, but which are aggravated by this discontent and probably the inability to get people to focus on solutions because of their emotions and reactions to the recent court decision.

MR. ALEXANDER. To go into that a little more, you say that's not exclusively caused by the current controversy. What are some of the elements that are putting the resource in jeopardy, aside from whatever the implications of the *U.S. v. Washington* decision are?

DR. ALVERSON. I think that it is fairly obvious that there have been some historical management policies that have not probably led to the best decisions in terms of the resources and evolution of fishing activities, that have been difficult to manage because of the manner in which they exploit mixed stocks. There has been an urbanization and a whole development of civilization in the Pacific Northwest and Columbia River Basin, and now in the Puget Sound Basin and many other areas, that are obviously contributing to the deterioration of the quality of the environment.

There is a mixed management regime even before the current dilemma arose in terms of Federal management, in terms of commission management, and in terms of foreign fishing problems, in terms of a whole spectrum of things that contributed to the deterioration of resources.

MR. ALEXANDER. The litigation in *U.S. v. Washington* has focused an enormous amount of attention nationally on the fisheries issue. In any sense has this controversy provided an opportunity at all to focus on some basic underlying problems between the biologists and the various multi-user groups? I gather that some of these problems were quite neglected in the last several decades.

DR. ALVERSON. I think it is accurate to say that the Boldt decision and the Belloni decisions and the subsequent response of society has brought a great deal of attention to the resources in this area, and just the creation of a task force itself and the pulling together of a great amount of information, and not just by the task force, but attention given to this as a result of this by the tribes, by the States, by academia, and others has focused attention. I think that could be of help if we could only get over the current problems.

MR. ALEXANDER. As you say, if we got over the current problem of the Boldt decision, as some people phrase it, would we still now be faced with all of the other range of problems that you have indicated? If there were not a Boldt decision, would not the resource still be in substantial trouble?

DR. ALVERSON. I think that it is fair to say that without the Boldt decision that we would still have certain problems. I think that perhaps the ability to focus attention on solutions might be somewhat better, and I don't want to say the Boldt decision, but I'm referring to the turmoil that responded in the wake of the decision itself.

Yes, I think that there is a chance that we would have all these problems, and in one sense maybe the Boldt decisions or the court decisions has focused attention on this, and I'm hopeful that ultimately they will lead to a better management regime and that management regime will have to give attention to the many other aspects of the problem that are perhaps independent of the court decision.

MR. ALEXANDER. Mr. Hough, the original question was—what is your view, your own role, as a member of the Interior Department in terms of an advocacy role for this plan?

MR. HOUGH. I feel no strong advocacy role for the plan.

MR. ALEXANDER. In your role in the Interior Department, I gather you in a sense functioned as a special representative of the Secretary in the region. Is that accurate?

MR. HOUGH. That's partially accurate. I think that covers a part of my responsibility.

MR. ALEXANDER. Do you in this role and the other components of your job have a relationship to the Secretary's trust responsibility? Are you institutionally viewed as one of the people who is part of the trusteeship?

MR. HOUGH. I think there is no way to escape that, Mr. Alexander. As a representative of the Department of Interior, I inherit certain obligations which fall into the general category of the trust responsibility.

MR. ALEXANDER. Would you agree with Mr. Waldo that, in terms of functioning on the task force as opposed to your other responsibilities, that in a sense the trust responsibility was not something that you were advocating but you tried to be a neutral party?

MR. HOUGH. That's correct. I was in a unique position, undoubtedly, because of the departmental trust responsibility. However, to categorize it as it was earlier, I did not feel that if the trust responsibility meant that I had to be an advocate for the position taken by the tribes throughout—certainly I was not that. I think, in a broader manner, I was asked to be neutral and to approach the problem on the basis that we were asked to achieve an agreement, and if we could achieve an agreement that the tribes could accept, the question of the trust responsibility would have been moot.

MR. ALEXANDER. Now that, in a sense, the task of the regional team's role is completed, do you have a continuing responsibility in the controversy in your role in the Department of Interior?

MR. HOUGH. I think, in a continuing manner, my role is simply one of discussing aspects of the plan, proposed amendments to the plan and what might likely happen to the plan, as a staff member dealing with other members in the Secretary's office and, certainly, our solicitor. But in terms of having a direct role tied to the document, no, sir.

MR. ALEXANDER. But you do see yourself participating within the Interior Department, perhaps commenting on draft legislation with the Solicitor's office and perhaps with the Justice Department?

MR. HOUGH. In the sense of being a staff resource who is acknowledged as having some knowledge about the report, of course.

MR. ALEXANDER. Are you expected to play a continuing role in other components in the controversy if perhaps the plan gets nowhere, for example, in phase two? Do you have any role in that?

MR. HOUGH. I have not had a role in phase two specifically, because at one point in the history of the actual task force involvement, the task force was removed from any involvement in phase two. That has not changed since the day we were removed.

MR. ALEXANDER. The continuing controversy as to whether or not the United States should request the Supreme Court to reconsider its denial of the *cert.* petition in *U.S. v. Washington*, do you have a role in that, have you made recommendations growing out of your experience or independently?

MR. HOUGH. Not directly. Our report represented a solution which did not require or advocate a Supreme Court review. Subsequent to the publication of the report, the Interior Department, as a department, has made its intention known to the Solicitor General that it will acquiesce to the motion to have the Supreme Court review, based on some cases in the ninth circuit.

I was not a part of that decision in a direct manner, but I was consulted about the decision and there were discussions, but nothing of a conclusive nature ever transpired.

MR. ALEXANDER. I gather that the task force process has generated at least some discussion between the States and the tribes on some issues, and where some level of agreement has been reached they were incorporated into your plan. If the case of *U.S. v. Washington* were opened up at this time for review, given your experience in the negotiation process, do you believe that there would be any continuing ability of the parties to meet and negotiate any issues?

MR. HOUGH. That's a hard question to answer. I'd take a stab at it this way, Mr. Alexander.

MR. ALEXANDER. I'd also like Mr. Merkel to answer.

MR. HOUGH. Okay. All of the people now who have commented on the task force report and who have submitted alternate proposals have said publicly and emphatically, "We do not like the task force report." Under that circumstance I believe that our initial charge to develop an agreement—we could be considered a failure as a task force.

Since we have failed to reach an agreement, I think the impact of a Supreme Court review is certainly less than it would have been if most or if a large number of the participants had said, "We think we have a potential solution and we continue to desire to wish to negotiate."

MR. ALEXANDER. Let's take it a step further. The State plan—

MR. HOUGH. I'd like to continue because I don't think I've finished yet.

MR. ALEXANDER. Sure.

MR. HOUGH. Under the circumstances that we have now, people have decided not to continue to negotiate, and since they have decided that, the time frame for any potential solution has certainly been elongated. I'm not an attorney, but I have heard so much about the Supreme Court review that I have some knowledge about the process.

I am quite convinced that if there is a review it will not have nearly the disruptive impact, from a time standpoint, that it might have had, had the parties agreed to continue to negotiate.

So, to answer your question, will a Supreme Court review have an impact on the potential for a solution—I think the answer is, yes, it will have, but a much reduced impact than we might have expected had that idea been presented, let's say, half way through the task force effort.

MR. ALEXANDER. What I was going to ask you was that reading the State's comments that were issued several days ago, there is a strong vein that runs through it, at least, that is in a sense anti-Federal, and it says, "We need to work out more things with the tribes. We have worked out some, we need to work out more." One wonders whether or not you view your task force effort as a failure, whether or not you may not have generated a potential for additional mediation or negotiations. What impact would a review have on that process?

MR. HOUGH. I think we have done two things that are noteworthy. One, we have achieved a level of communication with all of the groups

that we did not perceive to have existed before our coming into being. The second thing, and I think this is very noteworthy, I think we have caused to be collected a data base which is more trustworthy, and we have caused the biologists, the technical people, in all levels of this particular process to communicate better and very productively, and if that turns out to be the legacy of the task force, it was probably worth the effort.

MR. ALEXANDER. Mr. Merkel, would you like to comment on the potential for future negotiations between the parties themselves and the role of review at this point that *U.S. v. Washington* might play or not play?

MR. MERKEL. Well, it seems to me the impact would depend on what the Supreme Court took up as an issue or issues on review. It seems pretty clear to me that if the Supreme Court went to the core of the decision and they came to the conclusion that the tribes were, in fact, entitled to 50 percent, the opportunity to harvest 50 percent of the fish, as the Boldt decision says, it would be very difficult for tribes to then say, "Well, we won in the district court, we won in the ninth circuit, now we won in the Supreme Court, and now we want to sit down and give up something."

On the other hand, if the non-Indians and State went and the Supreme Court says the Boldt decision is wrong, it would be very difficult for them to sit down and give up something, because they'd say, "Well, that's exactly what we've been saying all along, that it was wrong, and it was always wrong."

From that standpoint the Supreme Court review could have a tremendous impact on whether anybody is going to be willing to even sit down in the future or whether the person, the side that wins is going to say, "Well, this is the end of the road and I want exactly what I've got today." I think you end up basically in the same position that we started out with, with a Court decision that is exactly the way one side wants and exactly the way the other side doesn't want it. You start the process all over again, convincing somebody that that may be the way it is today, but it may not be the way it is tomorrow, because some solution that's better than the Court decision has to be come at by virtue of legislation.

There are a lot of decisions, of course, that the Supreme Court makes, based on what the law is today, that generate congressional response so that the law tomorrow is something different. So you might win today, but ultimately in the long run you lose. It takes a long time to convince people that that's a process that the Government goes through and that society goes through.

So, I think you set back a time for an ultimate solution by whatever period of time it takes to explain that process to the winner.

MR. ALEXANDER. So that if there is a potential here for additional mediation or negotiations between the parties, a review at this point might stop that negotiation?

MR. MERKEL. It might. It depends on the reasonableness of the parties. Everybody, I think, at this point professes a willingness to have a review and then sit down at the bargaining table and deal fairly with the other side. If they do, that would be very well and good and we could get on with the negotiations. Human nature is often such that, as a practical matter, it won't happen.

MR. ALEXANDER. Dr. Alverson, could you just briefly describe to us or get into the plan a little bit that you did propose, even though it has not been greeted affirmatively by the participants? Would you briefly describe the zone and management concept to us of the plan?

DR. ALVERSON. Are you asking the management system or the allocation concept?

MR. ALEXANDER. The system, not the allocation concept.

DR. ALVERSON. The management system basically establishes a process whereby we felt we could integrate the capabilities of, largely, the Washington Department of Fisheries, Washington Department of Game, and the tribal groups with, essentially, the basic conservation responsibility vested for most of the areas with the Washington Department of Fisheries as it relates to salmon. We have a split jurisdiction as it relates to steelhead, with steelhead vested in the department of game.

The concept was really to bring a closer integration of these groups together to allow for an input on the part of the tribes in developing the basic management strategies and plan, but to provide a focal point for the final decision as relates to the establishment of the run sizes and the potential escapement that's required.

It has as a focal point, as you recall, a Federal review board that, in essence, has the capacity to evaluate certain disputes that arise, particularly as it relates to allocation and whether or nor the commitments of the agreement were being reached. Beyond that, there were three Federal judges which could be essentially accessed if the decision could not be resolved at that particular level.

The review board has the capacity, in essence, to pass down to the various parties that they were not essentially adhering to the agreement, and in the case of substantial failure to meet the commitments of the settlement could recommend that the authority of that particular group be lodged at the Federal level and be taken away from them until such time as that was resolved.

MR. ALEXANDER. This is a multimanagement system utilizing, I gather, the existing State agencies, but requiring the creation of a new tribal entity?

DR. ALVERSON. That's right. I was going on down to that next.

The three basic components, after you get below the review board, include the Washington Department of Fisheries, the Washington Department of Game, and a tribal commission, which would be established which would largely have the responsibility for the tribal responses, and the responsibility would be vested at the tribal commis-

sion level, and the basic authority at that level—with the concept that the tribal commission could reallocate certain responsibilities back to the tribes as far as certain management activities—that the focal point, however, for the tribal input into the decision process would come through a tribal commission, that in addition there would be a technical committee upon which the tribes' members would serve, and the Washington Department of Fisheries and Washington Game people would serve, that would really try to thresh out the technical problems so that there was a general agreement in terms of such issues as the status of the resource, the size of the run, the forecasts and run size, and to look at all the basic technical issues and try to resolve them at that level.

If they were not resolved at that level, the next level of attempting to resolve the issues would go to the basic directors of the State game, State fisheries, and tribal commissions, and, finally, if they were not resolved there and it wasn't a basic noncompliance issue, then it would go on up to the review board.

MR. ALEXANDER. The State in its commentary has criticized the multimanagement system and takes the position, and a fair reading of it is, that there should be a more unitary management system for the resources and should be more the State. Would you care to comment on that level of the criticism?

DR. ALVERSON. I'd like to place it in context first. I think all of us here on the task force would generally agree that if we were to look at a textbook on management, of which I have read a number, most of those authors would throw up their hands at the management system that we have proposed.

But, in essence, we were trying to find some sort of intermediate ground that was acceptable on the part of both the tribes and the State and to some extent the user groups that were involved. We had a choice of looking at a very unitary management system, and one would have been to essentially create a commission.

The tribes proposed a commission, but I think not of the character that we would have generally liked to have supported. It still retained a number of the existing entities in terms of the State game, State fisheries, and tribal entities as major inputs to that.

A strong commission with membership from both parties, which had its own sort of technical group but was not subsequently relying on a number of other entities, might have been a very effective way to go in terms of resolving the issue and probably completely unacceptable, as we would have defined it, to the tribes, but also to the States who find very strong State rights—desire to maintain their own institutions in the same form.

MR. ALEXANDER. I'm curious about another component of the management scheme, that you were in a sense asking the tribal entities to consolidate their function, yet the plan does not ask the State agencies to consolidate their function, both for the departments of game

and fisheries, and one could assume that there were various other State agencies, environmental and so on, that would have a substantial impact on the situation. How come this disequilibrium, in a sense?

DR. ALVERSON. I think that's a fair question. The task force thought about that for a long time, and I don't want to speak for the other two members, but in my reflection on our dialogue, I think all of us basically felt that a more effective system would be to have an integrated State management system which pulled together the department of game as it relates to the steelhead responsibility and the Washington Department of Fisheries.

Part of all of our solutions, obviously, were framed in the context of what was politically realizable on both sides, but there were some limits that we felt constrained us. We did discuss this with the recreational fishermen and essentially with the commercial fishermen and other people and people from the Washington legislature, and the possibility of achieving that, we felt, was just almost not there and that it would destroy any support whatsoever to move ahead and essentially get the type of State legislation we felt was necessary to get a solution in place.

MR. ALEXANDER. But now, in a sense, the State and the private user groups and the tribes will not accept the settlement. It is your professional judgment—just to make sure I have it clear—that a unified State system could be a much preferable management system, at least for the States responsible for the solutions?

DR. ALVERSON. With or without Boldt.

MR. ALEXANDER. Another thing in the plan that I was a little curious about, in your allocation of the resource, enhancement seems to be a major tool for providing an increased salmon fishery. I was curious as to why you made the decision not to use enhancement as a major tool to increase the steelhead fishery as opposed to restricting most of the tribes from a steelhead catch, with the exception of some of the ocean tribes, and continuing for the Puyallups and Nisquallys, which is to phase out over a period. How come the enhancement route was not used for enhancement of steelhead?

DR. ALVERSON. I'm not sure I understand the question. There is a substantial program proposed by the Western Department of Fisheries or, excuse me, the Washington Department of Game.

MR. ALEXANDER. That program, as I understood it, from the department of game was premised on the notion that the tribes are going to be continuing to take steelhead. The proposal in a sense restricts the tribes from taking steelhead. If we're going to enhance the steelhead resource as part of the plan, why is it necessary for the tribes to give up steelhead? What are the balances of that kind of decision?

DR. ALVERSON. I think that you are going beyond just the enhancement question. I think the steelhead issue and the factors involved are much broader.

In terms of looking at the steelhead issue, I think it was fairly obvious that the steelhead represented a major resource and one of the only resources of a fresh water character that could be accessed by recreational fishermen. In essence, the point that this is one of their few opportunities in terms of recreational fishing was made very strong to the task force.

In terms of the tribes, they have made the point to us that a number of the tribes have relatively strong economic reliance on some of the steelhead resources. In terms of enhancement opportunities for steelhead, I think they were probably as good if proper stocking strategies were developed as were salmon. I think the tribes were fully as capable of achieving this as the Washington Department of Game. Maybe some of their programs have been more successful.

The steelhead issue, I think, resolved down to one that was essentially a very, very strong political pressure on the part of the recreational fishermen, that they felt that they could not live with any other alternative than complete decommercialization of steelhead. I think this is the Washington Department of Game's position and continues to be the Washington Department of Game's position.

A very large sector of the society felt that this was their only hope in terms of a recreational opportunity, and there was strong feeling on our part that if you could compensate the losses to the tribes with substantial numbers of salmon, that you might resolve this conflict by then reallocating the steelhead to the recreational fishermen, and the tribes, in the end, if the enhancement programs were successful, contingent on being successful, would in essence be economically better off than they were in the past.

That may be a value judgment on our part, but, basically, we felt that the enhancement programs of the State, of the tribes themselves could generate essentially an income from salmon that was substantially larger than the small losses that would be achieved by essentially backing off steelhead, and at the same time resolve a substantial social conflict.

MR. ALEXANDER. Mr. Merkel, Dr. Alverson has raised the issue of compensation. If your plan were to be adopted by congressional legislation, several parties have indicated that, at least in terms of the reduction of the allocation in the Boldt formula, perhaps the reduction of the steelhead catch, and the change from the normal and accustomed fishing places to the tribal commercial zone, that all of those might be viewed as fifth amendment due process takings. Do you agree with that view?

MR. MERKEL. They might be, in the context of an imposed legislative settlement. They certainly were not viewed that way by the task force, I don't think, in the context of coming to an agreed settlement. I think nobody raised those issues until after it was decided that the task force proposal would not be accepted, that there would likely be some legislation anyway.

MR. ALEXANDER. In the event that your proposed plan or a substantial portion of it becomes drafted for legislation, would it be fair to say that the various enhancement programs in the plan were not viewed as a fifth amendment compensation to the tribes—or were they, in your view?

MR. MERKEL. We approached this from a different standpoint. We approached it from a standpoint of an arm's length bargain. Somebody over there has something and somebody over here has something else and there is an exchange, a giving up of something on both sides, which involves no constitutional problems of due process in taking or compensation.

MR. ALEXANDER. But if a congressional committee were to deal with any legislation emanating from this plan, it would anew have to face serious specific compensation issues for each one of those potential takings?

MR. MERKEL. They may well have to do that. The task force didn't worry about that problem, because we viewed it as a bargain. Everybody was free to accept or reject. If you're free to accept or reject something, then you obviously haven't had it taken from you if you agreed to it. When you take that out of the context of an agreed settlement and put it into the context of a legislative problem, we didn't worry about that, because we were carrying on a settlement.

Now, at the other end, I don't, off the top of my head, I don't know why Congress would have to, if it changed all this, would have to supply any enhancement. They could supply compensation, period, if they wanted to. I know of no reason why enhancement monies would not be offset against whatever compensation would be required by the due process clause.

MR. ALEXANDER. To ask Dr. Alverson, would it be fair to say that at least a significant part of enhancement that is proposed would be needed to regenerate this resource, whether or not there was a *U.S. v. Washington* decision, that enhancement is necessary for the resource separate and aside from the Indians?

DR. ALVERSON. Yes, but I want you to understand that I use enhancement in the broad generic sense to reflect a wide range of opportunities from habitat to rehabilitation—

MR. ALEXANDER. We're not just talking about fish hatcheries.

DR. ALVERSON. Building natural stocks to cultural techniques, and, in essence, just reflecting on what Merkel has just said, I think that we did feel as a task force in this balancing act that the commitment to substantial tribal enhancement was part of balancing the scales that related to what you were asking them to give.

MR. ALEXANDER. You said before that enhancement, if it works, what is the state of the art or the science of enhancement? In your view, what is the predictability and how certain are we?

DR. ALVERSON. If you asked 10 of the best scientists in Seattle, you would get 10 different answers. My own reflection is that the cultural

techniques have come a long way forward. Disease control has come a long way forward. Nutritional aspects and genetic aspects have come a long way forward, but there are still a lot of questions to be answered: stocking policies, in terms of if you're going beyond the general area of a genetic stock, are questionable; the impact on the essentially native runs is questionable; the potential still for disease dissemination is a potential.

But I guess if I was to make a bet, I would say that we have come sufficiently far forward with the aggregate of enhancement techniques, that the opportunity does exist to rebuild those runs, but it is going to take a very carefully managed integrated program, where all these facets are very carefully thought out, because enhancement can lead to all sorts of disasters. But I think technology is there and the science is there to do the job. Whether or not we can get the act together to do the job is something else.

MR. ALEXANDER. I'd like each of you to respond to this question, in that if you were to start this process again, and I don't mean to suggest that any of you would wish to, what were the lessons learned from the last 15 months? How would you do it differently, if at all? Dr. Alverson, would you select the same types of people, such as yourself, participants in the local scene?

DR. ALVERSON. Probably knowing what I do now, I'd refuse to be a member, but I guess I would have had the approach—and I reflected on this with the other task force members, and each of us has their own opinion how you establish a task force. I felt a little bit uneasy in the manner the task force was framed, inasmuch as each of us belonged to a line government component that had a very strong vested interest with one or another user groups. In that sense, I think many of us were perceived as "the enemy" when we first came on the scene. That comment was made to us a number of times.

I came from an agency that had very close ties historically with the commercial fishing industry and, frankly, had personal long interaction with a number of the commercial people and until NOAA was framed we didn't take on the responsibilities that were somewhat broader than that in terms of recreational fishermen and in terms of some of the basic responsibilities for the resource itself.

John Hough came from the Department of Interior that had a history of, at least reflected history on the part of the non-Indians, of being dedicated to achieve Indian rights.

Merkel came from a group that had been largely responsible for bringing about the court cases with which a number of the user groups were unhappy. So, for one side or the other, I think they perceived us all with having some vested interest.

I supposed I might have generated a task force that was not closely tied with government agency lines. I am not willing to admit that they could have done any better job; at least they might not have been as suspect as we were.

MR. ALEXANDER. Mr. Merkel.

MR. MERKEL. I agree basically with what Lee says. I think that if you have a task force to deal with a problem like this that is both the Federal and State problem, and you have some competing groups out there and the State is one of those competing groups, then nobody is left but the Federal Government to make up the manpower. I think it is a question of convincing everybody that you are not, as a Federal official on a task force, that you're not advocating a particular role, and it took us some period of time to do that.

I think eventually both sides—the Indians thought we were advocating the other side's position, and the other side thought we were advocating the Indian's position. It's pretty clear to both groups that we were not advocating their own viewpoint and that's what we wanted. That's largely why the trust responsibility did not play a role in the workings of the task force. It was essential to both sides to be able to sit down and know that we were not their man, nor were we the other side's man.

So if you can achieve that in the makeup of a task force, I think you could get somewhere. The problem is it always ended up that nobody thought we had the power to do much about the whole thing anyway, that it would be nice to go into the final battle with a report that reflected that particular side's position, and that it would be nice to kind of stroke us a little bit to try to get us to there, but if it came to push and shove we couldn't force it down their throats anyway, and therefore you could stand back and take shots at it during the entire time. If you didn't like something, you'd say I'm not going to talk to you anymore and try to coerce the task force into doing each side's bidding, because they really felt they had nothing to lose. I think that was their basic position.

That makes it difficult, not really having a power source, some way to make people think that you really have some authority. But I think that's inherent in any solution that people feel ultimately to be dealt with by the Congress, because obviously the Congress doesn't have to listen to us, no matter how much power we have. The Congress wouldn't have to listen to the task force created on the executive branch level.

As a problem solving thing the task force tends to focus on the problem and tends to bring the parties together to talk about the problem, but as a general statement I would say that you would find few solutions that everybody will voluntarily enter into at that level, simply because there is another place and another day to fight the battle.

MR. ALEXANDER. Mr. Hough?

MR. HOUGH. There simply is no acceptable manner in which to approach this problem. I don't think that the mix of the agencies that we had made everybody feel comfortable with our organization. On the other hand, to achieve an organization which represented every interest probably would not have been a functionally workable task force effort.

From the viewpoint of the executive branch of the Federal Government, however, I think that the task force as it was created came as close to being effective as a task force might be. There simply is no solution to this problem without a massive commitment and a willingness to coordinate from the Federal Government.

I think we did achieve that. We had the three major agencies with vast responsibilities working together at a level that, I am told, was unprecedented in many instances.

It's just a hard question to answer. If you were going to do it over again from the viewpoint of the executive branch, I think I might recommend that we do much that we did, but as with any experience over a period of 16 or 17 very intensive months, I think specific actions that we took as a group might have been altered.

I would say that I might think in retrospect more carefully about advising the national group to ask the judge to alter the allocation formula—things like that rather than things of organizational substance.

MR. ALEXANDER. Mr. Chairman?

CHAIRMAN FLEMMING. Commissioner Freeman?

COMMISSIONER FREEMAN. Gentlemen, I have a concern about a fundamental premise. You may have heard the question that I asked of Mr. Waldo, and while I can understand and appreciate all of the efforts which you have put into this matter, I still have a problem that troubles me, and that is the perception that one can negotiate away basic constitutional and treaty rights. I would like to ask you the same question and ask if you will respond to the same question that I asked Mr. Waldo to respond to.

It seems to me that if the minority—the tribes in this country are minority and I know of other minorities. I'm a member of one. The thing that troubles me is that if rights will not be respected and laws will not be enforced by the Federal Government and the State government, that we are establishing a dangerous precedent, and I would like to at least have your comments with respect to this.

MR. MERKEL. To start with, I think you perceive this as something different than what we perceive it, at least you perceive it differently than I do.

There is a severe problem out here on the water. There is a problem of violence, there is a problem of law enforcement, all of this stemming from what various groups perceive as their rights. Somebody in Washington, D.C., decided that there should be a task force set up in order to see if there can't be a negotiated settlement to this problem so everybody would be more happy in his position. You can't negotiate a court case after the court case has been decided without somebody giving up something that he won in the court decision.

So, you enter into this negotiation knowing full well that the law is this way and this way and that you've got to make some movement in there, that the law has got to be changed. If nobody wanted to change the law, and nobody wanted to change the rights that are involved, there would be no necessity whatsoever to do any negotiations.

If the Federal Government and the task force started out saying, "All right, we're going to sit down and figure out a way to negotiate full implementation of the Boldt decision," there would have been nobody else sitting down with us. That was very obvious that the point of this was to try and negotiate with all the parties and see if you couldn't come up with a better economic condition for everybody by making some adjustments in the decision that the court came to.

Now, clearly, it was not to negotiate away somebody's rights without their approval. It was to sit down with the Indian tribes and sit down with the State non-Indian fishermen and the State officials and say, "Would you be willing to give up something here for something over here?"

Now, I don't perceive that situation as being subject to being defined as being able to walk in and negotiate somebody's rights away as if they had no say in it. Everybody had a say all the way along the line as to whether or not they would be happy to give something that they had that had been defined as part of their treaty rights in a court case or whether they wouldn't. If they would not, then that was something that was nonnegotiable.

COMMISSIONER FREEMAN. Let me ask you an example. Suppose the Justice Department representing the Internal Revenue Service would get a judgment against me for \$25,000 in payment of taxes, then you are saying that then I could say that the court decision is not final and we can now negotiate and I will find out if you will take \$25?

MR. MERKEL. No, I'm saying that you can negotiate after the court decision is final.

COMMISSIONER FREEMAN. So, you're saying that this position that the Justice Department has taken with respect to tribal rights is one that the Justice Department would take with respect to any other litigation?

MR. MERKEL. The Justice Department did not take a position regarding tribal rights in a general sense. There is a specific case dealing with a specific State and a specific number of tribes in a district that have certain rights under a specific treaty.

COMMISSIONER FREEMAN. The point I'm saying is that when you take a position in terms of selective interpretation of the law, of selective law enforcement, that is establishing a precedent which may be used in other situations.

MR. MERKEL. Where is the selective law enforcement?

COMMISSIONER FREEMAN. Well, in this case there wasn't any, but if there had been it would be a precedent that is different from the usual interpretation of our system of law, that we are a government of law and therefore when rights are declared by the court, then those declarations are binding on the parties.

MR. MERKEL. Sure. I think the Federal Government enforces those rights and concludes that they are binding on the parties.

The issue that you keep going over and leaving out here is that the parties were invited to sit down and see if they could come to any con-

clusions whereby they would be able to negotiate away some of the things that they had or thought they should have.

COMMISSIONER FREEMAN. They were invited by whom?

MR. MERKEL. The Federal Government through the task force. They sat down and they said, "Now we want this and we want this and we want this." The task force said, "Well, we're not getting very far with this process. We've listened to everybody and here is what we think would be fair and do you guys like this?" Everybody said, "No, we want our rights." So, that's where they are today.

Nobody has negotiated away his rights, but both sides have been offered the opportunity to negotiate away a certain portion of their rights that they received in the court case in exchange for something else. Both sides said no and so today everybody has exactly the same rights that they had when they started, and the Federal Government is enforcing those rights.

So it isn't a question of setting a precedent for negotiating away somebody's rights without that person being a party and having a full yes or no say in it.

Now, if somebody wanted to say, "Look, I would rather have the Federal Government do thus and so than do what it is supposed to do," it seems to me that if I were in that position and the Federal Government was bound to do something to me that I would rather have them do something else to me, then I would like to be able to bargain for that.

MR. HOUGH. Could I respond in addition to Mr. Merkel to that question?

I find that your analogy is not very applicable and I would like to tell you why. In the example where you might have a judgment for a tax liability, it certainly would not have the broad social and economic impact that we have had as a result of the Boldt case.

The fact remains that although the court has made a ruling, the issue was greater than ever and the economic and the social impacts were greater than ever, all the while the resource, the fish, were going to hell. And, so what we did over a period of 17 months was an attempt to take the Boldt decision and see whether, based on what the judge had said, we couldn't come up with a better way of implementing that decision. At the same time we were doing that, nobody destroyed anybody's right and the judge continued to have the same jurisdiction that he still maintains today.

COMMISSIONER FREEMAN. Are you suggesting that a Supreme Court decision or a court decision, a court of appeals decision, is subject to followup interpretations as to whether it has a broad social and economic impact as to whether it is going to be implemented or not?

MR. HOUGH. I'm not suggesting anything of the sort, Commissioner.

MR. MERKEL. It is subject to if the parties don't like how they came out in the lawsuit, then they should have the right to sit down and renegotiate their position among themselves and say, "I realize this

came out this way as a result of the lawsuit, but neither of us likes that. Let's sit down and do something else." That's all we're saying you have the right to do.

COMMISSIONER FREEMAN. If the Government represented the tribes and got a decision favorable to them and the tribe agreed with the decision, then why did the Government superimpose its decision?

MR. MERKEL. As far as we are concerned, being the Government, we didn't superimpose any decision on anyone. The Government merely acted as a catalyst to let the parties come in and see if they could come to a conclusion that would be better than what they both had. The tribes liked the decision, but they didn't like the enforcement policy of the State and what was happening out there. That was their problem. The non-Indians didn't like the decision and that was their problem.

If the Government has these two factions out here who are not getting along under the decision, if the Government acts as a mediator and invites them in to talk about it and see if they can come to a mutually satisfactory conclusion, I don't think that's negotiating away anybody's rights.

COMMISSIONER FREEMAN. If the Government and the State have a duty to enforce the law and do not do this, then how do you justify this?

MR. MERKEL. Because you misinterpret what the State's legal position is. The Federal Government is enforcing what the Federal Government believes to be the law, which is the Boldt decision. The State government—the law does not require a State to do anything that is against its own laws.

In other words, the Federal Government cannot require the State to do something that the State specifically has no authority to do. The State government's position in this is, simplistically stated, that "We don't have the authority under our own laws to enforce the Boldt decision as it is written. Therefore, we are not going to." Now, that happens to be at this point in time a constitutionally permissible position for the State to take. The question is, do they have the power or don't they have the power to enforce the Boldt decision? Their position is, "No, we don't and therefore we are not going to."

Now, it isn't that the State over here says, "Gee, we can do this if we wanted to but we just refuse." They have a legal position and in this country the way we work this all out is to go to court on this legal position, and at some point in time the State's legal position that they are powerless to enforce the Boldt decision will be before a high enough court that they will get a decision. But the State supreme court says today we don't have the power to enforce Boldt, that's just the law, that isn't anybody's desire not to enforce rights.

COMMISSIONER FREEMAN. I still say this is a dangerous precedent as it affects the rights of minorities in this country.

MR. MERKEL. I guess I just disagree with you. It doesn't affect the minority's rights unless the minority wants his rights to be affected.

DR. ALVERSON. I'm rather surprised that you find this procedure as being dangerous, because I think the procedure of involving a task force to resolve problems, even when there is a legal body of law, has been carried over and over in our society for the last 200 years.

COMMISSIONER FREEMAN. No, sir—

DR. ALVERSON. Would you please let me complete my statement.

One, there is a matter of having a right and, second, there is a manner in which you may want to alter the ways in which you exercise that right. I think if we take a little history from the Vietnam situation, we had a right to essentially bring people into the service and send them to Vietnam, and a great part of society began to think that that was not a very good moral obligation on their part, and the Government began to perceive that if they pursued that course over time and exercised that right in a rigid manner that the societal revolution would likely develop.

Don't think in this particular part of the country at this particular point in time, whether you like it or I like it, that a great part of the non-Indian society has accepted in principle the Boldt decision. I have and I have worked with it as part of this task force in finding the solution to it, but you must recognize that many people basically have not accepted that decision and it's led to a major social conflict, and it could lead to a larger one.

The Government perceived that even though it was attempting to enforce, essentially, a decision of the court, that a large part of society in this area was not accepting it, and it was not leading to providing the benefits to the minority groups that they sought.

Now, there are a number of ways you can resolve this, and I agree you can develop a large enforcement capability and rush in and, essentially, put your thumb on these people and force them through a very large enforcement activity to respond to this.

There is another alternative in, essentially, bringing a group of people together and asking the people who have the right if there is a different way to exercise that right which will help to resolve the problem that faces the other body. The other body, essentially, in this case, in my view, has also, as well as the Indians, have received a judgment that if they accept the total responsibility for that judgment is likely to lead to a situation that is undesirable. And I don't think they should. I think all of us—society in general who made the societal error ought to pay the cost, and I think the procedure is a perfectly legitimate one.

CHAIRMAN FLEMMING. Could I ask this question? You have now, as a task force, developed a report. You were functioning on behalf of a Cabinet committee, as each one of you has a principal who is a Cabinet officer. Do you know how the Cabinet committee intends to proceed from this point? Have they considered your task force report as a committee? Do they intend to consider it as a committee and then make recommendations based on your task force report to the President? Do you know what the next steps are in connection with the

procedures that have been set up as a result of the Presidential directive?

MR. MERKEL. I certainly don't. I haven't heard word one from the Department of Justice, other than that they are going forward and doing whatever they are doing.

DR. ALVERSON. I can only report that I have heard from a Commerce member on the task force. The last time I talked to Mr. Walsh, the impression I got was that after reviewing the response of the various groups that they had basically come to this decision, that there was no settlement, there was no agreement in that sense, that I think they've now decided not to carry on the drafting of the legislation because there was no settlement. I would assume that they are going to look at alternative ways to solve the problem, that they are not going to support going forward with the task force solution.

CHAIRMAN FLEMMING. Your understanding though is that the Cabinet committee still has a responsibility for making some kind of a recommendation or a series of recommendations to the President as to a possible course of action?

DR. ALVERSON. That's my understanding.

CHAIRMAN FLEMMING. You are not aware of what their next step may be?

DR. ALVERSON. No. I think we as a task force basically asked that once we had culminated our submission of the report, we would terminate our responsibility other than clarifying the decisions we made in that report.

CHAIRMAN FLEMMING. Your objective was to develop a report on which there would be a consensus? In other words, it was a mediation objective. Your comments to this Commission have been to the effect that as far as you can see that particular objective has not been achieved.

Do you have any thoughts as to how the mediation process can be carried on further? In this instance, the task force representing the three Departments that have a great deal at stake came into the picture. You made this effort to file this particular report, which has brought about certain types of reactions. Do you, as persons who have gone through this experience, have any idea as to the possibility of another person or a group of persons being injected into the mediation process in such a way as to carry it on with the hope, of course, again of reaching some kind of agreement? Do you have any views along that line?

MR. HOUGH. Mr. Chairman, if we had an unlimited amount of time I could probably suggest three or four ideas for continuing the discussion and continuing the negotiations. Unfortunately, the resource itself is under an exceptional amount of stress. It is being diminished annually. It is being overfished illegally to a massive extent. Frankly, I don't believe we have the luxury of doing what we have done for very much longer.

The next step for the national task force members is to come to an agreement about our task force report and to seek the approval of the administration for that agreement and then to submit the agreement, or their particular consensus, to the Congress for action. I don't know what will happen to it when it reaches there, quite obviously. But to answer your question, under the specific biological aspects of the diminishing fishery, I simply feel we are beyond the time of continuing to have the luxury to discuss. We have to do something.

CHAIRMAN FLEMMING. I'd like to return for a moment to the discussion my colleague just had with you. You recall, I think you were here at the time, I asked Mr. Waldo if the implementation of your report would be in conflict with the current law. As I recall, his response was that it would be; it would require a change in current law.

Do you visualize that that particular change would come about as a result of congressional action? Is that what the task force had in mind, or did you have in mind that effort would be made to bring about a change through a judicial process in any way?

MR. MERKEL. Well, I guess I would approach it from two viewpoints as two problems. If everybody were to agree—what would you do with the fact that you just can't go out and operate in a manner that's inconsistent with what a judge's decision has said you should be doing? We have that problem.

The other problem is, how do you make both sides trust that the other side is really going to do what it says it is going to do, and this is going to be an ongoing solution that everybody is going to live with for a number of years, instead of, you know, the first time somebody gets mad saying, "Well, I want to go back to the old way."

I think that we probably could have gone in and gotten into a modification of the decision if the parties agreed. I think Judge Boldt would have been in a position to modify his decision. To allow the State to participate in the agreement to the full extent that they were required to by taking that agreement, they need some legislative changes, some authorization to do things that they don't have anybody to do now, just some kind of housekeeping things. To alleviate the fears of the non-Indians that the first time that the tribes would get mad, that they wouldn't want to go back and say to Boldt, "We want to go back to the way it was," would probably require some congressional legislation from Washington in order to modify the treaty right to reflect the new agreement that the Indians and non-Indians and State would have entered into, in effect, the court order.

I think there is probably legislation at both ends, and I think Judge Boldt would undoubtedly have wanted to become involved if people were going to do something that was different than what he had said the law was.

CHAIRMAN FLEMMING. Let me take that particular step, because it seems to me it has a bearing on the issue that Commissioner Freeman has raised.

You are assuming that the parties have reached an agreement?

MR. MERKEL. That's right.

CHAIRMAN FLEMMING. On the basis of that agreement, that if the parties were to appear before Judge Boldt with a request for some kind of modification of his order, he would have before him at that time not only that request but also the treaty, and he would have to decide whether or not that request was in harmony with the treaty rights or in conflict with the treaty rights. Am I correct on that? Even though there was an agreement, he would still have an obligation as a Federal judge to decide whether or not the agreement itself was in harmony with the treaty rights.

MR. MERKEL. I suppose it's like a contract dispute. What you're suggesting is that if two parties [enter] into a contract and they come to a settlement during the middle of a lawsuit that the judge would have to look at the contract and say, "Gee, you can't settle this thing; we're going to have to try this case because this isn't exactly what the contract calls for." I don't know that that principle that you put forth is, in fact, true. I think Judge Boldt could accept on behalf of the parties a compromise position that the parties put forth, bearing in mind that his decision would be subject to review in the Supreme Court at this stage and that each party could lose entirely what he had, if the parties wanted to enter into an agreement as to what their rights that they would exercise under the treaty would be. I think he could accept that.

CHAIRMAN FLEMMING. What I'm driving at is if in this case parties to an agreement, in the judgment of a Federal court, have in reaching that agreement weighed some constitutional rights, doesn't he have an obligation still to protect those constitutional rights and wouldn't he normally take a look at that particular issue?

MR. MERKEL. Constitutional rights are waivable. They are waived all the time in criminal cases, as you probably well know. I don't know what constitutional right any tribe would be waiving. They would be waiving a right maybe under the treaty.

CHAIRMAN FLEMMING. That's what I have in mind.

MR. MERKEL. But I don't know if a constitutional right is waived there.

CHAIRMAN FLEMMING. Well, the treaty has some standing under the Constitution.

MR. MERKEL. Sure, it's law.

CHAIRMAN FLEMMING. That's right. That's what I have in mind. I'm trying to get your opinion as to whether or not it would be possible for the parties to the agreement to, in effect, bargain away the rights that they have under the Constitution through the treaty.

MR. MERKEL. Let me say it this way. If you start out with a specific treaty and a specific group, that that's the end of it. There are no other people who are involved in that treaty. All of the parties to that treaty are before the court—let's say we haven't had the 50-50 decision yet—I think that the parties could have come in and said, "Well, we want to agree on this; we want to settle this case, and here is how

we're going to exercise our rights under this decision, and we want to enter into an order allowing us to exercise our rights under this decision." I think they could do that.

If you want the judge to say, "Yes, that's exactly what this treaty calls for," he may not be able to do that, but he can certainly allow the parties to exercise their rights in the litigation in any fashion that they desire.

I don't think that Judge Boldt has to come to the conclusion and say, "Oh yes, I was wrong over here and now I'm right." I think all he would have to do would be to enter an order allowing the parties to exercise their right, much as he did in the 55-45 order. At that point you could get the show on the road. A little further on I think Congress in furtherance of that manner of operating—

CHAIRMAN FLEMMING. Stay right there just a moment. What would be the role of the United States as a trustee at this particular point?

MR. MERKEL. I think the Government brought this lawsuit on behalf of the tribes. The tribes have intervened; the tribes are represented by their counsel. Government, as plaintiff, is represented by their counsel. If the parties entered into this—given the fact that this is a negotiated settlement in which the Federal Government has been the mediator—I think the Federal Government would advocate that the court go along with the wishes of the real parties, the Indians, and agree that their rights could be exercised in this new fashion.

I don't think that the Government would have the responsibility to get up and say, "No, no, no. Even though this is what the Indians want, even though it is going to be economically feasible and it's a better deal, we can't let you do it."

I think the Government should do what the, in this situation, what the ward would want them to, and that is, enter into the agreement. That's assuming that the Indians would come to the conclusion that this is a better way to exercise our rights under the treaty than to go out today and be able to get 15 percent of the fish because of the enforcement problem.

I don't think the Government is obliged to say, "No, no forever more. We must go with this 50-50 thing even if you don't get any fish," because you would economically drive them to the poorhouse with that kind of approach.

CHAIRMAN FLEMMING. I'd like to come to the question of the Supreme Court review. As I understand it, in the lower Federal courts, they have accepted the position of the Government, the Federal Government. In other words, the Boldt decision and the subsequent decision on the part of the circuit court have been consistent with the position taken by the U.S. Government. Is that correct? Am I correct in my facts?

MR. MERKEL. Yes. You are correct in that you assume certain things that Government asked for that they didn't ask for in the beginning, that just came along naturally in the flow of the decision. There are

parts of that decision that the Government had no conception even that were going to occur. But, generally speaking, the courts have never done anything that the Federal Government hasn't advocated.

CHAIRMAN FLEMMING. On what grounds would the Government petition the Supreme Court to grant *certiorari*?

MR. MERKEL. I haven't seen the petition, but there is such a document floating around.

CHAIRMAN FLEMMING. The decision hasn't been made yet, has it, by the Solicitor General?

MR. MERKEL. There are documents that I'm aware of from the Department of Justice setting forth the position. I don't know what it is. I don't know exactly what the status of that is. However, I assume that you are not asking for a review of the Boldt decision. You are asking for a review of certain ninth circuit cases, and I think it would be very simple to say we would seek review in *X versus Y* as opposed to *U.S. v. Washington*. I don't think there is any legal impediment in doing it. I don't think there is a problem with doing that. The Supreme Court isn't going to say, "Ah, really what these guys are saying is that they want a review over here even though they are calling it this." I don't think the Supreme Court is going to treat it that way.

I think as a practical matter everybody recognizes the problems, and I think that the Supreme Court of the United States often accepts cases of great public moment just because they have to be resolved, and it seems to me that this is one of those.

Earlier I told you what I thought the impact of the review is going to be, and I didn't mean to imply that I thought that the review should not be granted on the basis of that.

At the point where tribes say, "We want the total Boldt allocation," and the nontribes say, "We want all of the fish," then I think you're at a complete impasse. Either one of two things is going to have to happen. Either Congress is going to have to pass some legislation and/or modify the treaty, or the Supreme Court is going to have to make a decision, because if you go on like we are today nothing is going to be changed and everything is going to just keep going along at a high boil from now until doomsday.

So, one of those two things is going to have to happen. You either have to have legislation or you've got to have Supreme Court review. Right now the fastest thing probably to get is a Supreme Court review, but that is not a sure cure either, because whoever loses there is going to say, "Gee, well, they were just as wrong as the other guys."

Ultimately you really are narrowing this thing down. Over the long haul you're narrowing it down and winnowing out the possibilities. You know, you threw the task force to the side and it's okay; we don't want to deal with that one. Now you're getting closer and closer to the ultimate decider in this, and that's the Congress.

CHAIRMAN FLEMMING. Thank you very, very much. We appreciate your coming in here and sharing with us the results of what was certainly a very difficult and very tough assignment.

Counsel will call the next witnesses.

MR. ALEXANDER. Frank Haw, Ralph Larson, Winfield Miller.

MR. SCHWARTZ. If you gentlemen would remain standing to be sworn in, please. Mr. Chairman, the State witnesses are accompanied by their counsel, Mr. Mackie.

CHAIRMAN FLEMMING. Thank you.

[Frank Haw, Ralph Larson, and Winfield Miller were duly sworn.]

TESTIMONY OF RALPH LARSON, DIRECTOR, WASHINGTON DEPARTMENT OF GAME; FRANK HAW, DEPUTY DIRECTOR, WASHINGTON DEPARTMENT OF FISHERIES; WINFIELD S. MILLER, CHIEF OF FISHERIES ENFORCEMENT, WASHINGTON DEPARTMENT OF FISHERIES

MR. SCHWARTZ. Would each of you please state your name, address, and occupation for the record, starting with you, Mr. Larson.

MR. LARSON. My name is Ralph W. Larson. I'm director of the Washington Department of Game. Our office is located at 600 North Capitol Way, Washington, 98504.

MR. SCHWARTZ. Mr. Miller?

MR. MILLER. My name is Winfield Miller. I'm chief of Fisheries Enforcement, Washington State Department of Fisheries, Washington State, and our office is at the General Administration Building.

MR. SCHWARTZ. If you gentlemen could raise your voices a little, it's a little difficult to hear you.

Mr. Haw?

MR. HAW. My name is Frank Haw. I'm the deputy director of the Washington State Department of Fisheries, and my place of business is the same place as Mr. Miller's.

MR. SCHWARTZ. Mr. Mackie, would you identify yourself?

MR. MACKIE. I'm Edward Mackie, M-a-c-k-i-e, deputy attorney general, State of Washington, representing the three witnesses.

MR. SCHWARTZ. Mr. Larson and Mr. Haw, would you each, please, briefly describe the authority and responsibility of your individual departments in fishing in Washington State?

MR. LARSON. The Washington Department of Game has the responsibility for the management, preservation, protection, and enhancement of the game fish resources for the State of Washington. Game fish are defined by statute and include the aggregate species such as steelhead trout and cutthroat trout, as well as fish which are resident species within the inland waters of the State. This generally describes our fishing aspects of our department, although we do handle wildlife also.

MR. SCHWARTZ. Mr. Haw?

MR. HAW. Our duties are almost identical; however, the species that we have control over are different species. We have jurisdiction over all of those species, both true fish and shellfish, that's crustaceans and mollusks, taken from public waters in the State which could be taken

for commercial as well as recreational purposes. Also, the fish and tail fish that we have jurisdiction over are either entirely marine species or anadromous in the case of the species of salmon.

MR. SCHWARTZ. Could each of you, so that we can just get a better idea, briefly explain about the size of your departments in terms of employees and budget amounts?

MR. LARSON. The department of game has approximately 475 permanent employees. We have a budget of approximately \$15 million per year.

MR. SCHWARTZ. Mr. Haw?

MR. HAW. We have—you caught me short on the size of our budget. I've been involved so much in the enhancement end that I'm a little too close to it. We have 458 full-time employees in the Washington Department of Fisheries. Our budget is generally larger than that of the department of game. We have substantial capital as well as an operating budget.

MR. SCHWARTZ. Mr. Haw, could you explain what role your agency played during the development of the regional team's final settlement plan?

MR. HAW. First I'd like to qualify that by saying that in my own role I have been involved in the State enhancement program and as deputy director that has been one of my principal responsibilities. My contacts with the task force, the regional task force, as a result have been limited. My personal contacts have involved working with the staff people assigned to the staff task force in terms of the enhancement package, and considerable involvement in that.

In the department of fisheries many of its different people are management people and to some extent our hatchery people and others met many times with members of the task force and staff members of the task force in submitting our input.

MR. SCHWARTZ. Were suggestions made by the department of fisheries adopted in the final task force plan?

MR. HAW. Some of them were, some in part, others not.

MR. SCHWARTZ. Could you give us some idea of the ones that were and weren't?

MR. HAW. Again, not being familiar with all aspects of the plan, and my personal involvement was rather limited, there were elements of the management concept, I know, and again I'm not able to explain those in detail, and the parts of the plan that dealt with management and management structure were not fully adopted by the task force.

MR. SCHWARTZ. Mr. Larson, could you answer those questions, please?

MR. LARSON. Well, generally, most of our recommendations were not adopted. Basically, we wanted total decommercialization of steelhead. We wanted sole management rights for the steelhead resource, and we did not feel the need for a fisheries advisory board. Essentially, it was a partial decommercialization with the supposed end product

being total decommercialization, which is something that may or may not occur based upon the premises made by the task force.

MR. SCHWARTZ. The department of game, I understand from your testimony, has made the recommendation that steelhead be decommercialized. Is that representing the interests of a particular group that wish to have it decommercialized?

MR. LARSON. This represents the views of the department as well as the steelhead sports fishermen in the State of Washington, since most of the times, and all of the times except once when we met with the task force, there were a group of steelhead fishermen representing various groups meeting with us, so we met with our basic user groups at all times with the task force.

MR. SCHWARTZ. Is there anything about the nature of steelhead differentiating it from salmon in its value as a commercial fish versus a game fish only?

MR. LARSON. Commercially they have been, I guess, equal to about the coho as far as price is concerned, although they are not a good fish for canning. They are a fresh market kind of fish. Sport-fishing-wise, they have been game fish, which is noncommercial, in the State of Washington for 40 years, and therefore they have been declared as a State game fish as well as being the probably most sought after game fish in fresh water areas in the State of Washington.

MR. SCHWARTZ. Since the decision in the *United States v. Washington* in 1974, commercial steelhead rights have been recognized for the Indian tribes. What impact has that had on your department and the way your department has managed the resource?

MR. LARSON. First of all, since we have not been a commercial fish organization, we did not have the data base really to manage a commercial fishery based upon an allocation system of specific numbers. We had then to gear up to get this kind of information to prevent the overharvest of the resource.

During the period of the first 2 years, we did gain enough knowledge to come up with run size predictions, which have been, I guess we'd say, reasonably close to those which have occurred, and we have modified some of those during the season to permit the treaty Indian fishermen and also the non-Indian fishermen to have an opportunity to catch at least their 50 percent.

One of the different things we have relating to the department of fisheries is that, basically, most of the commercial fisheries for steelhead are either in salt water or in the lower reaches of our streams, so that, basically, the commercial fishery has, let's say, first shot at the numbers of fish.

We have had no problem in reaching the 50 percent allocation of the harvestable numbers by the treaty Indians. In fact, based upon the areas off-reservation and on-reservation, the ratio has been about 70 percent treaty Indians and 30 percent sport fishermen on the overall as an average.

So, we have, I guess, a totally different problem than does the department of fisheries where, basically, the treaty Indians would be more in terminal areas, so they are the last ones with the resource, where in our case they are the first ones to harvest the resource.

MR. SCHWARTZ. In light of the testimony you've just given, has that developed within the department a need to allocate the steelhead resource among the treaty net fishermen as opposed to the sport fishermen?

MR. LARSON. Well, we have essentially allocated, based upon the Judge Boldt decision, allocated the numbers of fish that are available for commercial enterprise and also for sport fish.

MR. SCHWARTZ. Can you give me an example of the types of allocation orders that the department has made with respect to steelhead?

MR. LARSON. Well, basically when we develop our run size predictions, which according to the court order are due to go to the tribes by September 10, as I recall, they then come back with seasons to harvest the known 50 percent of the total harvestable number. These seasons then are monitored on the basis of the fish tickets, which are filled out upon the sale of steelhead, and when 50 percent is reached, basically in off-reservation waters, the fishery is closed.

MR. SCHWARTZ. Which of the fisheries would be closed?

MR. LARSON. At times both. Normally, the treaty Indian fishery was normally closed first because of the efficiency in gear, and they were able to catch that 50 percent in a much more rapid rate than do the sportsmen. In the last 2 years, however, we have closed both the Indian commercial fishery and the sports fishery in many of our streams because allocations for both parties was reached.

MR. SCHWARTZ. The closure was a result for the necessity of escape-ment?

MR. LARSON. That's correct.

MR. SCHWARTZ. In the closures that were done for the commercial net fisheries by Indians, independent of the sportsmen fishing with traditional sport gear, was it the view of the department that the traditional Indian fishery by net should be closed as soon as the allocations were reached, and then the sports fishermen be permitted to continue to fish until their allocation had been reached, and then a final closure? Do I understand that correctly?

MR. LARSON. This is correct. Whichever one reached allocation first would be closed first.

MR. SCHWARTZ. In other words, if the sportsmen took their 50 percent first?

MR. LARSON. This is correct.

MR. SCHWARTZ. The sole basis for determining the amount of the fish available would be these fish tickets, reports of fish catches?

MR. LARSON. Correct.

MR. SCHWARTZ. Any other data analysis that was involved?

MR. LARSON. Well, we maintain what we call creel census crews on as many of the rivers that we can that have both commercial and sport fishing on them. By the creel census we attempt to obtain as accurate figures as we can on the sport catch so that we can determine when that allocation portion by the non-Indian fishermen has been reached. With the commercial we use the fish tickets which come to the buyers.

MR. SCHWARTZ. Are they both accurate to the same degree in reporting the fish available?

MR. LARSON. We would be measuring probably more closely the accuracy of creel census this year, since we are making a very careful analysis of what we have as a steelhead punch card, which the sports fishermen punch out a hole to indicate where they caught the fish and date and these have to be turned in. We analyze those along with our creel census to determine how accurate those systems are.

I'm assuming that fish tickets, basically, are actual documentation, and if all are turned in and turned in properly that they would be more accurate generally than you would figure a creel census would be.

MR. SCHWARTZ. In your experience has that been the case? Have those punch card systems worked?

MR. LARSON. This is what we are attempting to analyze this year to determine the accuracy of the punch cards and to determine, basically, how would the punch card data compare with the creel census data, and this is being done at this present time.

MR. SCHWARTZ. Does the department of game's closure require an order of the court, or is that done directly through your office?

MR. LARSON. In off-reservation waters it is done by our agency or the Indians. Either one or both can do it.

MR. SCHWARTZ. That would go for the treaty Indian and the sport fishing as well?

MR. LARSON. The sport fishing. The department would make the official closure.

MR. SCHWARTZ. What about the on-reservation catch?

MR. LARSON. On-reservation catch would have to be closed by the court on request of either party.

MR. SCHWARTZ. Mr. Haw, unlike the steelhead, the State law, as I understand it, permits a combination of sport and various types of commercial fishing for salmon. Is that correct?

MR. HAW. That is correct.

MR. SCHWARTZ. How does the State determine which of the user groups will be permitted to catch any particular percentage of the resource?

MR. HAW. Much of it, of course, is based on historical patterns. The way the system works, basically, is the department each year publishes what we call a "Red Book," which is a forecast of spawning escapements, hatchery productions, and other types of things which impact the resource during a given year. As a result of the combining of those things with stream flows and other kinds of things, we develop a

preseason forecast on a particular given run. Tribal biologists then provide input into this whole system by providing certain types of data of escapements and other things that they are aware of and we're not. We combine the total information and come up with a regulation package for each year. Public hearings are held on the regulations, which prescribe numbers of fishing days, fishing seasons, and other things, and eventually regulations are adopted based upon what transpires in the public hearings and other kinds of information.

During the season if there is any sort of a dispute over this whole thing with the tribes, there has been a rather good system developed with Judge Boldt's court advisor, a fellow by the name of Dr. Whitney of the University of Washington. Most of the disputes, tribal and State disputes over fishing regulations, are taken before this group and resolved prior to the season. This system has worked quite well and the vast majority of those kinds of differences are resolved at that particular point.

During the course of the season, we have developed a rather complex system of data that we call the soft data system. All parties have access to this system. We are able to judge and assess the runs on the basis of what is being caught as it comes into the soft data system. If problems develop, of course, we have an emergency regulation system which is applied.

Basically, these things are based upon forecast, input from tribes, development of regulations, and in season an adjustment is based upon what fish actually show.

MR. SCHWARTZ. My understanding is, from your testimony is, that when you have disagreements with tribes you go directly to the tribes to negotiate out those differences.

MR. HAW. We do that as a first step, of course. We bring people in and we talk to them and very often the disagreements can be resolved at staff level.

MR. SCHWARTZ. Is that done in most of the cases?

MR. HAW. In most cases, yes. Some cases, of course, are taken before Judge Boldt's advisor, Dr. Whitney, and it is resolved at that particular point. The system has actually evolved into a pretty good system for managing the resource. There are some problems that arise, but we've developed under some very difficult circumstances.

MR. SCHWARTZ. It's my understanding, from my limited exposure to fisheries here, that the State is divided or the State's waters are divided into a number of commercial zones, each assigned a number, and that in all of those zones, there are a number of them, there could be one particular kind of gear or there could be a variety of types of gear—purse seines, gillnets, troll boats, and other things which may be used on one particular species or in one particular area or another.

How does the State go about determining in which of those areas parts of the fish runs will be taken and what kinds of gear will be permitted to take that? I assume that's something over which the State will have control.

MR. HAW. Part of it is established by statute. In parts of marine areas only certain kinds of gear are allowed by State law. One area, of course, we haven't talked about is the Pacific Ocean, and the jurisdiction of salmon fishery in the Pacific Ocean now is handled by, essentially, the Federal body, the 200-Mile Regional Council. The range of the Pacific salmon actually encompasses two of those regional groups, the Pacific Council and actually, to some degree, the North Pacific Salmon Council, including the waters of Canada. So there are lots of different people involved other than the State of Washington. A big chunk of the action now occurs in the Pacific Ocean under this Pacific Regional Management Council.

So the decisions we make are based upon what escapes those ocean fisheries, depending upon what Canada has taken, what's been taken in the regional council area, and that's where a lot of decisions are based upon, prior harvests versus actual runs. The inside fisheries, the ones that the State has primary jurisdiction over, tend to be the net fisheries. These are the traditional purse seines, gillnet fisheries on inside waters, plus our growing recreational fishery.

MR. SCHWARTZ. To give you an example of what I'm thinking about—up in the Straits of Juan de Fuca, it would be possible for a fish run to come in through the Straits of Juan de Fuca and travel through north Puget Sound down to the south Puget Sound, and that would pass through a number of commercial fishing zones, as I understand it?

MR. HAW. That's right.

MR. SCHWARTZ. The State would have the option to decide in any of those zones that a certain number of fish would be taken. Is that correct?

MR. HAW. That's right. Of course, there are other complicating factors. Another one that I didn't mention is the IPSFC, which is the international body that has jurisdiction and regulates the fishing in Juan de Fuca Straits and the approach to Puget Sound.

MR. SCHWARTZ. Let's take, first of all, the areas over which the State has direct control and then we can go to the intermanagement arrangements.

MR. HAW. Fine.

MR. SCHWARTZ. In the State areas it would be possible—as I understand it, the State does open and close various areas to allocate fish among fishermen fishing in those particular areas. Is that correct?

MR. HAW. Yes. We have certain—by allocation, I suppose you mean certain seasons established for gillnet fishermen, purse seine fishermen, Indian fisheries, reef net fisheries, and those kinds of things; yes, that's true.

The basic length of the season is established to allow the optimum spawning escapement returns to the streams. That is the primary criteria involved. The fishing time between the various net fishermen is essentially—among the non-Indian fishermen is essentially equal, although they tend to fish different hours.

MR. SCHWARTZ. The State has no problem in saying that at a certain point the fish run will be closed down, perhaps to be opened later on and perhaps to be closed even later than that, depending on what the data will show?

MR. HAW. That's right. We're quite successful in assessing the size of the runs and getting the escapement back and managing the fisheries, from that standpoint.

MR. SCHWARTZ. You mentioned also the other management agencies which control the resource. We have two represented here, the Washington Department of Fisheries and the Washington Department of Game, and then there are also the international and national agencies that you mentioned which control various parts of the resource. What kinds of coordination are developed on a day-to-day basis with those management agencies to control the resource?

MR. HAW. Of course, we have members of our staff working with the Pacific Regional Council. The director of fisheries is part of the Pacific Regional Council, which manages our offshore fisheries both in the north Pacific and the Pacific. The director of fisheries is also a member of the International Pacific Salmon Fisheries Commission, and considerable coordination occurs between those organizations.

MR. SCHWARTZ. Do coordination problems exist with those organizations?

MR. HAW. To some degree, yes, there are some coordination problems. All of these other agencies don't do things exactly as we would have them do them.

MR. SCHWARTZ. Can you give us an example of one that is particularly impacted on the Washington fishery?

MR. HAW. I would think the offshore fisheries management tends to have one of the greatest impacts. The Regional Council doesn't do things precisely as the Washington Department of Fisheries would have them do, although we do have our input and our opportunity for input. Another organization we have, of course, no control over, which has a great impact on Washington fisheries, is the management of Canadian coastal fisheries. Many Puget Sound fish, particularly, are harvested prior to their entry into State's waters off the west side of Vancouver Island. So, that's an example where there is very little coordination at this particular time. Hopefully, there will be in the future, but it is an area that is a real problem. For example, on certain occasions when runs of a certain stock of fish into Puget Sound may be at a particularly low level, we might not be completely satisfied with the seasons established in Juan de Fuca Strait by the IPSFC. There's an example.

MR. SCHWARTZ. In the State response to the regional team's management plan, the suggestion seems to be that the management agencies be as consolidated as possible, particularly with respect to the tribes. I think it is mentioned in there that the tribal commission should have as much authority as can be given to it so that it can make final management decisions. Is that a position that your department holds?

MR. HAW. That's my understanding, yes.

MR. SCHWARTZ. What is your personal position?

MR. HAW. That coincides with my personal position.

MR. SCHWARTZ. Yet the plan also suggests that the department of game and the department of fisheries, both having control over management of a similar resource in the same area, be permitted to continue their traditional management authority. Why does the State continue the dual management role of the State when it feels a need to consolidate the managers among the tribes?

MR. HAW. My understanding of the State response to that question is that there is very little, if any, duplication of the State's position, in that in matters involving steelhead and trout the director of game would have the principal control. Issues involving salmon, it would be the Washington State Department of Fisheries. So there would be very little overlap in my judgment.

MR. SCHWARTZ. Aren't there hatcheries for steelhead and salmon on the same streams in the State, some of them anyway?

MR. HAW. There are some. I can't think of any particular stream that has steelhead and salmon hatcheries on it. I think Chambers Creek may be one example and Skagit.

MR. SCHWARTZ. Have there ever been problems with, let's say, timing releases of one fish with another that may create some environmental problem?

MR. HAW. I think there probably have been problems, but one of the things that I think has happened here, in the last couple of years particularly, is a new agreement that Director Sandison and Director Larson have arrived at, is that the departments now are relating to each other and advising each other of their plans in advance to coordinate these issues. There has been a great deal of progress in that particular area. In the past, yes, definitely, there was a possibility of some problems.

MR. SCHWARTZ. Mr. Miller, what actions has the State department of fisheries taken to enforce the treaty fishing rights that were recognized in the Boldt decision?

MR. MILLER. That we do not have the authority.

MR. SCHWARTZ. That's as a result of a recent supreme court ruling of the State, as I understand it?

MR. MILLER. Yes.

MR. SCHWARTZ. Let's go back in time previous to the Boldt decision. Would you say that there was a problem with illegal fishing in the State waters of Washington?

MR. MILLER. There is always some illegal fishing.

MR. SCHWARTZ. What was the magnitude of the problem? Could you characterize it?

MR. MILLER. Prior to the Boldt decision?

MR. SCHWARTZ. Yes.

MR. MILLER. I think that we had good voluntary compliance from the commercial fishermen.

MR. SCHWARTZ. By voluntary compliance what do you mean?

MR. MILLER. They respected the laws. They felt that the department of fisheries was the governing body. Other than our enforcement as patrol officers, they more or less complied with our regulations.

MR. SCHWARTZ. After Judge Boldt handed down the decision in *U.S. v. Washington* in 1974 did the situation change?

MR. MILLER. Yes.

MR. SCHWARTZ. Could you characterize the change for us, please?

MR. MILLER. Prior to the Boldt decision, as far as our enforcement activity would be concerned, four or five closed season netting arrests a year would be average. Subsequent to the decision it has gone to in excess of 200 arrests; about 50 percent Indian and non-Indian.

MR. SCHWARTZ. Two hundred arrests annually?

MR. MILLER. Yes.

MR. SCHWARTZ. Has your department had the resources to fully deal with the illegal fishing that has occurred that has led to this number of arrests since that decision?

MR. MILLER. Given the problems of authority, no.

MR. SCHWARTZ. When you say that, problems of authority, to what are you referring?

MR. MILLER. We cannot enforce the allocation issue.

MR. SCHWARTZ. That's a point in time later. I'm talking about in 1974 before the supreme court had made its judgment. At that time were you attempting to enforce the court order?

MR. MILLER. Yes:

MR. SCHWARTZ. And you were encountering a situation which included a great deal of illegal fishing?

MR. MILLER. Yes.

MR. SCHWARTZ. Before it was prohibited from enforcing the court order, was your department able to deal with the illegal fishing that then existed?

MR. MILLER. We were able to deal with it fairly well as far as the enforcement end of it.

MR. SCHWARTZ. Would you say that you were able to prevent the illegal fishing that was occurring then?

MR. MILLER. Up to the point that our arrests weren't properly consummated in court, and then there was a breakdown.

MR. SCHWARTZ. The resources that you had with which to enforce the law, were they adequate after the decision with *U.S. v. Washington* to enforce the law at that point?

MR. MILLER. They were fairly adequate in the beginning, but this broke down in the court system.

MR. SCHWARTZ. Did you make any recommendations for changes in your department's authority or for changes in your department's available resources in order to be able to enforce that decision?

MR. MILLER. Myself personally?

MR. SCHWARTZ. Yes.

MR. MILLER. No.

MR. SCHWARTZ. Was the recommendation made by the Washington Department of Fisheries?

MR. MILLER. Yes.

MR. SCHWARTZ. To whom?

MR. MILLER. The legislature.

MR. SCHWARTZ. Are you familiar with what that recommendation was?

MR. MILLER. No. We asked for more enforcement personnel and beyond that I don't know.

MR. SCHWARTZ. What was the response of the legislature?

MR. MILLER. We were not budgeted for more people.

MR. SCHWARTZ. Did you receive more equipment?

MR. MILLER. Some.

MR. SCHWARTZ. Was that adequate to do the job?

MR. MILLER. Under the present circumstances, no.

MR. SCHWARTZ. Mr. Haw, when the decision in *U.S. v. Washington* was handed down, were the treaty fishermen by your data estimates taking 50 percent of the resources that were allocated by the court decision?

MR. HAW. When the decision was first handed down?

MR. SCHWARTZ. Yes, at the time it was handed down.

MR. HAW. No.

MR. SCHWARTZ. Did your department take any action to augment the Indian's share of the catch when the decision was handed down?

MR. HAW. Yes, we did. We established seasons designed to provide the treaty Indian fishermen with their treaty share of fish.

MR. SCHWARTZ. What was the result of those changes?

MR. HAW. The overall result, and it's a point I would like to make, is that despite the fact that we have great difficulty or total difficulty in enforcing our allocation regulations to treaty fishermen, the total numbers of fish harvested within the case area by treaty fishermen approach the numbers allocated by the courts. There are problems, for example, in the north Sound area on fish bound for the Fraser River system, where only certain treaty tribes have treaty fishing rights, and where the management of those resources are actually managed by the IPSFC rather than the State the fractions are rather low. Of course, the principal problem in that area is fishing power, or the ability of the treaty fishermen to catch their share. So that's part of the problem in that particular area. But if you look at the species originating in the heart of the case area, that is, in the Puget Sound area, the treaty fishermen have approached their treaty share despite the fact that we have had a great deal of difficulty in establishing or enforcing allocation regulations. The harvest by treaty fishermen last year for in-Sound chum was about 50 percent, and for in-Sound coho and chinook runs it again approached 50 percent. I can't give you precise numbers, but they were very close to the 50 percent figure established by the courts.

MR. SCHWARTZ. How much of the runs entering Washington State water? What percentage actually do make it back to Puget Sound?

MR. HAW. These numbers that I have given you take into account the harvest offshore by fishermen under the jurisdiction of Washington fishermen. There are some adjustments made on what the court will allow on the basis of adult equivalents. This is quite a technical thing. I don't want to bore you with that now, but you don't count fish just on a one-for-one basis. It depends on their size and their state of maturity and the probability that these fish would have survived anyway to return to Puget Sound. But fish that are harvested by Washington fishermen offshore are taken into account.

MR. SCHWARTZ. The task force plan proposes a tremendous enhancement of the resource. I think doubling the amount of the salmon catch was what they had in mind with the enhancement that was proposed. And you said that you were involved in the enhancement discussions. Is that correct?

MR. HAW. Yes. That's right. Now, in addition to the task force enhancement plan, the State has a substantial enhancement plan going now too. One of the very good things that came out of the last session of the Washington State Legislature was a \$33 million bond issue for massive new salmon enhancement in Washington State, and most of this enhancement, or a good chunk of it, is in the treaty area, which will benefit both treaty and nontreaty fishermen. I'm involved in both aspects. I'm right in the middle of the State's own enhancement program, plus I was involved in the talks with the staff people the task force had working on enhancement.

MR. SCHWARTZ. I take it that you have been involved in enhancement of the resource effort on behalf of the State for quite some time. Is that correct?

MR. HAW. That's right. I see a tremendous potential in the enhancement of our salmon resources in Washington State, and I see enhancement, of course, as being a very important part of an overall solution.

MR. SCHWARTZ. Have there been problems existing in State or Federal efforts to enhance the resource which have resulted in a lesser impact in terms of increased numbers of fish than those originally projected?

MR. HAW. To some degree some of the more recent estimates, for example, of survival rates, I think the task force technicians have taken a relatively conservative approach in estimating survival and contribution rates of various groups of fish. So there have been some adjustments in our original projections. Particularly, I think the number one adjustment was made in coastal chum survival. We estimated that the survivals resulting from recent information in places like Willapa Bay would not be as high as Puget Sound.

MR. SCHWARTZ. We are talking about not just some enhancement, we are talking about doubling the resource. That seems to me something of a tremendous magnitude when compared to efforts of the past. Would that be a fair characterization?

MR. HAW. Yes, it would. Of course there have been some significant breakthroughs in recent years in things like chum salmon production, a type of fish that we haven't worked with that much in the past in our enhancement program, that would be more cost effective, so by investing relatively low amounts of money, you would be able to get far greater contributions than you would normally anticipate.

MR. SCHWARTZ. Do you see any problems with massive enhancement programs that could exist?

MR. HAW. Oh, certainly, and I would agree with Dr. Alverson's statement on enhancement. I thought he painted an accurate picture.

MR. SCHWARTZ. Well, if I understand Dr. Alverson's statement correctly, it seems like there was no real degree of surety that the enhancement program would be successful. Would you share that belief?

MR. HAW. I thought that Dr. Alverson's statements reflected that enhancement was a very, very good bet and we would be foolish not to go on with it. The State has quite a few enhancement programs going on and our success rate to date has been very good. For example, some of our programs up until now have primarily involved chinook and coho salmon. We have not been that involved with pink salmon or chum salmon.

If you look at the present catch levels in Washington State, the statewide catches of those two species, which are the enhancement species, up until now pretty well approach the historic high catch level of those species, whereas the species that we have not enhanced, i.e., chum salmon and pink salmon, are at very low levels, and perhaps the historic low levels in the State's history. I think the evidence is overwhelming that enhancement will work. Certainly it has to be done carefully, a balanced approach is absolutely necessary, but if we all work together as we should, there is no question in my mind that enhancement will work.

MR. SCHWARTZ. Mr. Larson, do you share Mr. Haw's optimistic view about enhancement of the resource?

MR. LARSON. I'm not as optimistic as Mr. Haw. I feel there is room for enhancement of the resource, but I am not all that optimistic that it could be doubled or tripled.

I have a problem with the unknown quantity, I guess, of ocean survival. That would seem to be a part of the deciding factor. I find that hatchery plants per se can dim the loss, for example, of wild fish spawning and survival, in that areas where you have reasonable hatchery plants that you have a tendency to stabilize the numbers of fish coming back, but it does not necessarily always increase by increasing numbers of fish. Your wild fish survival can be different on an annual basis, depending upon the stream habitat that they are rearing in.

So, I guess I'm a little more pessimistic as to the numbers of fish that we can bring back based upon enhancement, but I do feel that

there is room for enhancement to some level, and I don't know what that level is at this point, and I'm not sure we'll find out until we continue to work on that particular problem.

MR. SCHWARTZ. The regional team of the task force suggests an enhancement of the steelhead resource, and it lays out a program for some steelhead hatcheries and other programs. Does your department agree with those recommendations?

MR. LARSON. Yes. Our people participated in developing those figures. I think that the number of fish we are talking about are very reasonable, because we are not talking about millions and millions and millions of fish, and we do at this time, from our experiments we have been conducting, have found that we can plant more fish and still get better returns in many of our streams. We have not reached that optimum level that we feel can be reached in the survival and also in the harvest of the steelhead resource. So we have some room to expand to some degree.

The only problem I have with the enhancement package as proposed by the task force is that the enhancement package was developed by a committee totally separate from the task force and without knowledge of what the task force recommendations were going to be. So, therefore, the enhancement package submitted by our agency is not in tune with the task force report. In other words, it proposes enhancement of the resource to bring in more fish to both treaty Indians and non-Indian fishermen in areas where the task force report recommends that no Indian fisheries for steelhead occur. Therefore, it is not in tune with the report and has to be modified, based upon the task force recommendations.

MR. SCHWARTZ. I noticed in one section of the State response that there were some criticisms of some of the enhancement proposals. I believe it was on a cost benefit basis, cost effectiveness basis. I don't recall now whether that was salmon or steelhead. I was wondering how the State made its determination on whether to accept the proposal for each of those individual hatcheries. Was it solely cost benefit or was there any other factor involved?

MR. HAW. I'm somewhat familiar with it. It was as a result of certain priorities that were established. I believe that certain facilities were indicated they should be a one priority, others two, others three. Essentially, cost effectiveness was one of the important criteria, and these kinds of information our hatchery people will be able to determine, water available, probability for developing a productive station. I think other priorities perhaps were based upon management complications. In order to protect our wild stocks adequately, you must be very careful where you build an artificial enforcement facility, so probably the criteria established two things, one was the cost effectiveness; the second criteria would be the impact on existing runs from a management standpoint within an area.

MR. SCHWARTZ. Were the locations that were suggested as the better bets in the enhancement program by the State, was there a calculation in there as to the number of fish that would be taken by treaty fishermen as opposed to nontreaty fishermen? Was that an element?

MR. HAW. No, that wasn't an element as far as I know.

MR. SCHWARTZ. I have no further questions.

CHAIRMAN FLEMMING. I want to express our appreciation to the members of the panel for coming here and sharing with us your expertise and knowledge of the situation, and we are very grateful to you. Thank you very much.

We are about to recess for approximately an hour. Some of you were not here when this hearing opened. At that time Commissioner Freeman called attention to the fact that it is our practice near the end of a hearing to provide those who have not been subpoenaed with an opportunity to present testimony under a 5-minute rule, and not subject to any examination. But anyone who desires to take advantage of that opportunity should be in contact with members of our staff in room 542, and that contact should be made prior to 12:30. At that time we will develop the list of those who are going to be heard. They will be heard in the order in which they have filed their request to be heard. That testimony will begin at approximately 5:15. We estimate that our testimony from subpoenaed witnesses will be completed at approximately that time.

MR. MACKIE. Excuse me, Mr. Chairman. I would like to make one short statement for the record here. There was a reference made in the questioning of the group before and also of this group of the ruling by the State supreme court of the lack of ability of the State to allocate to meet the requirements as announced in the decision of *U.S. v. Washington*.

I just wanted to note for the record that the State of Washington has sought review in the United States Supreme Court on both of those decisions and have a petition of *certiorari* pending with the U.S. Supreme Court. So we have sought to pursue that.

CHAIRMAN FLEMMING. Thank you. We appreciate very much your providing us that information.

We will be in recess until approximately 1:10, maybe 1 o'clock, depending on how quickly we can get our lunch.

Afternoon Session, August 25, 1978

CHAIRMAN FLEMMING. The hearing will be in order. Counsel will call the next witnesses.

MR. SCHWARTZ. Mr. James Heckman, Dale Johnson, Mason Morisset, will you please come forward?

[James Heckman, Dale Johnson, and Mason Morisset were duly sworn.]

TESTIMONY OF DALE JOHNSON, CHAIRMAN, JAMES HECKMAN, EXECUTIVE DIRECTOR, NORTHWEST INDIAN FISHERIES COMMISSION; MASON MORISSET, ATTORNEY

MR. SCHWARTZ. Will each of you, beginning with Mr. Heckman, please state your name, address, and occupation?

MR. HECKMAN. I'm James L. Heckman, executive director, Northwest Indian Fisheries Commission, 2625 Parkmont Lane, Olympia, Washington.

MR. SCHWARTZ. Mr. Johnson?

MR. JOHNSON. Dale Johnson, chairman of Makah Tribe, chairman of Northwest Fish Commission, Post Office Box 115, Neah Bay, Washington.

MR. SCHWARTZ. Mr. Morisset?

MR. MORISSET. I'm Mason Morisset, partner in the law firm of Ziontz, Pirtle, and Morisset in Seattle, general counsel for the Quileute, Lummi, and Makah Tribe and a legal consultant to the Northwest Indian Fisheries Commission. My address is 600 First Avenue, Seattle, Washington.

MR. SCHWARTZ. Thank you. Mr. Johnson, could you, please, briefly describe what the Northwest Indian Fisheries Commission is and what its role is in the Washington fishing controversy?

MR. JOHNSON. The Northwest Indian Fisheries Commission is a group of men that represent five treaty areas. Each treaty area has a commissioner that is appointed to the fish commission. Each treaty area has any number of tribes between one and nine, and they are the treaty areas that are in the case area of the Northwest.

We did work with the State and with the Federal task force at times, representing the tribes as they wanted themselves represented. They delegated a certain amount of authority to us that we could deal for them on certain issues.

So there are in the Commission three biologists that work with the tribes that don't have biologists and kind of coordinate the activities of the other tribal biologists. This is kind of a coordinating organization for all the tribes to be formed into one central unit.

MR. SCHWARTZ. Does the commission—Mr. Heckman, perhaps, can answer this also. Does the commission have any particular role with respect to the decision made in *United States v. Washington*?

MR. HECKMAN. Yes. It is a service organization to the tribes. First of all, we're looking to central issues for them such as the Canadian negotiations, the IPSFC, the 200-mile bill, and so forth, but essentially it was formed to attempt to help the tribes in becoming self-regulating as prescribed under the conditions set forth in *U.S. v. Washington*.

MR. SCHWARTZ. Does the Northwest Fisheries Commission have binding authority to represent the tribes in any negotiations?

MR. HECKMAN. It does on certain issues. In each case this comes specifically from the chairmen of the 19 tribes that are members to the Commission.

MR. SCHWARTZ. We have had a considerable amount of testimony here this morning about the formation of a task force in Washington, D.C., to deal with the various aspects of the Washington State fishing controversy involving Indian and non-Indian fishing. We have had testimony about the development of a regional team, and we had members of the team here explaining what they consider their role to be and how they went about it.

I would like to pose to you three gentlemen the question of the view that the tribes have and the Northwest Indian Fisheries Commission as representatives of the tribes has about how the regional team was established, its interaction with you, and how it went about the business of trying to solve the Washington State fishing controversy.

Perhaps it would be best to start with Mr. Heckman, since I know you were with the Northwest Indian Fisheries Commission at the time the regional team had been founded.

MR. HECKMAN. Okay. My recollection of the approximate birthday of the task force coincides with the beginning of the fishing season about two seasons ago, when we were beginning to hear from the State of Washington that they would like to have the tribes consider reducing their share under the allocation formula prescribed in *U.S. v. Washington*. We were almost simultaneously approached by Mr. Waldo and others representing the Federal Government that we should seriously consider that with the suggestion, or sometimes we considered it a threat, that if this were not done that there would be massive illegal fishing, and it would result in the end in fewer fish than if the tribes cooperated by giving up a share of their fish.

MR. SCHWARTZ. Before we get into the actual give and take of any negotiations that may have occurred, I would like to know how the tribes and the commission perceived the regional team because it consists of Federal employees, and I would be interested in knowing how you felt the regional team represented its role to you from the beginning of the negotiations.

MR. HECKMAN. I should say that at the very beginning, the formation of the task force, Leo Krulitz, Solicitor for the Interior Department, came out and met with tribal representatives in the commission office, and among the four objectives of the task force, the one that was of primary concern to the tribes was that we would not be dealing away any part of the provisions and the guarantees provided under the Boldt decision. I think that there was, with that assurance, a feeling of a need to cooperate and assist these gentlemen in going about the task.

MR. SCHWARTZ. Did you initially receive that assurance from the members of the regional team?

MR. HECKMAN. Yes, we did. In addition to that, Mr. Krulitz, who was then a member of the national team—

MR. SCHWARTZ. Go ahead. We were going through the process. The regional team had, as I understand you, made some assurances to the tribes, and then there began some process of the regional team trying

to solve the controversy. What was the interaction that the Northwest Indian Fisheries Commission had with the regional team as it went about its business?

MR. HECKMAN. That was fairly early in the spring and the task force set about its work.

MR. SCHWARTZ. We are talking about the spring of 1977?

MR. HECKMAN. '77. The task force set about its work. The tribes' members to the commission established a coordinating committee to deal directly with the task force to provide information, expertise, and so forth from the tribes. They met frequently with the task force people, sometimes individually and sometimes collectively. I think things were going along fairly well until about this time of the year in '77 when we were in Boldt's court and attempting to determine the allocation of the coho run that was about to enter Puget Sound, at which time the task force recommended a reduction in the Indian share, the infamous 45-55 suggestion.

MR. SCHWARTZ. Did the task force explain to you its reasons for recommending that reduction in the Indian share?

MR. HECKMAN. They attempted to explain that. I think it was not much more than a gut feeling on their part, but as far as we could determine there was not much substantiating data to support their move other than their feeling that there would be particularly tough economic hardships on the non-Indian fishermen if something wasn't done.

MR. SCHWARTZ. Mr. Morisset, do you have a recollection of that period in time?

MR. MORISSET. Yes, I do, Mr. Schwartz. I think it's important to recall that there was no explanation of this at the time. In fact, what had happened was that we were in court one morning when the United States Attorney announced that he had been instructed to request this substantial divergence from the decision as to allocation on orders from Washington, D.C., by way of the task force, and it was a classic stab in the back situation of which there was no prior notice or explanation at the time. The only thing which we ever saw in writing, as I recall, was the telegram or mailgram to the Justice Department, which talked about the need to cool passions and the need to provide some Puget Sound fishermen with economic relief. Other than that, which we saw after the fact, there was no explanation as to why the allocation formula suggestion was gone after.

MR. SCHWARTZ. At this point in time, after the regional team had made its representation that the run, in fact, was allocated 45 percent for the treaty fishermen and 55 percent for the nontreaty fishermen, did that have an effect on the attitudes of the tribes in dealing further with the regional team of the task force?

MR. HECKMAN. Yes, it did, and immediately and for some time—I think Mr. Waldo mentioned it this morning—there was a breaking off of relationships between the tribes and the task force, and there was

a period of no or very little communication with them. When it finally was reestablished it was after the fishing season and very close to the period, or within a couple months of that period, when they released the first draft in January.

MR. SCHWARTZ. Was there an attempt by the regional team to solicit the input of the tribes in developing its plan in the early stages?

MR. HECKMAN. Yes. Before the January draft they did establish a series of meetings with individuals and tribal groups to discuss with them their thinking on the development of a plan and to hear from the tribes their various proposals as to how a settlement or adjustments might be made to alleviate tensions.

MR. SCHWARTZ. Did the tribes come forth with some suggestions?

MR. HECKMAN. Yes, they did, both verbally and in writing. In fact, I took the liberty of bringing along the reports of the tribes that were provided to the task force during November and December, some 651 pages of tribal positions, suggestions, and recommendations to the task force.

MR. SCHWARTZ. Mr. Chairman, I'd like at this time to introduce those reports into the record.

CHAIRMAN FLEMMING. Without objection, they will be entered into the record at this point and marked as Exhibit No. 3.

[Exhibit No. 3 was marked for identification and received into the record.]

MR. SCHWARTZ. I see that that's actually a group of reports that was submitted rather than a single one. Would you explain how those reports are divided up, what areas they cover?

MR. HECKMAN. I'd have to look at them specifically, but some of them represent individual tribes and some of them represent groups of tribes such as—the Skagit River tribes consolidated their report and the Point-No-Point tribes did also, and I believe the coastal tribes did the same. There were some individual reports for the Nisquallys, Stillaguamish, and some others.

MR. SCHWARTZ. Did these reports include a lot of technical data as well as suggestions for management?

MR. HECKMAN. Yes, they do. A lot of the suggestions on how certain things could be done to alleviate tension, suggestions on the steelhead problem, enhancement proposals, adjustments of fishing techniques, patterns to alleviate tensions between the net fisheries and recreational fisheries.

MR. SCHWARTZ. How was the background data necessary to come to these suggestions or conclusions developed by those treaty tribes in those areas?

MR. HECKMAN. The background data was developed by the tribes' technical staffs as simply as that, based upon information they could obtain from State and Federal agencies and data that they themselves had collected and analyzed.

MR. SCHWARTZ. Is this data that the tribes would have had to develop anyway or had easily at their fingertips, or was this something that had to be generated for this purpose?

MR. HECKMAN. A considerable amount of it had to be generated. I might say that during this entire process, beginning mostly with that period in late '77 until the present, the tribes have had to expend a considerable amount of their time and dollars, and the commission as well, in dealing with this task force issue, to the extent of sacrificing on other important ongoing issues relating to management of the fisheries.

MR. SCHWARTZ. What, in your view, was the use the task force made of the plans that were submitted, which you have now submitted into the record?

MR. HECKMAN. This is a very serious concern of the tribes and it has been expressed in various ways, written and verbal, formal and informal, that after all of their efforts in meeting with the task force over several weeks, meeting with themselves to get these things together, and then preparing these voluminous reports, that very, very little of what they had to offer or suggest was incorporated in the task force proposal.

MR. SCHWARTZ. The original task force proposal came out after these reports were submitted? We're talking about, first, the January interim plan?

MR. HECKMAN. That's right.

MR. SCHWARTZ. Are you saying that the January plan did not take account of the proposals that were being made in this submission?

MR. HECKMAN. That's right.

MR. SCHWARTZ. Was there any attempt by the commission or the tribes themselves to lobby in favor of getting those changes made between the interim draft in January and the final plan issued, I believe it was, in June?

MR. HECKMAN. Well, the tribes very shortly, or a month or so after the January plan, things were in a state of limbo. I think people were trying to find direction. The task force, national and otherwise, was attempting to decide whether or not they should proceed or maybe there was another avenue, and it was suggested that the tribes negotiate directly with the State.

So, beginning in March of '78 until about a month ago, practically all of the energy and time of the commission and the tribes went into those negotiating sessions with the State. Some of those drafts of negotiated positions—and I underline *draft* documents—were incorporated in the June issue of the task force report, not entirely to the happiness of the tribes.

MR. SCHWARTZ. Were agreements negotiated between the tribes and the State universally incorporated into the final plan?

MR. HECKMAN. I don't believe so, no.

MR. SCHWARTZ. Were there any agreements that were left out?

MR. HECKMAN. I don't—well, first of all, there were no agreements, per se. There were no ratified agreements on any issues, and so I believe the task force people included sections on enforcement and some enhancement agreements or draft documents.

MR. SCHWARTZ. Mr. Morisset, were you going to make a comment on that point?

MR. MORISSET. On that particular point, Mr. Schwartz, there were some preliminary agreements about enforcement between the State and tribal authorities, and it's interesting how that got subverted. It is my understanding that preliminary agreements got redrafted by the State in its own version and that that version did find its way into the final task force report and was presented by them, or represented by them, to be an agreement between the parties, which is simply not true since it had gotten completely subverted by redrafting by the State. Even that agreement had been at the technical committee level, not actually between the parties.

So, things represented in the task force proposal as an agreement between the parties were not, in fact, agreements.

MR. SCHWARTZ. I believe that Mr. Merkel has said earlier that, today in testimony, that in considering how to go about the task of the regional team, that is, to solve the controversy, that they viewed their role as the impartial negotiators, and each side had its rights which could be negotiated by mutual agreement, and the fisheries continue on after the mutual agreements had been made pursuant to those agreements. Was that your understanding of how the regional team had gone about its business?

MR. MORISSET. No. First of all that wasn't my understanding about what the regional team was to be. Initially it was my understanding that they would be a Presidential task force operating under the duty the executive has pursuant to the trust responsibility to deal fairly with the problems that the tribes were having with implementation of the decision, and they would work towards implementation of the decision in such a way as to deal with some of these other problems.

I did not see them as being a mediator between two opposing factions. Evidently Mr. Merkel did. I don't think that concept was the one that was given to the tribes and presented to the tribes as what the task force would be.

Be that as it may, they did not, in my view, in fact operate as an impartial mediator, but became instead arbitrators with a particular point of view to get across, which point of view became to be more and more apparent, particularly after the January submission. That point of view was to calm political passions of the non-Indian segment of the population out here by disassembling the decision in *U.S. v. Washington*. In my view that's what they rapidly became, were the kind of a stalking horse for those views, for the view of the congressional delegation, and perhaps—or course I wouldn't know this—perhaps that was their plan all along, to disassemble the decision and not even

mediate, much less to look out for the tribes under the trust responsibility.

MR. SCHWARTZ. The question was earlier raised about whether, even if everyone agreed that there was going to be a negotiation, and even if there was an agreement on a settlement, whether such a negotiated settlement could act of its own to change the provisions of the treaties as interpreted by the Federal district court. What would your view be on that?

MR. MORISSET. If I understand the question, Mr. Schwartz, you are asking me, would an agreement be viewed as tentative, given the fact of the decision; would it depend on something else happening?

MR. SCHWARTZ. What I'm thinking of is that treaties are more than contractual obligations between parties. They involve a certain ratification process by the Congress, and they hold a certain position as legal documents which an ordinary contract wouldn't have, and I'm wondering whether a contractual type negotiation could be something that could change the treaties.

MR. MORISSET. Let me say what my view was, and I had some considerable hand in drafting the 650 pages worth of material that got more or less ignored. What Mr. Heckman did not point out is that in that material three of the treaty areas made specific proposals as to a new management enforcement structure which would deal with some of the problems, some of the problems being illegal non-Indian fishing, the refusal of county prosecutors to prosecute non-Indians who illegally fish, the refusal of the State of Washington to adopt management plans that dealt with Boldt allocations, and so on.

Those were dealt with in the tribal presentations in such a way that the treaties would be left intact, it being our view that the treaties were more than just contracts, they were supreme law and could not necessarily be negotiated between parties without considerable ratification or reratification of the treaties.

So, it was our view that the treaties were not up for grabs or renegotiation. Rather, we would have to work with those as a given, but evidently it was not the task force's view, and they viewed it as a possibility to completely disassemble the treaties and proceeded on that basis.

MR. SCHWARTZ. You said a few times now that the treaty rights have been disassembled by the work of the task force. I'd like to turn for a moment to the actual plan itself as it was finally recommended in June and ask you, Mr. Morisset, what do you see as the legal problems that the task force plan generates in your mind?

MR. MORISSET. First of all, have you got 8 or 10 hours to hear all the legal problems? I brought no material on that so I will have to speak from memory, but it is our view, and we have advised the tribes, that the plan if implemented amounts to a complete abrogation of the treaties and as such would be an unconstitutional taking of treaty rights and therefore would be totally illegal and improper. There are many specifics as to that.

The plan essentially abrogates, of course, the property right in the opportunity to take fish that was affirmed by the decision in the *United States v. Washington*. It changes the allocation into a much more complex formula for certain percentages here, certain percentages there. The plan would disassemble the extraterritorial jurisdiction of the tribes that was upheld not only by the ninth circuit, in this case, but in a companion case, *Settler v. LaMeer*, in the ninth circuit. That is an important jurisdictional right. It amounts to really taking away the sovereignty of Indian tribes, because this extraterritorial jurisdiction is a power that is unique only to sovereigns, and by dealing with it in the way that the task force does, it essentially abrogates the treaty.

The third important legal point is that the task force proposal eliminates the treaty defense in any kind of criminal proceeding and eliminates virtually all the law in the decision and would require the tribes, in the event that things did not go right, and certainly the history of Indian affairs in this State indicates that things might not go right—it would require the tribes to approach a new administrative body called the Fisheries Review Board and request that that board conduct hearings into the activities and behavior of the State, and only if that board after complete hearings found substantial noncompliance with the plan would there be any right to any kind of judicial relief.

In my view as a lawyer, this is one of the most outrageous provisions in the plan because it, in effect, says the decision in *United States v. Washington* and all the litigation that led up to it and all the facts that were put in are thrown out the window, and if the State continues to exhibit the behavior that it has for 100 years you will have to prove that over again. You will have to start all over again, make a whole new record, in effect try the case all over again. The task force plan essentially requires the tribes to do that.

There are numerous other important concepts in the plan. Usual and accustomed places, which are very dear to the hearts of the tribal fishermen and justifiably so, are thrown out the window, and Indian fishermen are essentially thrown into the pot with all other fishermen, except for tiny zones around their reservations which are called tribal commercial management zones, which is a misnomer since most of the zones are so small it would not be practicable to carry on a meaningful commercial fishery there.

MR. SCHWARTZ. Another part of the answer from Mr. Merkel this morning about the negotiations and the give and take process leads me to another question for you, Mr. Morisset.

In the give and take process it seems that the plan proposes grand scale enhancement of the resources, seeming to exchange that for certain managerial concepts which change, for example, the State commercial management zones and tribal commercial management zones, replacing the usual and accustomed grounds adjudicated by the court.

In your view, is that a fair trade and also is that a necessary trade? In other words, could management systems or other parts of the plan

be done independently of any allocation changes that might have been suggested?

MR. MORISSET. The answer to both of the first two questions is no, it's not fair, no, it's not necessary. The answer to the third is, yes, some of these things could be done independently.

The idea of asking the tribes to surrender what is essentially their birthright, as well as the contractual right, in exchange for the land that they gave up years ago for the promise of fish, and if you read some material that we'll be submitting, hopefully in a few days, you will see that there is no—the farthest thing from a guarantee that this complex plan of enhancement will work. It may turn out to be simply more of these paper fish that some tribes have been promised. It is not a good idea at all.

It is certainly not necessary to have enhancement at all to solve some of the other problems. It is particularly bothersome in light of the fact that in these 650 pages of reports that Mr. Heckman mentioned, volume one was a historical perspective and a list of conditions about any settlement. In that we pointed out that before any settlement could be reached, it would be necessary to deal with the problem of what are called interceptions with fish, and that problem has not been addressed in any meaningful way.

So that to offer the carrot of more fish through a massive enhancement program without doing this is to, in effect, be offering more fish to Alaska, to Canada, to Japan, to Russia, and to anyone else that fishes off the coast of Washington, British Columbia, or Alaska.

We feel that this carrot of \$200 million plus, offered without dealing with those problems, is the highest order of nonsense and the one that all taxpayers should be interested in, whether they are interested in Indian fishing or not.

MR. SCHWARTZ. In reading the whole plan, it strikes me as being a comprehensive effort to deal with various aspects of resource management and control, a little less so with enforcement. I did not see any specific recommendations about the Federal Government's role immediately in enforcement should the plan not be adopted.

I was wondering, in your contact with the Federal Government since the decision in *U.S. v. Washington*, has it played the enforcement role, any enforcement role, that it should be playing with respect to the decision in 1974 and the supplemental decision since then?

MR. MORISSET. Historically, it has not played a proper role. This year remains to be seen, since we are still in the throes of the season and the emergencies that it always brings about, but I had a terrible experience of *deja vu* after the decision.

Some years ago we were shocked when we approached the State Department and indicated that it was necessary in our relations with Canada under the sockeye treaty to properly protect Indian treaty rights, specifically the Makah treaty rights, and had the State Department indicate that it did not recognize Indian treaties and that they had no continuing validity.

Finally, after a meeting at the White House with then President Nixon's advisor for domestic affairs, at which Interior and State Department Secretaries were present, it was established that, yes, there were such things as Indian treaties and, yes, they did have to be honored and they were law just as much as anything else.

Having fought that battle and established it, we were speechless when, after the decision, the Department of Commerce announced that it too did not understand what the Indian treaties were about and why in the world did it have a role to play through the Coast Guard or the National Marine Fisheries Service or any other of its enforcement arms.

Last year there was a battle royal with numerous telephone calls, conferences, exchanges of letters, and so on, to try to get various enforcement arms of the United States Government to enforce the Federal court decision in this case. It was only after much arm twisting and so on that any enforcement effort last year was mounted at all.

As I say, hopefully, things will be better this year, but the record of the United States through its various departments is not good, each executive department taking a different view as to what its role and responsibility is.

MR. SCHWARTZ. You mentioned going to Washington a little while ago, and I was wondering if the congressional delegation from this State has played a significant role in attempting to solve the controversy existing over Washington State fishing rights?

MR. MORISSET. In my view, they played a significant role in trying to mess up the controversy, not solve it. The congressional pressure has been considerable and has come from a variety of quarters, certainly from the two Senators in this State.

On two specific occasions Senator Jackson has, for example, written the Attorney General in March of this year, indicating that he wants the trust responsibility of the Secretary of Interior to be examined and have that policy reviewed, in effect complaining that there is too much time and money being spent on Indian affairs and we can presume, by implication, on this case.

At the same time, the other Senator from the State, Senator Magnuson, wrote to the Secretary of Interior, again in March, requesting a case-by-case breakdown in expenses of the Department, asking the number of positions assigned to the litigation and requesting "a detailed justification for the activities entitled Boldt decision, attorneys 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." The letter goes on to request similar information for the Solicitor's office.

My experience in and around Washington, D.C., for the Chairman of the Commerce Committee and now the Chairman of the Appropria-

tions Committee to be asking a line-by-line justification of expenditures is a clear threat as to what is going to happen, and it has been my information that since this letter and during the current appropriations hearings that there has been considerable negative input from the Senator as to how this money is being spent, with threats made to cut down the budget of the Interior Department if it is used for trust responsibility funds.

It is also our information that there has been considerable contact between the staffs of the Washington delegation and the staff of the task force and we, of course, have not been in on those meetings, so it is only by rumor and hearsay that we know of those meetings, but it is my deeply felt conviction that, as I said before, the regional task force is the stalking horse for the Washington delegation, and they have been trying to react to the pressures and concerns of the delegation throughout these negotiations.

MR. SCHWARTZ. Mr. Chairman, if we could, I'd like to have those letters introduced into the record.

CHAIRMAN FLEMMING. Without objection, let them be entered into the record at this point as Exhibit No. 4.

[Exhibit No. 4 was marked for identification and received into the record.]

MR. MORISSET. There are two, and I suppose, Mr. Schwartz, if you want the record to be complete, there should be the reply from the Attorney General, Mr. Bell, to the Magnuson/Jackson letters.

MR. SCHWARTZ. I'd like to have that also introduced, Mr. Chairman.

CHAIRMAN FLEMMING. Without objection.

MR. HECKMAN. Could I suggest, Mr. Chairman, there is one other letter, and I don't have a copy at the table with me. That was to Secretary Andrus from Magnuson and Jackson, I believe it was this month, urging that the tribes consider a reduction in the tribes' share during the current season, implying that it would be similar to the reduction that occurred last year after the recommendations of the task force, with a similar implication or a threat—however you read it—that without the reduction, again, we could expect massive illegal fishing and further reduction in the tribes' opportunity to take their share.

CHAIRMAN FLEMMING. If you can provide us with a copy of that letter, we will make it a part of the transcript.

MR. HECKMAN. I have it in my briefcase and I will bring it forward.

MR. SCHWARTZ. Mr. Heckman, the plan, as pointed out previously, makes significant changes in management authority and responsibility, control of fishing areas, and fishermen, particularly Indians, fishing in various places in the State commercial management zone, for example, as opposed to tribal commercial management zones in place of usual and accustomed rights.

Can you explain to this Commission the problems, if any, that you see and the impact that you see that this plan proposed by the regional team would have on the rights which treaty Indians may now exercise under the court decisions?

MR. HECKMAN. Well, certainly there was a definite history in the past before the decision and definitely immediately following the decision that indicated very strongly that the State would conduct a management of the resource in such a fashion that it would be difficult for the tribes to receive their shares as prescribed in *U.S. v. Washington*.

MR. SCHWARTZ. Could you give us some examples of how that might occur?

MR. HECKMAN. Well, certainly, we have had problems with the State having the bulk of the technical data on which to make harvest escapement goals and run size predictions and so forth. The court has, because of this, looked to the State to be the one that makes the run size predictions and so forth. Since the decision has been a review process for the tribes, but still the State holds, more or less, the technical cards, and there have been occasions when a division of the catch was established on the basis of preseason run predictions, for instance, the coho in Puget Sound, and we later find that those predictions were wrong.

Before we find that the predictions were wrong, non-Indians had pretty well had their opportunity to take their 50 percent, and this is basically because they have the larger fleet. It is situated out in front of most of the Indian fisheries, and they are able to take their portion of the run quickly, early in the run, only to find out that after they have had their 50 percent that the run is suddenly smaller than predicted and Indian fishermen are closed for conservation reasons.

I can cite an example. For instance, in 1975 in Skagit Bay the tribal fishery, first of all, was limited in that they had to fish with nets of 7-1/2 inch stretched mesh to allow the escapement of pink salmon that were reportedly in bad condition and that closure was, I believe, on the 9th of September. On the 15th of September—I believe they were closed down finally—but on the 15th of September the fisheries department decided that the fishery could be opened, that reportedly the pink salmon were out of the area, the non-Indian fleet moved in, and we later found out that the test fishery conducted by the State on that same date had shown a preponderance of pink salmon in the area. What they had done is, they had closed the Indians to protect the pinks, but then a few days later allowed the massive non-Indian fleet to move in on those same pink salmon. It was a problem of trusting the State to look out for the best interests of the tribes.

MR. SCHWARTZ. Mr. Morisset, would the plan provide adequate legal protection to prevent this type of thing from occurring again if it were enacted as it is?

MR. MORISSET. In my view it would not. As I stated earlier, the plan not only disassembles the decision in *United States v. Washington*, but changes the procedural rights that the tribes now have under Federal law. It substitutes for those rights and for a decision the new administrative body which is given no power to redress the wrongs that may

occur. It is only given the power to act as a kind of quasi-pre-judicial forum to have hearings, take evidence, and so on, and if after all that, finds substantial noncompliance with the plan, recommend to a Federal court that some action be taken, although the plan is totally unclear as to how you do that.

I don't know under the rules of procedures how we get from the Fishery Review Board to the Federal court. So, one of the things that we have had the most difficulty with is the total lack of any kind of procedural or substantive rights this plan would have for tribal fishermen.

MR. SCHWARTZ. Mr. Johnson, you are a member of the Makah Tribe. The location of that tribe, as I understand, is out at the very northwest tip of this country in the Straits of Juan de Fuca. Could you explain to this Commission what the proposals are in the plan, how they would impact on your tribe and its traditional fishery?

MR. JOHNSON. In our particular case there, the proposal would put a limitation on our fishermen that would keep anybody else from getting into the fishing business, keep any of our tribal members from getting into it. Out there that's the only thing we can do is fish. Logging is getting to where you don't need the men to work in the woods anymore, so fishing is the only thing that we can do. So, the limitations on the winter troll, which is 20 boats, we are almost there now, or we would be there if we count the kelpers in there.

So, my children or anybody else's children would not be able to go into a fishery. The limitations on the fall gillnet, which amounts to 35 boats between 2 tribes and possibly 3 tribes for that fishery, just keeps anybody else from getting into the business, any other tribal members.

MR. SCHWARTZ. Does the proposal of the regional team significantly remove the fishing rights that the Makahs would have if just the provisions of the Boldt decision were implemented?

MR. JOHNSON. Yes, it does. It completely takes away our usual and accustomed areas. It leaves the tribal commercial management zones of one small little bay, maybe a couple of miles across, that would be left for the tribes to manage, the only place it would have jurisdiction over our fishermen.

MR. SCHWARTZ. Wouldn't the plan also allow the tribal fishermen to fish in the State commercial management zone?

MR. JOHNSON. Under the State jurisdiction, yes.

MR. SCHWARTZ. Would that pose any particular problem for the members of your tribe?

MR. JOHNSON. Yes, it would. We couldn't have the jurisdiction over the fishermen, and the way that our fishermen are watched, and I guess you could say harassed at times it seems, by the State enforcement people, that it would just be the same thing over again.

MR. SCHWARTZ. When you say, the same thing over again, do you mean going back to the time before the U.S. court decision?

MR. JOHNSON. And right now too. The same thing is happening now as far as the way our fishermen are checked by the State enforcement people.

MR. SCHWARTZ. Another element of the plan is to eliminate any extra Indian treaty fishing days or extra time for Indian fishermen, making up for it in a variety of other ways. What impact would that have on the Makah fishermen?

MR. JOHNSON. Last year the Makah fishermen caught approximately 17,000 sockeye. During the treaty Indian fishing days only, we had caught approximately 14,000 of that. During the time when we were fishing with the non-Indian group they caught 3,000. So, that equal opportunity fishery doesn't mean that we are going to get the fish.

MR. SCHWARTZ. Is there a particular reason why, when you're competing with the other fishermen, the amount is reduced by such a large number?

MR. JOHNSON. Yes. It has a lot to do with the numbers of boats in comparison with the numbers that we have, and the ability to fish where the fish are because of those numbers of boats. We can't get in there to fish because the places are already taken. They are corked off.

MR. SCHWARTZ. In other words, the nontreaty fishery prevents you from getting in to where the fish are to take a significant share. Is that what you are saying?

MR. JOHNSON. Yes.

MR. SCHWARTZ. Thank you. Mr. Chairman, I have no other questions.

MR. JOHNSON. I'd like to clarify one point on the agreements that was discussed earlier. It has been mentioned several times about agreements that the State and the tribes had come to, and I would just like to make it clear that there were no agreements in the negotiation process between the tribes and the State. There were agreements, tentative agreements, between the technical committees of each group, and we had a committee, they had a committee on enforcement, and they got together and come up with a draft for the negotiating teams to discuss. We had discussed them and we have come to a near agreement, but there hasn't been any ratified agreements between the tribes and the State.

CHAIRMAN FLEMMING. I'd like to go back to the beginning, and, again, what was the first contact made by the Federal task force with the association and how was it made? Was it made by way of conversation? Was it made in the form of a letter outlining the task that had been assigned, the task force indicating the guidelines that they were operating under, asking your cooperation, and so on? Just how did this all start?

MR. HECKMAN. My recollection is that we were advised of it verbally, and a meeting was scheduled to meet with some of the representatives of the national task force that came out. As I mentioned before,

Mr. Krulitz came out to Olympia, met in the commission office with the commissioners and other tribal representatives, and I believe simultaneously they had a press release that more or less defined their objectives.

CHAIRMAN FLEMMING. They shared that press release with you?

MR. HECKMAN. They released it at the time of their meeting and it was discussed—if you want to talk about timing, I think they released it in the morning and met with us in the afternoon.

CHAIRMAN FLEMMING. Were you aware of it when you met with them?

MR. HECKMAN. Aware of what their objectives would be?

CHAIRMAN FLEMMING. Aware of what was in that press release?

MR. HECKMAN. Not before the meeting.

CHAIRMAN FLEMMING. Not before the meeting?

MR. HECKMAN. No, I don't believe we were.

CHAIRMAN FLEMMING. Just to back up a minute, there has been no communication either from Washington or from this level to the association relative to the establishment of this project?

MR. HECKMAN. Well, I believe there was verbal discussion.

CHAIRMAN FLEMMING. No written communication?

MR. HECKMAN. I don't recall any, not that I recall.

CHAIRMAN FLEMMING. Were you made aware of the guidelines that were set up for the task force?

MR. HECKMAN. Not before the meeting with Mr. Krulitz. In fact, there was quite a large crowd of Indian people there, because they were all waiting to hear.

MR. MORISSET. When this happened, the only time I've seen it in writing was in the first proposal of the task force, when they announced that those were their guidelines at that point, but I have never been able to discover in our files, and as lawyers we're always trying to pin down chapter and verse, when the task force was formed and what its directives were. The only thing I have is a newspaper article stating there is going to be a task force, and then the meeting started and eventually the goals came out in writing at some point after that.

CHAIRMAN FLEMMING. As I understand it, there were four major guidelines: one, the optimum utilization of the fishery resources, including Federal assistance for fisheries enhancement; two, a healthy commercial and sport fishery that will provide an opportunity for all who depend on salmon fishing for their livelihood to earn a good living; three, a utilization of the fishery consistent with recognized treaty fishing rights reserved under the Stevens treaties of 1854 and 1855; four, development of management systems that will ensure that the salmon fishery is preserved and developed so as to satisfy points one through three.

Were you made aware of those guidelines? If not, and if so, at what point?

MR. MORISSET. I was not and I was fairly heavily involved until they came out with the first task force proposal.

CHAIRMAN FLEMMING. This is the one we referred to as the January report?

MR. MORISSET. That's correct.

CHAIRMAN FLEMMING. You were not aware of this. Did they in this initial meeting make any reference, for example, at least to the substance of point number three, namely, a utilization of the fishery consistent with recognized treaty fishing rights reserved under the Stevens treaty of 1854 and 1855.

MR. MORISSET. They may have. I don't know.

MR. HECKMAN. That was definitely addressed or posed to Mr. Kru-litz, and I was certain that he said there would be no diminishment of the Indian treaty fishing rights through this effort.

CHAIRMAN FLEMMING. How did the association go about deciding to respond to the invitation to enter into dialogue with the task force? Did you have a meeting where you considered what they had represented to you verbally and weighed the pros and cons and then decided formally that you would carry on a dialogue with them along the lines that they identified and so on?

MR. HECKMAN. There have been so many meetings with those people and about those people in the last one and three-quarters years that trying to remember which was the first meeting and anything about it is very difficult.

CHAIRMAN FLEMMING. All I was trying to get at was the representations that may have been made to you relative to the nature of the project, and then after you listened to those representations, when and how you went about deciding that you were really going to enter into dialogue with the task force in accordance with the assignment that they had been given?

MR. MORISSET. Mr. Flemming, I think the problem here is that there were so many actors in this drama that you will find many things going on at once.

From the tribal attorney's point of view what happened was somewhere along the line we discovered that one or more attorneys retained by the task force were meeting with our clients unbeknownst to us, without any notice of any kind, and we went right through the ceiling, knowing that this drama was going to get thicker and thicker.

At or about that point, I know that there were several meetings held, the result of which was to request that the task force deal only through the Northwest Indian Fisheries Commission and a committee set up to coordinate affairs, and that it would be proper and right for them to meet with every individual tribe as necessary, but that should be coordinated, and there should be commission observers present at every meeting so that we would know what the task force was saying to these different groups.

It was only after that kind of confrontation that we began to get some kind of cohesive approach to the thing.

Prior to that time, and I'm sorry I don't recall when it was but it was about a year ago, the task force was all over the place with people meeting here and there and everywhere with precious little coordination, which I viewed, quite frankly, as a kind of divide and conquer scheme, and we tried to put a stop to it and I think we eventually did.

CHAIRMAN FLEMMING. I'd like to pursue one line of questioning that was pursued earlier. When you got involved in the dialogue you did not regard it as a negotiation, if I understand you, but as a dialogue designed to work out ways and means of implementing the decision of Judge Boldt?

MR. MORISSET. That's correct. That's my view.

CHAIRMAN FLEMMING. That was your view and I gather, Mr. Johnson and Mr. Heckman, that was your view?

MR. HECKMAN. I'm not sure it was my view. It might have been my optimism, but knowing the characters involved—

CHAIRMAN FLEMMING. In view of the facts represented, I'm just interested in getting your point of view from the standpoint of the association, in view of the emphasis that has been placed so far in our hearing on the, what I would call, the negotiating process.

I gather as a lawyer, Mr. Morisset, as a lawyer you feel that the plan that has now evolved is a plan that is out of conformity with guideline number three?

MR. MORISSET. Yes.

CHAIRMAN FLEMMING. The plan has been announced and the task force indicated that they feel that their job has been completed. Their report has gone to their principals in Washington. What plans does the association have for having your views expressed to the Cabinet officers that make up the Cabinet committee appointed by the President, and the committee that will in the final analysis, I assume, make a report to the President?

MR. JOHNSON. We have drafted an analysis of that report that we'll be submitting to the people, telling them how and why, in depth why, that report or settlement plan cannot work for the Indian people. After we submit that we will be working on—we have the basic documents there for a plan to implement the Boldt decision.

CHAIRMAN FLEMMING. But your comments that you are working on at the present time, you plan to submit them. Where are they going to be submitted?

MR. JOHNSON. To the national task force.

CHAIRMAN FLEMMING. To the national task force, which, in turn, members of that report directly to the Cabinet officers involved. I assume that you will be interested in trying to have it work out in such a way that your views will get to the Cabinet officers themselves.

MR. JOHNSON. [Nodding affirmatively.]

CHAIRMAN FLEMMING. In addition to that, as I understand it, you are also planning to, in effect, submit a counterproposal, not just comment on this plan, but you're going to submit a counterproposal for imple-

mentation of the Judge Boldt decision, so that there are going to be two documents that will emerge from your present activities?

MR. JOHNSON. Yes, that is the plan.

CHAIRMAN FLEMMING. When will those documents be ready from a timing point of view?

MR. MORISSET. Let me explain, since Mr. Johnson does not know what I've done today. I have today sent telegrams to all the national task force members, indicating to them that there has been preliminary approval of a document in response to their plan, which was due yesterday, originally.

CHAIRMAN FLEMMING. They set a deadline?

MR. MORISSET. We had requested a deadline, self-imposed, and I have oral assurances already from the staff members to the task force members that additional time will be granted for a response—for no other reason than most of them are on vacation or traveling around. But we will be responding in not less than or more than 2 weeks to the task force plan in detail.

Additionally, we have made numerous requests and we have the commitment from Mr. Bud Walsh, one of the members who represents Commerce, that there will be no national task force response or report until they fully consider our written material and until they sit down face-to-face with tribal representatives and discuss the matter. We intend to hold them to that promise, and I think the question of when our alternative proposal and the scope of it, when it will be released and what the scope of it will be, will depend upon our talks with the national task force, for already when the tribes indicated that they were rejecting the proposal, there was some overreaction in Washington and it called for immediate legislation to implement the plan, which we replied would not fly, would be met with massive resistance through lawsuits, and so on.

I think that has cooled down now and that we will advise the commission—certainly I will and the other tribes—to meet first with the national task force, if possible, before committing themselves to a particular proposal, because it may be that the national task force, when it realizes the error in the ways of the regional task force, will come much further towards our views than the regional task force has, and further detailed proposals will be less necessary. That remains to be seen.

CHAIRMAN FLEMMING. Without objection, I would like the record of this hearing held open long enough so that we can submit and enter into the record at this particular point the document which will incorporate your views on the task force plan, because I understand it will be available within a matter of a couple of weeks.

[The document was subsequently received into the record and marked Exhibit No. 5 for identification.]

As far as the second document is concerned, I would hope that that would be available by the time of our national hearing on the civil

rights issues confronting the American Indian community, which will be held in Washington the latter part of January of '79.

We appreciate very, very much your being with us and providing us with this testimony. Thank you.

MR. ALEXANDER. Mr. Chairman, a point of omission. We have also, for the record, comments on the settlement plan for Washington State salmon and steelhead fisheries by the State of Washington. I'd like to introduce that into the record at this point.

CHAIRMAN FLEMMING. Without objection, that will be entered into the record at this point. I think it is Exhibit No. 6.

[Exhibit No. 6 was marked for identification and received into the record.]

CHAIRMAN FLEMMING. Counsel will call the next witness.

MR. ALEXANDER. Philip G. Sutherland, please.

[Philip G. Sutherland was duly sworn.]

**TESTIMONY OF PHILIP G. SUTHERLAND, PRESIDENT, PUGET SOUND
GILLNETTERS ASSOCIATION**

MS. HUBER. Mr. Sutherland, will you please state your full name, for the record, and the organization that you represent and your position?

MR. SUTHERLAND. My name is Philip G. Sutherland. I represent the Puget Sound Gillnetters Association as their acting executive manager.

MS. HUBER. Are you a gillnet fisherman yourself?

MR. SUTHERLAND. This is my 30th year of active fishing in Puget Sound, the Straits of Juan de Fuca waters. Yes.

MS. HUBER. And in what geographical area do members of your association fish?

MR. SUTHERLAND. We fish almost in the entire Puget Sound, from the areas clear to Cape Flattery and as far north to the border of Blaine and as far south as fisheries areas are permitted in the lower Puget Sound.

MS. HUBER. Could you tell us, again, in very specific terms, what has been the effect on the gillnet fishermen in Puget Sound of the implementation of the *U.S. v. Washington* decision since 1974?

MR. SUTHERLAND. It has had a very drastic impact in the 4 years that this thing has been implemented. Originally, the State fisheries department made their attempts at implementation and ran over our attempts to get relief through even our own State courts.

MS. HUBER. But what specifically was done? How did the implementation affect you? What could you not do that you could do?

MR. SUTHERLAND. A drastic reduction in the number of days that we could fish. On fish of Puget Sound origin, '74, '75, and '76, we had 16 days, and last year we had 7. So that's a total of 23 days of fishing opportunity in 4 years, contrasting to a normal 2 and 3 days per week and 14 to 15 weeks, which would be 30 to 45 days each year.

MS. HUBER. Could you explain to the Commission what effect limitation of fishing days has on gillnet fishermen, and perhaps in contrast to other types of gear fishermen?

MR. SUTHERLAND. Well, any gear has to have time to fish. There are gears who are more efficient and gears that are less efficient. I would say, for example, a gillnet would be more efficient than a troll, and certainly a purse seine vessel and equipment is more efficient for the time it operates than a gillnet.

So on the net fishery, which has been the prime participant in the impact of this thing, the gillnet, I think, has probably suffered more because of our lack of time to operate.

MS. HUBER. Have other factors, other than the dispute over fishing rights, affected your ability to harvest the salmon within Puget Sound?

MR. SUTHERLAND. Well, you mean just in the last 4 years or—

MS. HUBER. In the last 10 years.

MR. SUTHERLAND. In 10 years there has been very definitely an increase in the number of boats. The advent of the development of nylon netting certainly has made an impact. It made fishermen out of anybody, regardless of any sea background that they may have had at all, because of the very efficiency of that particular fiber in maintaining its invisibility.

So, when the nylon did come into popularity and use, the opportunity was seen by other people to get into the fishery, and—I forget which year, but not too long ago—there was a very definite downswing and in the opportunity of Boeing.

It is my impression that the fisheries department actually advertised licenses and the opportunities available in fisheries, and there was a very positive increase in people involved in the fishery. But when you get more and more boats involved and a limitation on the size or resource, in order for management to protect the resource, there is only one logical conclusion, and that's less time.

MS. HUBER. In addition to the increase in the number of people fishing in domestic waters, has there been any impact in interception by the Canadian ocean fishermen?

MR. SUTHERLAND. Oh, very definitely. This also has a bit of a bitterness in it. Some 13–14 years ago, the Puget Sound net fishery concurred with the need for more funding for enhancement and fisheries rehabilitation and concurred that our licenses should be increased from \$37.50, I think at the time, up to \$100, plus doubling or an establishment of a landing tax.

And this came about, but by choice of the Washington Department of Fisheries and intelligent biologists. Why, they decided that there was only one need—necessary type of fish, and that was the hook-and-line fish, coho and chinook, and there was no attention brought to the established net fishery on which both the Indian and gillnet net fishery at Puget Sound depend.

Ms. HUBER. These problems that you mentioned of expansion of the number of people fishing, interception by the Canadians, and enhancement programs benefiting hook-and-line fishermen, are these problems that would affect all inside net fishermen, both Indian and non-Indian?

MR. SUTHERLAND. Very definitely. You can only catch a fish once.

Ms. HUBER. And if someone catches it before it gets into the Sound, you're not going to have an opportunity to catch it at all.

MR. SUTHERLAND. That is exactly the position they had the Puget Sound net fishery in. This beautiful term "prior interception" has put us in a situation that is absolutely intolerable.

Ms. HUBER. Do you see any basis for unity or cooperative effort among the nontreaty and treaty inside fishermen in regard to some of these factors that are affecting all of you?

MR. SUTHERLAND. Well, I think there was some mention as to how the task force went about having their meetings. My first concept of the thing was that they would get everybody together so we could more or less lock horns and hammer out these differences.

As long as we have these bureaucratic approaches to the resolution of problems, the people who actually do the fishing and get into the thick of the concerns are not going to have their say, and I don't think there is hope for resolution to these things until we are placed on an equal opportunity citizen basis, rather than the wards of government versus citizen-recognized fishery.

Ms. HUBER. I take it that your organization takes very strong exception to the interpretation of the treaty rights of Judge Boldt in the *U.S. v. Washington* decision?

MR. SUTHERLAND. You certainly take that correctly, yes.

Ms. HUBER. What is your organization's view as to the correct interpretation of fishing rights guaranteed to the Indian tribes by the Stevens treaties?

MR. SUTHERLAND. I have read and reread the Medicine Creek Treaty, and I can't see any provision in there that I would disagree with, as I understand the English language. And the term "in common with the citizens of the territory" means just that to me.

Ms. HUBER. What exactly does that mean to you?

MR. SUTHERLAND. Since the year after I was born, we were all citizens, and that means in common with the citizens, and we fish together and equally and in competition, as most citizens are expected to do in any business of the free enterprise system, whereby we battle it out and fish, as two stores opposing each other battle it out for a favored position with their customers.

Ms. HUBER. So, in your view, the treaties do not accord the tribes any different rights from that of any other person?

MR. SUTHERLAND. If they do, I can't see how it can be resolved under my understanding of the constitutional provision for equal rights and equal treatment under the law.

Ms. HUBER. Mr. Sutherland, when did you first hear about the Federal Task Force on Washington State Fisheries?

MR. SUTHERLAND. I was called by—I can't remember the gentleman's name—by, from the White House, in fact, informing me that this task force was to be established and would address the problem.

MS. HUBER. And what contact did your organization have with the members of the regional team of the task force?

MR. SUTHERLAND. Well, as I mentioned earlier, I assumed that we would all meet in one big room and get to laying out our divergent viewpoints, but we had on occasion, I think, three or four meetings with the task force to discuss our viewpoints, specifically alone.

MS. HUBER. With you and the task force. I take it—did it ever happen that the task force called a meeting with members of your organization and some of the treaty interests to thrash things out?

MR. SUTHERLAND. No. No, ma'am. The only time we all met in one room together was when they were making their announcements as to the presentation and passing out their conclusions.

MS. HUBER. Do you think it would have been of any assistance in working towards some solution to the controversy if the task force had convened such a meeting on a smaller or larger scale?

MR. SUTHERLAND. Well, this whole concept of approach to this thing bothers our concepts. As I understand it, in 1953 there was a concurrent congressional resolution whereby the ward status of Indians would be deemphasized and Indians would be encouraged to participate in the society of our nation, and how we could sit down now in common with each other as citizens and resolve our problems. Under the direction that has been taken here by the increase of the ward keepers' emphasis on controlling the affairs of the Indian people and the impressions that, I understand, the Indian people have as to this alleged right that is superior to mine, I don't really think that there would have been all that much accomplished, other than shouting matches between attorneys.

MS. HUBER. Have you become familiar with the settlement plan that was issued by the regional team of the task force?

MR. SUTHERLAND. Yes, ma'am, to a degree. We quite definitely disagreed with it.

MS. HUBER. What are your views as to the settlement plan and the nature of your disagreement?

MR. SUTHERLAND. Well, the settlement plan goes right back to the guidelines that were discussed earlier. Our viewpoint of that number three guideline, whereby they would accomplish—acknowledge the treaty rights as interpreted by Federal courts, made the spelling of the task force different. We put an "a" in it [task farce] because we see no direction since they built the problem into the solution, and for this Commission or any other group to get on the regional committee for the directions that they take is tantamount to finding fault with children on the beach for digging holes when you hand them shovels.

MS. HUBER. So, in your view, the guidelines under which the task force worked was—

MR. SUTHERLAND. It made it an impossible situation in our viewpoint for them to accomplish anything.

MS. HUBER. We understand that a number of the nontreaty commercial and sports fishing organizations have formed a coalition and proposed their own settlement plan and that your organization has elected not to join in that coalition. Is that correct?

MR. SUTHERLAND. We attended the first two meetings of that delegation, and when we were invited to participate, the format was specifically stated that it would be a discussion of our mutual problems with the Indians, which I mentioned earlier I had hoped could be accomplished, but at the second meeting it was made very clear to me that it was strictly a negotiation type thing on the allocation of the fish, which basically recognizes the Indians as having some superior right to me, that we have to deal with in spite of the honorable gentleman in Takoma's interpretation of those beautiful words "in common with."

Until there is a U.S. Supreme Court interpretation of that, we cannot buy it.

MS. HUBER. I understand that your organization is calling for the Supreme Court review of Judge Boldt's interpretation.

MR. SUTHERLAND. We certainly hope that all of the facets of this monstrous legal hassle will be considered by the United States Supreme Court, and that petition has definitely been made.

MS. HUBER. If that petition should be accepted and the Supreme Court were to leave undisturbed Judge Boldt's interpretation of the treaty language, what would your organization's position be in that event?

MR. SUTHERLAND. I would say that we would certainly be between a rock and a hard place insofar as attempting to maintain any type of livelihood here in Puget Sound, and we very positively, in order to try to get any relief at all, would go the legislation route. Congress does definitely have supreme control of the Indian situation, and if there isn't something definite to come out of Congress that has more teeth in it, for example, than that concurrent resolution that was passed in 1953 and still on the books, there is never going to be any recognition. And as a net fisherman and in a very small 32-foot vessel, I can't conceive of doing battle with our United States Government to fish in common with.

MS. HUBER. Mr. Sutherland, if the present conflict over treaty rights, fishing rights, continues with no resolution, what do you see as the impact on the salmon resources?

MR. SUTHERLAND. It's a frightening aspect. You are going to have a continued fishery and a disrespect of the law, and I'm not just saying that as any threat to the resource or any threat from our specific involvement.

There has been just as many—much participation in fishing, supposedly illegally, by both sides, both Indian and non-Indian, and fair and equal treatment equates to a minimal need for enforcement.

That's where it has to be, and we cannot conceive of fair and equal treatment meaning that we sit on the dock and fish 1 day a week and watch somebody because of selection of his ancestors as mates giving them some privilege and they fish 5 and 6 days a week. It's an impossible concept for us to grasp.

MS. HUBER. Thank you. Mr. Chairman, I have no further questions at this time.

CHAIRMAN FLEMMING. Mr. Alexander.

MR. ALEXANDER. Mr. Sutherland, we talked earlier before the hearing, and at that point I believe you sort of indicated that treaties were between the United States and the tribes, that you as a fisherman are sort of caught in the middle. Is that a fair—

MR. SUTHERLAND. I'm glad you brought that point up. If this interpretation that the honorable judge has made of this treaty is to stand solid and did, in fact, be enforced or upheld by the U.S. Supreme Court, then we have a situation where the United States—and they're doing it now—are forcing the Puget Sound net fishery to assume their obligation, the obligations that were signed, and if those treaties are as valid now as they were 130 years ago, they were between the tribal organizations and the U.S. Government.

The U.S. Government has no valid position in forcing the net fishery to pay their obligations, and that is exactly the way we feel this thing is going.

MR. ALEXANDER. Well, let's assume that that scenario that you discussed were to come to pass, would you then view it appropriate for the United States to provide a form of economic relief to the non-Indian fishermen who may, in fact, be economically injured by the decision, perhaps a buy-out program of some sort or advanced retirement program or a major job retraining program?

How many gillnetters are we talking about that actually full-time fish for—just to start with?

MR. SUTHERLAND. Well, the total licensed number is some 1,500, and I say we are talking about half of that number that are depending on gillnetting for—

MR. ALEXANDER. Seven or eight hundred?

MR. SUTHERLAND. Something on that order. But we certainly did not choose to go into the avocation of fishing to accept some sort of relief program. If it comes to that situation, I note that the task force provides for a buy-back program for our vessels. And in my case, as a 30-year fisherman, I could be granted a \$30,000 inducement for early retirement. But they have already, as far as I'm concerned, by physical coercion forced me out of my normal income pattern to the tune of some \$60,000 in the 4 years, and at 54 I have 11 more years until retirement. That makes 15 years at that \$30,000 stipend, and I'm sure that you could get quite a few fishermen to talk to the Government if they would look at it realistically, so that we could complete our expected retirement investment.

MR. ALEXANDER. So, there are at least, leaving aside the details, there at least is some potential if the United States would view itself as having some responsibility to alleviate the economic impact, regardless of any rights or court decisions, that you would at least be willing to talk about that?

MR. SUTHERLAND. We would be willing to talk about that, but I think there is another direction that this should take, if I may offer it. It is our position that we have offered to the task force a resolution of this thing, that we do indeed fish in common with the Indian in fair and equal competition. But whatever percentage is agreed to by the trustees of the Indian and the United States Government in a court, then the difference in what the Indians actually catches in competition with us and the agreed percentage would be quantified and then paid to all tribal members, not just a handful of the people who are taking the privilege of free shots and becoming fat cats in this operation.

MR. ALEXANDER. Do the gillnetters have a written position in response to the task force?

MR. SUTHERLAND. We very definitely do.

MR. ALEXANDER. I would like to have that entered into the record.

CHAIRMAN FLEMMING. Without objection, that will be done at this point.

[Exhibit No. 7 was marked for identification and received into the record.]

CHAIRMAN FLEMMING. Thank you, Mr. Sutherland. Counsel will call the next witness—witnesses.

MR. ALEXANDER. Mr. Wallace Green and Mr. Gregory Dahl.

[Wallace Green and Gregory Dahl were duly sworn.]

TESTIMONY OF WALLACE K. GREEN, PRESIDENT, PURSE SEINE VESSEL OWNERS ASSOCIATION; AND GREGORY DAHL, ATTORNEY, REPRESENTING THE WASHINGTON TROLLERS ASSOCIATION

MS. HUBER. Beginning with Mr. Green, would you state your full name for the record and the name of the organization you represent and in what capacity?

MR. GREEN. I'm Wallace Green. I am president of the Purse Seine Vessel Owners Association, also advisor to the International Pacific Salmon Fishers Commission.

MR. DAHL. My name is Gregory Dahl. I'm attorney with the law firm of Stafne and Hemphill. We represent the Washington Trollers Association.

MS. HUBER. And, Mr. Green, are you a fisherman?

MR. GREEN. Yes, that's the first priority.

MS. HUBER. For how long have you—what type of fisherman are you and for how long have you been—

MR. GREEN. Well, I'm a purse seine fisherman. I've been a purse seine fisherman for 34 seasons, following my father for 50, following

my grandfather back to the last century, all in this area. My grandparents built canneries here, in Alaska, and in Canada. So, we were in the beginning of the commercial fishery when it became a feasible thing.

MS. HUBER. Mr. Dahl, could you briefly describe what has been the effect on the ocean troll fishery of the implementation of the *U.S. v. Washington* decision?

MR. DAHL. I'd be happy to, but first I'd like to clarify, Mr. Chairman, if I might, the rather unusual procedure that the staff has entered into of subpoenaing counsel but not subpoenaing our client. I am willing, under certain limited conditions, to waive the attorney-client privilege for the purpose of this proceeding. But I would like to state that in certain areas, which I have discussed with Ms. Huber, I would retain the attorney-client privilege.

Now, to answer your question, the trollers generally fish in the ocean fishery, and they fish in a wide-ranging area that ranges from southeast Alaska to the Oregon border. They are one of the first in a series of fisheries that intercept salmon returning to spawn. Salmon are also intercepted by Canadian fishermen and by foreign fishermen from other nations, then they enter the streams and rivers and the Sound of the State to spawn.

The impact on the Trollers Association of the Boldt decision is an indirect one, because our fishermen don't fish generally in the area that was subject to the decision. The case area included the Puget Sound and the costal rivers, Grays Harbor—

MS. HUBER. Your fishermen fish beyond those areas?

MR. DAHL. Our fishermen fish outside of those areas, so the impact is an indirect one. Our allocation since the judgment of the Pacific Management Council has come generally from that national or regional body which has participation from the State department of fisheries. So, there's a less direct impact on my clients, both in the areas that they fish in and in the way that their fish resources are allocated to them. However, the impact is a very great one even though it's indirect.

MS. HUBER. Mr. Green, what has been the impact on the purse seine fisherman of the implementation of the *U.S. v. Washington* decision?

MR. GREEN. Well, if it's implemented to its fullest—

MS. HUBER. I'm talking about the way that it has been implemented up until now.

MR. GREEN. Well, it'll cost you whatever percentage of the fish that has been taken. But let's say it's implemented to the fullest. I don't know what you—

MS. HUBER. Well, what—

MR. GREEN. Let me answer the question in my way, please.

MS. HUBER. Why don't we start with the present effect, and then you'll have an opportunity to—

MR. GREEN. Okay. As an example, I used to hate to use the word "Indian" and "non-Indian" because I resent being a non-Indian. I would rather be a U.S. citizen. And I think that it's degrading to the Indian to be an Indian and not be a citizen.

We're really talking about Judge Boldt when we're talking about this. We are not talking about Indian-white, and this thing has gotten completely out of context, I think, in this hearing, that is, being a type of thing where people are against people, and I really think it's a poor Judge Boldt decision.

MS. HUBER. Yes, sir, what—

MR. GREEN. To get back to the question—

MS. HUBER. What has been the impact on the purse seine fisherman of the implementation of the Boldt decision?

MR. GREEN. If the Indians have got 25 percent of the fish, then it has probably cut my income 25 percent. To put it in perspective, if you were making \$20,000 a year on your job, you'd be making \$15,000. That's the exact input. The only thing is, I have a set overhead in my business and that does not go down. As a matter of fact, it goes up with inflation like anything else. So, it does make a big difference, and we're talking families, and we're talking supporting families. So, this is the impact it has, yes, on people.

MS. HUBER. Are you talking about the limitation on days to fish?

MR. GREEN. Well, yes. It doesn't matter. If you limit me to days, if you only catch a million fish, and 25 percent or 20 percent are set aside for some specific group, regardless of who it is, it's going to be less fish for the rest of the people, because we're all competitive and we're all trying to catch more than our share because that's the nature of free enterprise. We really like that free enterprise business.

MS. HUBER. Mr. Dahl, what is the view of the Trollers Association as to the correct or legitimate interpretation of the Stevens treaties in regard to Indian tribes' fishing rights?

MR. DAHL. Well, I think you've seen today before this Commission two very opposed points of view, one, that the treaties represent a negotiated position between two sovereigns and that they should be implemented fully, and I think that point of view was set forth very eloquently by Mr. Morisset. Mr. Sutherland, on the other hand, set forth the point of view that's generally held by the nontreaty Indian fishermen.

And I'd like to digress for just one moment to make a statement about the use of the word "Indian," "treaty Indian," and "non-Indian." It's only those Indians, those members of Indian nations who are subject to the treaty areas that have rights. An Indian person from South Dakota, an Oglala Sioux, for example, does not have rights under these treaties. And, so, it's really not a racial—it's not a distinction that's being made on race. It's being made on where certain groups happened to live at the time these treaties were entered into.

Ms. HUBER. That's a good point. What is your view as to the nature of the rights of those tribes that entered into the treaties with the United States?

MR. DAHL. I'm coming to that. The majority of the nontreaty Indian salmon user groups have met and formed a group that has discussed and developed a position as an alternative to the task force. And I think it's safe to say that the consensus of nontreaty Indian user groups, both sport and commercial, is that there are definite treaty rights that exist.

Now, many of the individual fishermen would not agree to that position, and some of the groups would not agree to that position. But I think among most of the people who have dealt with this for some time, there is recognition that the Indian treaty fishermen certainly do have some rights, that those rights may or may not in the past have been deprived to them, and that they have, you know, some form of settlement that is called for. The dispute, at least in my view, is over how that settlement is going to be arrived at and what the percentages are going to be.

Ms. HUBER. Is that a question of the amount of allocation?

MR. DAHL. Well, it's primarily a resource distribution problem, and that fits into a pattern that's been ongoing in this State for at least 80 years of disputes over the distribution of this particular resource.

Ms. HUBER. Is it fair to say that there have been disputes as well as to distribution of the resources between the ocean troll fishermen and the inside net fishermen?

MR. DAHL. I think that that could probably be classified as the understatement of the day. And one of the remarkable things about this procedure that's been entered into since the Boldt decision in 1974 is that for the most part nontreaty fishermen have been able to put aside their differences and develop a position that the vast majority of them can support, vis-a-vis resource distribution and allocation. And the basic premise of this distribution plan is that the impacts of giving a certain portion of the resource to the treaty Indians as compensation for their arguable claim of treaty right should fall fairly and equitably on everyone. In other words, the negative impacts of implementing whatever the correct interpretation of the Stevens treaties may finally prove to be should fall equally on all groups. No one group should escape the impact of that.

And for my clients, even though they're outside the Boldt case area, that will mean—it has meant significant movement towards settlement.

Ms. HUBER. Mr. Chairman, we have been supplied with a copy of the plan produced by this coalition, and I would ask that it be placed in our record.

CHAIRMAN FLEMMING. Without objection, it will be entered into the record at this point.

[Exhibit No. 8 was marked for identification and received into the record.]

MR. DAHL. We generally call the coalition, Ms. Huber, the Commercial Recreational Delegation, because it does incorporate both commercial fishermen and recreational fishermen from the nontreaty areas.

MS. HUBER. And are the organizations that both of you gentlemen represent members of this delegation?

MR. DAHL. Yes.

MS. HUBER. Mr. Green, since 1974, when the Boldt decision was issued, what has been the impact on relations on a more personal, one-to-one basis among treaty and nontreaty fishermen?

MR. GREEN. Why, I think it's very fair to say that the feeling—there used to be a much closer feeling in the Bellingham waters because we have a large contingent of Indian fishermen in Bellingham, Lummi Island. As a matter of fact, when I first started fishing 34 years ago, in '46 and '47, there were 18 or 19 Lummi seiners out at Bellingham, fishing out there. And then, of course, by the time of the Boldt decision, there was only one Indian seiner left.

So, it isn't that we don't all have the equal opportunity or have always had the equal time to fish. They've always had the equal time to fish. This is something that everybody should understand.

But, anyway, we used to tie up together and talk a lot together. You don't see that as much now. It's a shame, because everybody were really quite close friends, and you had the one thing in common, you always fished, and this type of thing. But it really isn't quite that way now, and it's because of the Boldt decision, and it's not because the people have changed.

MS. HUBER. The regional team of the Federal fisheries task force, when did you—for either of you gentlemen—when did you first hear of the Federal task force as a means of possibly moving toward a resolution of some of these disputes?

MR. GREEN. Well—

MS. HUBER. Why don't you go ahead, Mr. Green?

MR. GREEN. Well, our manager was undoubtedly the first to hear of it, because we have a manager that is hired in the office and I'm usually fishing; that's the reason we have to hire a manager. But, myself, I heard it through him by telephone, but I can't tell you the exact date. I think it's irrelevant, isn't it?

MS. HUBER. We'll get beyond that. What has been the view of your organization of the work of the Federal fisheries task force in the settlement plan recently issued?

MR. GREEN. I think they were making a sincere effort to try and have some type of solution, but they were actually making an effort with their hands tied because of the guidelines. You know, they're locked in, and so, naturally, from my standpoint, I'm not going to completely agree with the task force's final solution, although their effort was there. They were very sincere, I think, in trying to come to a solution that could be lived by with all parties and not put any segment out of business.

The first thing of the task force was to establish a healthy commercial fishery for non-Indians and Indians both. And it looks—all I can see is a tremendous amount of non-Indian fishermen going out of business in the salmon business. There's no way that it could economically be feasible with the provisions there.

They talk about double enhancement and they have come a long way in enhancement, but am I supposed to sign my livelihood away on "the scientists think they can"?

You know, this is the same for the Indian, too. You know, how about putting up dollars and cents and say you will secure it, because I'll make the wager that they can't double what they say they can.

MS. HUBER. Mr. Dahl, would you like to comment on the enhancement provisions of the—

MR. GREEN. Excuse me. They do a tremendous job on coho and kings as far as enhancement.

MR. DAHL. Of course, our fishery is primarily directed at coho and kings and we have a—well, representing the troll industry, it's important to us that enhancement, whatever enhancement is done, fall equally on both the inside and the outside fisheries so that if Federal money is going to be spent in an enhancement project, we want to ensure that at least in part that the benefit of that money reaches the ocean fisheries as well as the inside sports, net, and Indian fisheries.

I think perhaps the details of enhancement were made more clear by Dr. Alverson when he spoke this morning. But it's apparent that the Federal task force, although I concur with Mr. Green that they made a tremendous effort to try and achieve some kind of a settlement or to negotiate some kind of a settlement plan that would work, we too view it as having several shortcomings.

MS. HUBER. From what you know of the current state of the technology, could you with confidence rely on a prediction that the resource would be doubled with no deleterious effects?

MR. DAHL. In part, to answer this question properly, I have to go back to the testimony that was given by the representatives of the task force when they talked about having to develop a new data base, because no one could rely on the data base that was being used.

The Indian representatives are concerned about numbers of paper fish, and so are we. We don't want to see a lot of money spent on enhancement projects that don't pay off in real fish out in the ocean or in the Sound, as the case may be.

I'm just afraid, based on my experience with dealing with some of the people who, I guess I should say, control the access to the data on hatchery production, and so on, that that may be the case, that the promise of the doubling of the resource may never occur except in the books, on the ledgers of the Washington Department of Fisheries.

MS. HUBER. The regional team settlement plan contemplates a considerable, if not primary, resting of authority within the Washington Department of Fisheries for collection and maintenance of data; is that correct?

MR. DAHL. I think that's safe to say.

MS. HUBER. What has been the experience of you and your partners in the representation of the trollers in regard to the WDF's management of data?

MR. DAHL. Well, that goes a little afield from the subject of the Commission today, at least as I understand it. But we've had some problems with the department of fisheries data in that, occasionally, rather obvious discrepancies are discovered in the normal course of representing our clients, and then no explanation for these discrepancies is ever forthcoming. However, we've been working with the department of fisheries trying to achieve some kind of resolution of this, what's essentially a communications problem, and I think that we are making progress in that direction.

MS. HUBER. What would you view as a desirable role for the tribes to have in collection and management of data in the salmon fishery?

MR. DAHL. Well, I think it's unfortunate that the State views its role as one of increasing its management authority over everyone, over commercial fishermen, sports fishermen, and over the treaty Indian fishermen as well, at the expense of the resource, and occasionally, I think, at the expense of the human beings who are involved in these fisheries, because what's at stake here isn't bureaucratic empire-building and enhancing management authority for the State or for any other management group.

So, to be perhaps more direct in answering your question, I would like to see a management authority that incorporated both the—that had provided for access for all groups, for the commercial fishermen, sports fishermen, for the treaty fishermen as well, and that had such staff access that we could get data on catch statistics without having to take it sort of on faith that we're getting true numbers.

I'd like to see the tribes have professional biologists available to them, and I'd like to see them available to my clients as well, so that we could have a real open and perhaps more directed discussion of catch statistics with the managing authority.

MS. HUBER. Mr. Green, would you care to comment on Mr. Dahl's remarks?

MR. GREEN. To be efficient, you have to have single-source management views. You can't run a boat with more than one skipper, really. You can have a lot of crew that has input, and it can be very honorable input and can have power to it, but you could only have one boss. I'm sure that you have a boss that you answer to; everybody has to have one. And I think that's a must in the management of fisheries, regardless of who catches the fish and who kills it. But you have to have single management. And I think the logical place rests with the State of Washington Fisheries.

MS. HUBER. The salmon resource is not managed exclusively by a single agency at this time, is it?

MR. GREEN. No, in Washington we have a unique thing and the salmon that runs toward the Fraser River—we're harvesting fish—are raised in Canada, and through an international treaty with Canada, it's about 35 years old, we share the fish. We also shared the cost to rehabilitate the river after a landslide in 1913. This is another point I wanted to get across, how—

MS. HUBER. This is a joint management system with the United States and the Government of Canada?

MR. GREEN. Yes, but it has a single boss. Only one person gives the rules. And this is one point I want to bring out that the Boldt decision has affected this so much, because in article seven of the International Pacific Salmon Fisheries Commission bylaws, it specifically states that the single-source management for that river system is to be with that one authority, and this has been usurped since the Boldt decision, and the Interior Department has made separate regulations, which I view as wrong because as near as I understand law—and we're all laymen so we don't want to get into this too much—but the latest treaty has preference over a previous treaty. This is our understanding. And we usually have some basis for it. And this has been usurped, this single management in that river. So, it makes it much more difficult for them to manage the river.

MS. HUBER. The IPSFC is, however, the creation of the two governments, the United States and Canada?

MR. GREEN. Oh, yes, it is.

MS. HUBER. Could you conceive of a similar type of commission or a system, for example, among the State and the tribes to manage the fishery within Puget Sound under a model similar to the IPSFC?

MR. GREEN. I don't think that's impossible. I think that's kind of this type of thing here, but you still have the one manager. You still have the one boss at the end. And the one thing with the task force that looks bad to me is you create exactly what we have now in the Boldt decision, that if we don't like something or the Indians don't like something, they go right at home and complain, and fish don't wait to be caught.

It's just like—we're sitting on the sockeye season right now. If something happens tomorrow, if we have to go to Washington, D.C., in order to find out if we could fish next week, it's too late. I make probably 50 percent of my income in a 2-week period. And it's that tragic for everybody in Puget Sound right now. And we're looking at the 2 weeks right now. We've had one of them; we're looking at another one right in the face. And after that it's shot because they're predicting no cohos for this season, and when you get into coho fishery, we haven't had a coho fishery now for 4 years—the non-Indian fishermen—

I think, like Bill said, we've had something like 23 days in what we call a normal fall season of 3 months in the lower Sound. That's a tragic thing compared to what we used to fish.

MS. HUBER. I'd like to ask both of you gentlemen, if the present conflict over the treaty fishing rights continues, what effect is that going to have on the commercial fishery? Mr. Green, if you could answer for the inside, Mr. Dahl, for the outside fishermen.

MR. GREEN. Well, sure, if the conflict continues we will have a lot of people dropping out of business. We'll have a tremendous bunch of wealthy attorneys.

[General laughter.]

But the one thing you have to keep in mind is how it hurts the country. And these fishermen are very sincere in their thinking, that when you say "equality," we all very sincerely feel equality. We're in an area where we've never really felt discrimination or this type of problem. When you say equal, this is the way we take our Constitution.

And the Constitution is the one thing that says everybody is equal. And all the treaties were made after the Constitution. There was nobody to make it. We had the Constitution first, then all the treaties were made.

And now we're told that we aren't equal. Somebody else is more than equal. This is something that we can't understand. I can understand equality, but I can't understand more than equality. I have a very difficult time telling my seven children they're not equal. And this is exactly the way every citizen that's fishing feels, every non-Indian citizen. And I think most of the Indians sincerely feel that way.

MR. DAHL. I think that if the present controversy continues and there is no move towards a political solution to it, the first major impact is going to be on the resource. The resource will diminish and eventually, you know, we'll be looking at placing various types of salmon on the endangered species list.

And I think that, socially, relationships between the groups of competing users will deteriorate. To this point in the 4 years since the Boldt decision, there really hasn't been a great deal of violence. I think that there were some distortion earlier in characterizing this as a hotbed of violent activity over fishing. It simply hasn't been that way.

The anger—and I think the justifiable anger—of the nontreaty Indian fishermen has been directed primarily at Judge Boldt and at their belief that his interpretation of the treaty was a wrong one.

It hasn't been directed against members of the tribes. And I'm afraid, quite frankly, that if this is not resolved, if we go on with another 5 years to 10 years of this continual destruction of people's lives that there will be some increase in that. And, frankly, I think it's the people that are here, who have been working both in management of this resource and in exploitation of the resource on both sides, who really deserve to be commended for the fact that there hasn't been the sort of violent outburst that the potential exists for.

MS. HUBER. Thank you. Mr. Chairman, I have no further questions.

MR. GREEN. May I make a comment?

CHAIRMAN FLEMMING. You have a comment, Mr. Green?

MR. GREEN. Yes. I did have a letter here, a position I'd like to enter in the file. Also, to most—

CHAIRMAN FLEMMING. Would you identify the letter?

MR. GREEN. The testimony of the Civil Rights Commission hearing for this Purse Seine Vessel Owners Association. It's just a written testimony.

CHAIRMAN FLEMMING. Without objection, that will be entered into the record at this point.

[Exhibit No. 9 was marked for identification and received into the record.]

MR. GREEN. Also, to most fishermen the simplest solution to this, one way or the other—you know, it was mentioned earlier that we have a confrontation between State courts and Federal courts. We're not—we're laymen as far as the law goes, but we understand right from wrong. And it seems to us like we have five or six judges in the Washington Supreme Court that say that we're right in the way we feel. And I feel that the judge is a smart man, whether he's Federal or whether he's State. I don't think that God made the Federal judge any smarter than he did the State judge; it's just that one happens to have a different position.

And then we have four Federal judges over here—Judge Boldt has said it—and then three in the district court say, "Well, we'll go along with that." And it's very seldom that the district court overturns the other anyway. The majority goes with the original judge.

So that the simple solution is to have the entire Boldt decision heard by the Supreme Court. I can't see any other honorable way out for our country. It just doesn't seem like it's right to not have that. And especially the whole thing should be heard and the phrase "in common with," because this is the crux of the whole fishery problem, because it's used twice in the same treaty in a different context in two places. I can't understand that our Justice Department and Interior Department haven't insisted on this. This just seems like simple justice and the American way to me. Thank you.

CHAIRMAN FLEMMING. I'd like to ask both of the witnesses to describe briefly the contacts that you had with the Federal task force. What kind of input were you invited to make, and what kind of input did you make, as far as their deliberations were concerned?

MR. GREEN. Paul met with them several times, I'm sure. I know that we met on the board level once or—well, Lee Alverson talked to the general membership one time, the board level, one time—and, actually, you might say the talk with the general membership was to try to influence them to listen to the task force rather than to go out yelling.

And I'm sure he did the same thing with the other organizations, because Lee had the feeling that the fishermen, that we respected him because he worked in fisheries around Seattle for years, and we were familiar with his name. And I'm sure that the task force picked him

because he could associate with the fishermen, the same reason they picked the Federal judges, so they could talk to the Indian tribes.

This has gotten to the point where it's Federal against fishermen, is the way we feel. You know, when we talk to any Federal panel now or any Federal employee, we are almost going to become paranoid now, because we haven't had a fair shake in our supreme court.

MR. DAHL. My participation in this is relatively recent. I just joined the firm that I'm presently with. But members of my firm did have contact with the commission through its deliberations, and we were able to make presentations, and I think our view was adequately represented.

On a personal level, participating in a masters program at the University of Washington, Dr. Alverson was one of my professors. So I was familiar with the work of his commission.

CHAIRMAN FLEMMING. Did both of the organizations represented comment on the January tentative plan when it was submitted?

MR. GREEN. Yes, we did—

CHAIRMAN FLEMMING. Did you file written comments?

MR. GREEN. Yes. Yes, both. And we had much input into it, not that it was all favorable, but we had a lot of input.

CHAIRMAN FLEMMING. Now, have both organizations commented on the final plan?

MR. DAHL. Yes, we have. Our organization's comments are incorporated into our alternative proposal in the commercial and recreational groups' alternative proposal. Do you have a copy of this?

MS. HUBER. Yes. Mr. Chairman, we have a copy of the Purse Seine Vessel Owners Association's comments.

COMMISSIONER FREEMAN. Has it been introduced?

MS. HUBER. No.

CHAIRMAN FLEMMING. Do you want it introduced?

MS. HUBER. Yes.

CHAIRMAN FLEMMING. Okay. Without objection it will be introduced into the record at this point. Mr. Alexander, did you have a question?

[Exhibit No. 10 was marked for identification and received into the record.]

MR. ALEXANDER. Yes. Mr. Dahl, as a lawyer who has been following this, what is your own view as to the efficacy of a petition for *certiorari*, either rehearing the original Boldt decision or in any of the cases where the issues are intertwined, at the circuit or the State supreme court level?

MR. DAHL. I would say that the majority of the board members of the Trollers Association favor the petition for *cert*. My own personal belief is that the dispute should—that an attempt should be made to settle the dispute legislatively. I am not—perhaps I am more cynical than my clients—but I'm not as convinced as some of my clients and some of the other commercial fishermen are that a petition is in their interest.

There is one more point that I'd like to make before you're finished with us, and that concerns something that was drawn out of Mr. Sutherland's testimony by Mr. Alexander.

If Judge Boldt's interpretation of the treaties are correct—and I'd like to underscore that I'm saying this in a hypothetical sense—if they are correct, it seems to me that the burden that belongs to all of the people of the United States of upholding those treaties with the Indian tribes has fallen disproportionately on a very few number of people in the State of Washington.

The treaties were made between the United States Government and what were then sovereign nations of Indians. And those groups, each negotiating in their own self-interest, arrived at an agreement in which the Indians reserved to themselves certain rights to fish in common with other citizens.

And it seems to me that if now those rights are going to be reasserted in the manner that Judge Boldt has interpreted the decision, that the burden of enforcing those rights, the burden of providing whatever compensation is due for those rights should fall on all of the people of this country, because it's a moral obligation that we all owe, and it should not fall on one particular and rather small class of people in one State.

MR. ALEXANDER. Mr. Green, to follow up on that, which is, in fact, what we were talking about with Mr. Sutherland, if the Supreme Court were to review various components of the *U.S. v. Washington* decision, and if it were to affirm the decision as it stands—hypothetically, as Mr. Dahl would say—what in your view would the position of your organization be then? What would you see as the next step for yourself? You would be in exactly the same position, I assume, as you are now in terms of the economic impact.

MR. GREEN. Oh, yes. Of course, since the Boldt decision we're running scared, like every other non-Indian fisherman who hasn't the security or the backing of the Federal Government.

I've already started running to California to herring fish. I've gone to Alaska for the last 25 to 30 years. And I really get uptight about it. You should appreciate it. You should come down the coast with me in January and December in a 54-foot boat. You'd appreciate how we feel about it. My wife is very reticent having to go down the coast in a boat.

MR. ALEXANDER. Do you agree with Mr. Dahl that if the decision was affirmed or if there were no *cert.* petition granted and that it was not reviewed again, that it is the responsibility of the United States Government to in some way, shape, or form make up for the economic requirements of the Boldt decision?

MR. GREEN. Oh, absolutely. Regardless of whether it was fishing or what it is. If you let a person live by a set of rules all of his life and then you say, "Well, we're going to change the rules"—and to me, you're not talking about buying my boat out for value; this is my

livelihood. Like you say, this is generations for me as well as for the Indian.

You don't go to law school and get halfway through your career and then sell it out for the \$20,000 it would cost you to pay tuition. So, you're not talking about a pittance, this is the sad thing about it. I think it should be a workable thing, but definitely the people should be compensated for what they lose. There's been an awful lot lost already, you know, that people—it all depends on the individual. Sometimes you have excellent fishermen, and you can build up any barrier and they'll be able to make a living. But you've got to talk averages.

MR. ALEXANDER. Let's go to averages for a second. Take a medium sized, but not your best or most efficient boat or your least efficient boat, and what would be an average net income for one of your members in the pre-Boldt days?

MR. GREEN. Pre-Boldt, of course inflation has set in, but pre-Boldt, you're talking anywhere from \$3,000 to \$6,000 share in the summertime. That's pre-Boldt. Now inflation has set in, and this year we've got a price in sockeye that you can't believe, so that's out of reason. But you've got to talk truly generalities.

MR. ALEXANDER. Sure.

MR. GREEN. And judging on the same dollar values, like I say, if 25 percent of the fish are gone to some other group, well, that's 25 percent less. You can cut it that way, but the overhead remains constant for the boat owner.

MR. ALEXANDER. That's why I asked what your net income would be in a fairly decent fishing season.

MR. GREEN. Well, you're talking about a \$3,000 to 000 a share, then you're talking five shares for the boat owner.

MR. ALEXANDER. Okay.

MR. GREEN. And liability insurance is \$5,000 a year now. My hull insurance will run \$1,200-\$1,400. My gear will be another probably \$6,000 or \$7,000. In other words, by the time you cut it down, it isn't a lucrative fishery if you're average. If you're above average, as in any competitive business, you can do well.

MR. ALEXANDER. How many—we know there were substantial number of licenses, but how many people within your membership or within the people holding licenses, given your best estimate, are, in fact, people who rely on fishing as a fairly full-time income producer or a substantial proportion of their income?

MR. GREEN. I would say seiners is 95 to 99 percent. There's really few seiners that that isn't their main income.

MR. ALEXANDER. And the trollers?

MR. DAHL. There are about 3,100 outstanding troll licenses in the State of Washington, 450-odd members of the Washington Trollers Association. However, our membership catches considerably more than half the troll-caught fish. So, our members—

MR. ALEXANDER. If I remember, your partner stated 80 percent; accurate?

MR. DAHL. Well, I don't know if I'd want to make that statement for the record, but I would say that it would be considerably more than half. So, our organization is essentially made up entirely of people who make or get their primary livelihood from fishing.

MR. ALEXANDER. One final set of questions on a slightly different area. In the preparation of your plan, the delegation's plan, responsive plan, which has been incorporated in part by reference in the State plan, did the State provide you or your organization with technical assistance or help draft the plan with you? Was there any working relationship?

MR. DAHL. Yes, there was some technical assistance provided by the department of fisheries, both scientific staff and from their legal staff.

MR. ALEXANDER. And legal staff?

MR. DAHL. Well, we got some assistance in drafting, and it was primarily an effort at coordinating the management plan that they were attempting to develop with the resource distribution plans that we were attempting.

MR. ALEXANDER. So, were you until prior to the release—I believe it was Tuesday—of the State plan, were you, in effect, privy to what the State's comments were, what their drafts were?

MR. DAHL. No, we were not.

MR. ALEXANDER. But they at least understood what you were going to be doing?

MR. DAHL. Yes, but I'd like to make it clear, however, that it was not a State plan, that it was a plan that was developed by the members of the commercial- recreational delegation—

MR. ALEXANDER. I understand that.

MR. DAHL. That they take the responsibility for it and that they spent many, many, many long hours hammering out their own individual differences before they could arrive at a consensus.

MR. ALEXANDER. One more final economic figure. When we spoke to Mr. Sutherland—although I forgot to ask him—in terms of economic costs, he estimated that his organization has spent a quarter of a million dollars in legal fees in the last 4 or 5 years. Have you also had significant legal, technical, and other expenses in your organization in this period of time?

MR. GREEN. Oh, yes.

MR. ALEXANDER. Could you give us a ballpark figure?

MR. GREEN. I'm trying to give you—I'm trying to think. I'm not secretary or treasurer, and I really can't tell you in exact dollars, but I figure it out at \$500 a member for 4 years with 200 members, and plus donations.

MR. ALEXANDER. Would the same be true for the trollers, that this has been a substantial expense over the last 5 years?

MR. DAHL. I think that would be—

MR. ALEXANDER. Without getting into your fee schedule.

MR. DAHL. I think that would be a safe assumption, Mr. Alexander. However, I wouldn't want to go further and discuss our fees.

MR. GREEN. I was just averaging out. Some people pay a lot more and some less. I'm just trying to come—you asked for a figure, and the only way I can do it is to figure backwards. But this isn't anywhere near the cost of what it's costing.

MR. ALEXANDER. But it's an additional factor.

MR. DAHL. I would like to make one further comment. In the last year the Trollers Association president has informed me that they have had, I think he said, 100 percent contribution to the voluntary part of the legal fund.

MR. ALEXANDER. Thank you.

CHAIRMAN FLEMMING. Thank you very, very much. We appreciate both of you being with us.

Counsel will call the next witnesses.

MS. HUBER. Mr. Edward Manary and Mr. Archie Graham, please.
[Edward Manary and Archie Graham were duly sworn.]

**TESTIMONY OF EDWARD MANARY, PRESIDENT, WASHINGTON STATE
COMMERCIAL PASSENGER FISHING VESSELS ASSOCIATION; ARCHIE
GRAHAM, PAST PRESIDENT, WASHINGTON STATE SPORTSMEN COUNCIL**

MS. HUBER. Beginning with Mr. Manary, sir, would you state your name and the organization you represent and your position?

MR. MANARY. My name is Edward Paul Manary. I'm the manager of the Washington State Commercial Passenger Fishing Vessel Association.

MS. HUBER. Mr. Graham?

MR. GRAHAM. My name is Archie Graham. I'm a past president of the Washington State Sportsmen Council, but I do not represent them officially since I hold no status with that organization at this time.

MS. HUBER. Would you please briefly describe the nature of the Washington Sportsmen Council and its membership?

MR. GRAHAM. It's an association of sportsmen's groups, of sportsmen organizations statewide. In other words, they have affiliate member organizations, and there are presently, I think, 84 sportsmen clubs with a total membership of around 7,000. They are the—the council is the Washington State affiliate of the National Wildlife Federation.

MS. HUBER. What positions and actions over the years has your organization taken in regard to the steelhead trout?

MR. GRAHAM. Starting in 1934 when the council was founded, one of the first things they participated in and were largely responsible for was the creation of the State game department and the game commission as it stands today and State management of the wildlife resources.

MS. HUBER. How was the council involved in the creation of the State game department?

MR. GRAHAM. They sponsored the legislation and pushed for its passage. That was before my time. But they also were instrumental in making the steelhead trout a game fish and the State fish of Washing-

ton, among other things. They fought environmental battles over the full 45-year history of the organization.

MS. HUBER. What has your involvement been in the organization in general, and particularly in regard to the steelhead?

MR. GRAHAM. My first involvement with the council was in 1965 when I spent 2 years as a chairman of a committee. And then I was a director for 2 years and went through the chairs and became president. And then I fulfilled an obligation of director-at-large last year.

In that time I represented the Sportsmen Council on a State legislative committee that drafted and passed the State Forest Protection Act—Forest Practices Act, I beg your pardon—and I've served on the Governor's Salmon-Steelhead Advisory Council, a body that is no longer in effect. That's about it.

MS. HUBER. You've been involved considerably over a number of years?

MR. GRAHAM. Yes, also with the Federal task force that was—with a four-man team who represented the council in that 14 or 15 months' activity.

MS. HUBER. What is your organization's position regarding management of steelhead fishing, and particularly commercial taking of steelhead?

MR. GRAHAM. Well, of course, we are deadly in opposition to the commercialization of that specie, that game—that premier game fish of the State—the return to its commercial status. We don't believe that steelhead trout will survive in that fishery, and it's a great concern of ours.

As far as management goes, we are very adamant in our position that the management of steelhead should be with the State of Washington Department of Game.

MS. HUBER. Could you explain the nature of any disagreement your organization might have with Judge Boldt's interpretation of Indian fishing rights in the *United States v. Washington* decision, particularly in regard to the steelhead?

MR. GRAHAM. Well, it's the overwhelming consensus among sports fishermen in this State that Judge Boldt's interpretation of the treaties is wrong, and that's a basic problem.

MS. HUBER. In what way? In what way, particularly in regard to steelhead, does your organization differ?

MR. GRAHAM. Oh, in regard to steelhead?

MS. HUBER. Yes.

MR. GRAHAM. I can't separate the issue between steelhead and salmon.

MS. HUBER. Well—

MR. GRAHAM. Just answer it as far as fishing is concerned?

MS. HUBER. Yes. You say you disagree, but what is the nature of your disagreement?

MR. GRAHAM. Well, we believe that apportionment or allocation of the resource is not correct. That the right to fish in common means just that, that they fish on a common basis, that it's an equal opportunity fishery.

MS. HUBER. Mr. Manary, first of all, could you explain exactly the nature of the work of the members of your organization?

MR. MANARY. The people I represent are charter boat skippers who operate out of the ports of Ilwaco, Westport, LaPush, Neah Bay, Sekiu, and Port Angeles. Their primary function is to transport recreational salmon anglers to and from the fishing grounds.

MS. HUBER. What has been the effect on the ocean charter boat industry of implementation of the Boldt decision?

MR. MANARY. Well, the direct effect that we've felt is somewhat lesser than it is in Puget Sound, inasmuch as we have lost time, and the other effect that we've had—the other direct effect is through the increase of the size limit on the specie of chinook salmon; it has served to decrease the amount of fish that are available for recreational fishermen.

There's another facet that has probably been greater than that, an indirect effect, that has put the coastal situation in a position that is now somewhat akin to the United States before the Civil War, where you have a family who for generations have fished, the father possibly is a troller, son a charter boat operator, a nephew a gillnet fisherman, where the social implications and the instability of the crisis concerning the allocation as to who shall be the group to give, for that has reached the point that it has led to very serious internal friction, which has resulted in our people being blocked in port by members of other commercial groups, all of which has a direct effect on the economic well-being of the people that I represent.

MS. HUBER. Would you give an estimate of what percentage of the ocean harvest is taken by the recreational fishermen on boats run by your members?

MR. MANARY. If you look at the 1971–75 average on chinook salmon, we probably take 43 percent of the chinook that are caught on the ocean. Now, this is total recreational catch.

On the coho we take somewhere around, oh, 39 to 41 percent. Of that 39 percent, I would imagine that somewhere around 65 percent of it is taken aboard charter boats.

MS. HUBER. What is your view as to the nature of fishing rights that may have been guaranteed to the Indian tribes by the Stevens treaties of the last century?

MR. MANARY. I think the position of our association has been that through the past 100 years there has been a recognition by the United States Supreme Court that a treaty right does exist. The question becomes to quantification and the other question relates to the management of the resources.

MS. HUBER. What are your positions with regard to quantification and management of the resource?

MR. MANARY. There is no way that the membership that I represent nor myself can perceive the decision of Judge Boldt to be in tune with what was meant at that time as it regards quantification.

As it regards management, we disagree also with the judge. The facts are that at the time the treaties were signed, there was no fisheries management in this part of the country. There was no need for a fisheries management.

It wasn't until 20 years, some 20 to 25, possibly 30 years after the treaty was signed that fisheries management came into this situation.

So, consequently, we are very strong in our belief that the management should be a single resource-managed situation, and we have already found in other areas that the encroachment of other bureaucracies has got us into a position that is very difficult to work with before the Boldt decision came along, and now we're talking about the inclusion of 27 or 28 other separate entities as managers. To us that just means that for all practical purposes the ability—if that is a course that is going to be pursued, the people of this country have got to recognize that the salmon industry, the salmon resource, will not survive to the point that it can sustain viable industries.

MS. HUBER. On the question of allocation, do I understand you to say that you and your membership disagree with the 50 percent allocation, but that it's a matter of percentages, that there's room for discussion as to amount?

MR. MANARY. We definitely disagree with the concept of 50 percent, plus ceremonial, plus reservation, plus subsistence.

We feel, as I acknowledged earlier, that the United States Supreme Court has held that there is a treaty right over a period of time. We feel that this is an item that should be worked out legislatively and negotiable, and that it should be less than 50 percent.

MS. HUBER. I'd like to ask both you gentlemen—Mr. Manary, from the point of view of the ocean salmon, and Mr. Graham, from the point of view of the steelhead trout—what factors other than the controversy over treaty fishing rights have affected the viability of the resources?

Mr. Graham, maybe you could begin.

MR. GRAHAM. Just steelhead? You just want me to speak on steelhead?

MS. HUBER. If you'll talk about steelhead, yes.

MR. GRAHAM. We have environmental problems here. We have a situation where the steelhead trout does have a hard time competing with some other species of anadromous fish, and timing of returns is critical in a viable fishery.

We are concerned about the proposed massive enhancement of chum salmon, because we foresee a harvest conflict with those November and December returns entering the river system at the same time as steelhead.

MS. HUBER. And I take it those are problems that are with us regardless of how any—the controversy over treaty rights might—

MR. GRAHAM. The fishery has always had problems. Yes. And we've been able to overcome them up to this point.

MS. HUBER. Mr. Manary, what other factors are affecting the salmon fishery?

MR. MANARY. Well, you and I spoke in our previous conversation. There are problems in the fishery; there were problems in the fishery prior to 1974—dams; lack of passage for fish; poor logging practices; poor road building practices; a mammoth Canadian troll fleet sitting up north that in the case of Puget Sound chinook salmon will take 70 percent of the total harvest, and in the case of the Columbia River they'll take upwards of 50 percent; the needs of man—and that might sound as a facetious statement, but it seems that, unfortunately, that anytime you have a battle of the welfare or the needs of fish versus the benefit needed for society, the fish lose.

I think the other thing that I mentioned just briefly is the lack of comprehensive water policy in this State, throughout the region. For example, the Columbia River is a situation where there was at one time mammoth runs of salmon that have greatly diminished because of the fact that there is not a comprehensive policy on the river. You have dams that do not allow for fish passage, and those are the basic problems that the salmon resource itself has.

MS. HUBER. Has there been a problem with the number of licenses issued and an increase in gear in the water taking the salmon?

MR. MANARY. Well, if you are on the water you always like to see less people on the water. The fact, ma'am, is that prior to 1974 it was not all a bed of roses, but we were making it. There was a relative degree of stability. And I do not intend this to put the blame entirely on the Boldt decision, because there were trouble in the resources that you detected prior to that.

The problem that we have at this point in time is we are now at a catalyst point—it's either going to be put together or we're going to lose it. It's just that simple.

MS. HUBER. Do you see the Boldt decision in any way as being a mechanism for focusing on the problems facing continued viability of the salmon resource in general, with the controversy over treaty rights being one of a number of factors?

MR. MANARY. I think the Boldt decision has, in fact, focused a lot of attention on the salmon industry, not all of which has been good, not all of which has been beneficial.

If you are inferring is there a possibility that the Boldt decision in the long run could be beneficial, yes, that could happen. That could happen if there is a quantification worked out between the Indian and non-Indian people that is acceptable, if there is a management structure that makes sense in the form of a sole management agency. If that does not happen, the Boldt decision, I feel, would just go down in history as the straw that broke the camel's back.

MS. HUBER. We understand that the organizations that each of you represent have joined the commercial and recreational fisheries delegation. Is that correct?

MR. MANARY. That is correct.

MR. GRAHAM. That is correct.

MS. HUBER. And, Mr. Manary, did you have some involvement in the initial discussions that led to the forming of this delegation?

MR. MANARY. Yes, I did.

MS. HUBER. Could you describe briefly the process by which the commercial and recreational fisheries delegation came together?

MR. MANARY. What brought the delegation together was after the task force's initial report was given in January of this year, there was—for lack of better terms—it was not dearly embraced by anyone.

The State and the treaty Indian, Northwest Indian Fisheries Commission, at that point in time or some point later, agreed that they were going to sit down head-on-head and start talking about the substantive answers, to try and see if there was common ground. One of the key ingredients that was missing from those discussions was the question of allocation or resource distribution—how do you split the pie?

The treaty Indian people for a considerable period of time expressed the desire to sit down and talk about that, “How are we going to divide the pie?” The State's attitude was that they were reluctant to do that. They felt that that was more apropos that the user groups sit down and see if they among themselves, you know, could work this situation out.

As a result of the call by Mr. Sampsel, who was representing the Northwest Indian Fisheries Commission, to sit down and discuss, as in his own terms would be X, several of us in the non-Indian community got together and said, “What are we going to do? Can we sit down and talk about X, or can't we sit down and talk about X?”

This led to a series of discussions in which we chose the chairman of our delegation, Mr. Anderson of the Purse Seine Vessel Owners Association, and we said, “Yes, we feel that we have to talk about X,” and I took that as a very favorable thing, because it was a commitment that we were willing to sit down and seriously try and work out this problem.

The reason then we asked Mr. William Wilkerson, who was under contract to the State of Washington, to serve as our chairman, because it was our understanding that there were two negotiators at the head table—Mr. Sampsel, representing the Northwest Indian Fisheries Commission, Mr. Wilkerson, representing the State of Washington. They did not wish to have that expanded.

So we agreed to have Mr. Wilkerson present our thoughts that we as a commercial-recreational delegation had come up with. Mr. Anderson sat to his immediate left as chairman of our delegation.

We met with the treaty Indian people three or four times, and it soon became obvious—

MS. HUBER. What time period are we talking about?

MR. MANARY. April of this year, and I would say the meeting, the last meeting, was held probably sometime in June, or was it July, that the thing fell apart. Sometime—it was in that time span.

And we sat down to see if we could have a go of it, to see if we could define *X* and who's going to get what cut of the action. Our impression was that the treaty Indian people were going to be able to talk about something other than implementation in full of the Boldt decision. But the third meeting into it, it became very obvious that that was not the case, that they could not talk anything further than full implementation of the Boldt decision. And, consequently, there's been a cessation of the talks, which we continued on with our work and desire to try and bring this thing to a point of resolution that we felt was fair to all parties concerned, and as a result you have in front of you the yellow book, which is the document of the commercial-recreational delegation.

MS. HUBER. I see. Could I ask both of you gentlemen the nature of your organization's interaction with the regional team of the Federal task force and your views as to settlement that was eventually produced? Perhaps Mr. Graham could start.

MR. GRAHAM. It was—I think it was first formed in April '77, and they called a number of sportsmen groups at that time. I think the first contact was by telephone. And in addition to the State's Sportsmen Council there were other organizations involved in the sportsmen task force, you might say, the Washington Poggie Club, the Washington Fly Fishermen, the Federation of Fly Fishermen, the Washington Steelhead Trout Club, and the Northwest Steelheaders Council of Trout, Unlimited.

We probably met over that 14-month period maybe 10 times, 10 or 12 times, and it was apparent to most of us at that time, that, really, the chances for success were very dim because of the guidelines and restrictions that had been placed upon the regional team.

MS. HUBER. What specifically are you referring to?

MR. GRAHAM. That there could be no discussion of *U.S. v. Washington* or any adjustment proposed. That was our understanding.

MS. HUBER. What is your view as to the settlement plan's provision in regard to taking of steelhead?

MR. GRAHAM. Well, the State Sportsmen Council has not—they've commented on the January proposal, but they have not yet formally commented on the latest. I think that will be done at our quarterly meeting in September by a resolution action. There is very little support for it among the individual members, affiliates, and sportsmen in general.

MS. HUBER. What difficulties do the membership see in the settlement plan with regard to steelhead?

MR. GRAHAM. One principal one is that we do not believe that a viable sports salmon fishery, for instance, can compete successfully in the tribal management zones, which happen to be prime sport fishing areas. That's one objection.

I'm only reiterating comments that I've heard and comments that have been input to us. It does not decommercialize steelhead. It does not return it to game fish status.

We don't agree that the management structure that's proposed under that document makes it possible to effectively manage the resource either, whether it's salmon or steelhead. These are the principals.

MS. HUBER. What does your organization say in regard to the argument that some of the treaty tribes are economically dependent on taking steelhead commercially?

MR. GRAHAM. With the proposals per enhancement of other species, we don't believe that that is a viable argument. The economic dependence on the steelhead is just not there, if you're keeping in mind what is proposed for enhancement of the other species.

MS. HUBER. As far as your organization is concerned, is there any room for negotiation or compromise whatsoever in regard to any commercial taking of steelhead by any of the tribes?

MR. GRAHAM. I would say no, there is no room for negotiation on that point.

MS. HUBER. Mr. Manary, from the point of view of the charter boat owners, could you tell us about your interaction with the regional team of the task force and your views on the settlement plan which was eventually produced?

MR. MANARY. Our first contact with the task force, I think, was the same meeting at the courthouse when Mr. Krulitz was here from the Interior Department, and I think that is when pretty much the announcement was made, and I would assume that was probably in 1977, sometime in that area, April '77.

The first formal meeting we had with the task force took place in Westport, Washington, in May 1977. Dr. Alverson, Jim Waldo, John Hough, Carl Mundt were there. They came and met with our board of directors for the State association and explained the charge that they had been given, explained the guidelines, and this sort of thing, and asked us whether we wished to participate in trying to come up with a settlement for this problem.

Our answer at that time was, yes, we felt that the issue had to be settled. We were very concerned that it would never be settled in the court system. And, therefore, we would, among ourselves, start coming up with a program to provide input into this.

I met with them and had telephone conversations personally with them on several occasions. The first full negotiating session between our State board and the task force took place in November of 1977. We met with them in late December or early January 1978. And all of our dealings have been on the basis of "here's what we think is right; here's what it will take for us to have what we consider to be a reasonable settlement," and go at it.

MS. HUBER. How did it appear that the team received your input?

MR. MANARY. We have no complaints. In the areas that directly affect the charter boat industry—and I'm talking about buy-back, enhancement, and that sort of thing—we feel that we were treated very, very fairly.

As to the overall allocation formula, we have some disagreement with that. As to the management mechanism, we have disagreement with that. But these are points that we feel if it was—well, we feel that they are negotiable. And given what these people were given to work with, and the guidelines, we feel that they did a very commendable job in putting out the document they did. We have publicly commented on that proposal.

MS. HUBER. Is your membership willing to accept a buy-back program and a diminishment of fishing effort?

MR. MANARY. Yes.

MS. HUBER. Mr. Chairman, I have no further questions at this time.

CHAIRMAN FLEMMING. We are very appreciative of your being willing to come here and share with us your point of view. Did you say you had—

MS. HUBER. I'd like to ask one or two more questions, if you have a moment.

CHAIRMAN FLEMMING. I think we ought to move forward rather quickly, but go ahead.

MS. HUBER. I'd like to ask both of you gentlemen—well, first of all, Mr. Manary, how in general do the nontreaty fishermen regard Judge Boldt's decision and the orders in connection with its implementation?

MR. MANARY. Since I'm under oath and four-letter words are probably banned, it is not highly regarded.

MS. HUBER. What effect has that had on enforcement of laws and regulations in regard to the fishery?

MR. MANARY. I think it's had effects on both sides of the fence. The problem is very simple. People cannot perceive that to be a fair decision. People in this part of the country will live with laws that they can perceive to be fair. They don't perceive it to be fair. It's likely illegal fishing on both sides of the fence.

MS. HUBER. Is it unfair to say that there may be those that are taking advantage of a lawless situation?

MR. MANARY. Right.

MS. HUBER. For their own profit, perhaps?

MR. MANARY. There's always a possibility of having a fox in the henhouse, yes.

MS. HUBER. What do you see as the impact on the resource of the illegal fishing in a situation where the enforcement system has broken down?

MR. MANARY. If we continue the path that we are continuing right now or taking right now without a resolution to this problem, I do not see that the resource will be able to continue to sustain viable industries, period. I do not wish to say that it's going to vanish as a specie

from the face of the earth. I do not think that will happen. I will say it will not be able to continue to support viable industries, whether they are recreational or commercial.

If it continues you're going to see the starting of a bloodbath out here. You're going to see allocation fights between Indian and non-Indian, commercial, recreational, inside recreational, outside recreational, inside commercial, and outside commercial. And if that's in the best interest or the resource of the people of this country, I think we're all in a world of hurt.

MR. GRAHAM. The sports fishermen are probably the only group that has not engaged in massive illegal fishing. And our first concern is and always has been the welfare of the resource. I think we've demonstrated that over the last 45 years.

And I hope however this is resolved—and I do not think that it will be resolved with the implementation of the Boldt decision—it's our hope that the resource will receive the first consideration from all parties involved.

The enemy to the sportsmen is the Federal Government. That's the way they perceive it.

MR. MANARY. If I might add one thing, Mr. Chairman, the other thing that is a very, very dire concern, I think, on all parties is that we perceive that there are some people in the Federal Government who wish to use this, the Indian problem, to take over the fishery.

CHAIRMAN FLEMMING. I don't think generalizations of that kind are helpful to us at this point.

MR. GRAHAM. It might not be helpful, but that is a specific feeling.

CHAIRMAN FLEMMING. That's a generalized statement and is not evidenced in the testimony. But we do appreciate your being with us and presenting the points of view that you have presented and the evidence relative to the deliberations of your organizations and the positions taken by your organizations. It has been very, very helpful to us. Thank you.

Counsel will call the next witnesses.

MR. ALEXANDER. Forrest Kinley, Billy Frank, Guy McMinds.

[Forrest Kinley, Bill Frank, and Guy McMinds were duly sworn.]

**TESTIMONY OF FORREST KINLEY, DIRECTOR, LUMMI TRIBE FISH
DEPARTMENT; BILL FRANK, NISQUALLY TRIBAL COUNCILMAN AND FISH
MANAGER OF THE TRIBE; GUY McMINDS, DIRECTOR OF FISHERIES FOR THE
QUINAULT TRIBE**

MR. ALEXANDER. Starting with Forrest Kinley, could each of you tell us what your current involvement in the fisheries is and what tribe you are from?

MR. KINLEY. I'm Forrest Kinley from Lummi Tribe. I'm a member of the tribal council and I'm the official representative of the tribe on all fisheries matters, and I'm also still the director of the Lummi Fisheries Program, and I'm a past chairman and I was one of the organizers of the Northwest Indian Fisheries Commission.

MR. ALEXANDER. Mr. Frank?

MR. FRANK. My name is Bill Frank. I'm a member of the Nisqually Tribe, and I'm on the tribal council. I'm a fisheries manager.

MR. ALEXANDER. Mr. McMinds?

MR. McMINDS. I'm a commissioner on the Northwest Indian Fisheries Commission from the Quinault treaty area. I'm a member of the Quinault Business Council. I serve as the Secretary of Commerce's advisor on the Marine Fisheries Advisory Committee, advisor to the Pacific Regional Management Council, and work on fisheries matters of an international nature and a national nature.

I do want to point out that I sit here as an elected representative of three tribal governments, which is much different than a position representing a fisheries group. It's my belief that our governments are governments of the highest order and they should be treated as such.

MR. ALEXANDER. Thank you, gentlemen.

I gather that all three of you were involved at the early stages with the Federal team of the fisheries task force. Is that correct?

MR. KINLEY. Yes.

MR. FRANK. Yes.

MR. McMINDS. Yes.

MR. ALEXANDER. Starting with Mr. Kinley, could you characterize for me what was the initial nature of the contact that you had with the fisheries task force team?

MR. KINLEY. Well, in the beginning of the task force, I think that our first meeting with them—and it wasn't a total task force there at the time—was in the Olympic Hotel, and it was at that time that we were informed that we were to talk about implementation of the Boldt decision.

And at this hearing today was the first time that I heard that one of their charges was to negotiate down the Boldt decision at that time, that it was the decision of the tribes that we were willing to talk about a long-range program in implementing the Boldt decision, but we were in no way willing to give up any of our treaty rights.

MR. ALEXANDER. Had you understood at the beginning phases of the task force that potential recommendations for abrogation or diminishment of the *U.S. v. Washington* decision interpreting the treaties was a potential of the task force or its intention, would you have participated in any of the series of discussions with the task force?

MR. KINLEY. I know that my tribe wouldn't let me. Even after the task force when they went into the negotiation with the treaty that we felt I had wasted so much. I had spent 7 months down here in Seattle working with the task force, putting in recommendations, meeting with

them, that our tribe felt that even this last negotiation with the State was just a waste of time, that we should have some concrete agreements coming out to fulfill the Boldt decision and come up with some of the shortcomings that the State had.

The State had no power to allocate fish. They seemed to have no power to enforce. None of these problems that were actual problems that faced the implementation of the Boldt decision were not being discussed at this time.

MR. ALEXANDER. Mr. McMinds, would you care to comment?

MR. MCMINDS. We certainly wouldn't have participated. As we discussed the situation, it seems from my recall that the task force presented their case to us as a way to implement the Boldt decision, a staged plan to implement the Boldt decision.

Nowhere in the three objectives or the four objectives that they were to fulfill did it say they were to abrogate the Boldt decision. In fact, the third one that Chairman Flemming refers to all the time is the one that we staked our life on. And we went into the negotiations as a vehicle to get to the implementation, working up to the 50 percent, rather than immediately taking 50 percent, gearing up, and working in a staged approach, also utilizing other programs to where the, hopefully, the non-Indian fishery wouldn't have to be cut.

That was our understanding of what was going on, that that kind of program could be developed.

MR. ALEXANDER. Mr. Kinley indicated he spent a minimum of a period of 7 months participating in drafting proposals, attending meetings, and so on. Would the experience for both yourself and Mr. Frank be similar, in that significant and substantial amounts of your resources and energies were spent participating in this process, in this task force process, over the last year and a half?

MR. MCMINDS. That's correct.

MR. ALEXANDER. Tribal funds, technical resources of your departments, and so on?

MR. MCMINDS. All of our technical resources were tied up, so much so that we couldn't fulfill some of our obligations at home, and I think that's characteristic of the time the task force took from the job of really getting on with fisheries management.

MR. ALEXANDER. Mr. Frank, would you care to comment?

MR. FRANK. One of the things that—I'm also the commissioner for the Medicine Creek Treaty in the southern part of Puget Sound, and one of the things that I see as far as the task force report is concerned is that it was a waste of time for the Indian people to waste the last year and a half involved with the U.S. Attorneys, the technical team that was putting that pack together, the trips back to Washington, D.C., because to me, as a manager in Nisqually River, which there were five species of salmon, now there's only two of the natural run left, that it puts me way back into no management.

Right now, today, I am a manager, an equal manager with the State of Washington, and I have something to say on that Nisqually River as far as the salmon are concerned, the enhancement programs that go on, on that river stream, but before I didn't have nothing to say.

If I accept the task force report right tomorrow as it stands or the legislation that probably will be enacted, it will put us out of the management business, it will put us back into no fish. The other two species that only remain on the Nisqually River will probably no longer be there in a matter of a few years, and we go back into—

MR. ALEXANDER. A point of clarification. In the State comments or plan that have been mentioned several times today, the Nisqually arrangement with the State is indicated as sort of a positive outgrowth of this whole process.

Is that a correct way to phrase the Nisqually project? Could you just very briefly describe what we're talking about?

MR. FRANK. On the Nisqually-State enhancement program we put together by negotiating back and forth between tribe and State, it looks at a long-range management program for that drainage in the Nisqually River.

Now, that program has never been signed by the State of Washington. It's been signed by the Nisqually Tribe. I don't believe in the situation we're in right today that the State director can actually ever sign that.

MR. ALEXANDER. How long ago was that agreement, at least in principle, reached?

MR. FRANK. Probably a year ago.

MR. ALEXANDER. And the tribe signed it when?

MR. FRANK. Several months ago, I think.

MR. ALEXANDER. And the State hasn't yet signed it?

MR. FRANK. No.

MR. ALEXANDER. The negotiations and the discussions for this Nisqually project, did they, in fact, precede the whole existence of the task force, or are they in some way related to that process?

MR. FRANK. What was that again?

MR. ALEXANDER. The discussions that you entered into with the State, the Nisqually project, did those start way before the task force was ever in existence?

MR. FRANK. Yes, they did.

MR. ALEXANDER. So, to look at the Nisqually joint State agreement, even though it's not been signed, as a product of the task force would be misleading. Is that correct?

MR. FRANK. Yes.

MR. ALEXANDER. We've had testimony for the last several hours about—from various non-Indian commercial and sports fisheries saying that the Boldt decision has had significant and substantial economic impact on these fisheries. Would you—starting with Mr. Mc-Minds—care to comment on either the reliability of that, or what kinds

of solutions could be brought to bear, to the extent that that is a serious economic problem?

MR. McMINDS. Well, on information that our staff has prepared for us, we find that the Boldt decision had very little impact on the state of the non-Indian fishery. The most dramatic impact on that fishery was from mismanagement of the resource itself.

In order to get into that, one has to understand that there are a variety of managers, including international commissions. And two separate treaties affect the chinook and coho that get into Puget Sound, three treaties, to be exact—the North Pacific Treaty up in Alaska that covers the Russians and other countries and the United States, the U.S.-Canada Treaty that covers U.S.-Canada waters, and the third treaty is the International Pacific Salmon Fisheries Commission Treaty.

In addition to that, are 200-mile legislation that sets up the Pacific Regional Management Council down here in Washington, Oregon, and California, and the North Pacific Regional Management Council up in Alaska.

These organizations or management entities all have representation from the State of Washington and Oregon. For example, the Pacific Regional Management Council has representation for the State of Washington in the director of fisheries, a newly-appointed representative from New England Fish Company, who takes in a lot of troll fish in LaPush. That position was effected by Congressman Bonker from that district, mainly because they wanted to see the troll fishermen represented there, when, in fact, we had been pushing Indian representation on that commission.

MR. ALEXANDER. All of these international and multi-State commissions that have some management responsibility with respect to some portion of the fishing rights, are Indians represented on any of them?

MR. McMINDS. We are not represented in any policy capacity. Some of us serve as advisors to some of these things, and oftentimes the only way we can be heard is by strength of voice or by turning some arms in Washington, D.C., to listen to us.

MR. ALEXANDER. Is representation on at least some of these management groups one of the things that you requested from either the regional team of the task force or the national team of the task force as part of putting the tribes in a better management position?

MR. McMINDS. We have done that in addition to writing letters to the highest official in the United States and some of the underofficials to him, the Secretaries of Commerce, Justice, and Interior, trying to get heard on the issue.

I was nominated once for the position and I was the priority pick for the Pacific Regional Management Council by Governor Dan Evans, and the chairman of the State house natural resources committee had political influence with the salmon fishing industry in the State of Washington and the congressional delegation, and so we didn't count much in the final countdown.

MR. ALEXANDER. Was there ever a commitment made from either level of the task force to try to obtain Indian memberships on any of these organizations where the United States makes the appointment?

MR. McMINDS. They recommend it in this document, yes. It's in the form of a recommendation.

MR. ALEXANDER. Mr. Kinley?

MR. KINLEY. I met with both the regional and national task force on this issue. First we met with the regional task force and they assured us that President Carter was going to ask for the resignation of two of the commissioners and would reappoint commissioners that maybe was more favorable or not, at least not anti-Indian, and that they would appoint an Indian.

And after we got this assurance from the regional task force, we went back and met with the national task force, and we got the same commitment. And at that meeting that we were at, I think we had our Northwest Indian Fish Commission back there, and the national task force assured us that they would recommend and get us—

MR. ALEXANDER. Has this, in fact, happened?

MR. KINLEY. No, they haven't—we haven't heard a thing about it since.

MR. ALEXANDER. And so that the condition that you referred, of being unrepresented on these commissions where the State of Washington is, in fact, represented, continues today, Mr. McMinds?

MR. McMINDS. Forrest is right in what we've done. But I later heard, and from very reliable sources, that the regional task force itself recommended against removing those officials we wanted to be removed. They thought at the time that it would cause substantial harm to the negotiations that were going on. So that's what I heard about that particular situation.

MR. ALEXANDER. Was, in a sense, the attaining of membership an inducement to further discussions or negotiations, was there anything else mentioned by the task force in the early stages of discussions with you that were sort of held out as inducements to negotiate or inducements to prevent further harm occurring to Indian rights, or anything of that nature?

MR. McMINDS. I don't think inducements is the correct term. There were plain threats that Indian management programs would not be funded if we did not talk to the task force. So that "inducements" were threats, in the form of threats, from the Washington congressional delegation. And they expressed that through the task force.

In fact, in person, when we visited with certain of the staff people of the congressional delegation, they made that awfully plain to us.

MR. ALEXANDER. Would you concur in that, Mr. Frank?

MR. FRANK. Back in the early part of 1977, one of the things that took place that year when the task force was formed is that the congressional people used the task force as a way of either just stalling the money until your tribe comes around sort of thing, or holding a club over your head.

At that year of 1977, we had a drought year and some funds were coming down from D.C. to help certain tribal areas and different other areas on the drought problem, such as wells, such as other programs on the river, and these funds were held back by the task force, although they said that they didn't have anything to do with it, but the funds were held back by their power.

MR. ALEXANDER. We've had testimony earlier today about the 55-45 recommendation. Are there other instances of the task force, the regional task force or the national one, being involved in allocation decisions either to your benefit or to your detriment during this task force phase or since it's ended? Mr. McMinds?

MR. McMINDS. Yes, on the Grays Harbor off-reservation fishery they did recommend a smaller percentage to the Indian people than 55-45. I believe it was 60-40 recommended for the Grays Harbor area.

The rationalization they used there is that the non-Indian fishery would be restricted from fishing because 50 percent of the chinook and coho had already been captured out on the ocean by the high seas troll fleet. That, in fact, is true, but it doesn't minimize the fact that the Boldt decision still stands at 50-50 and that they should have allowed the Indian people to catch those fish that were returning to Grays Harbor area.

Now, there's been a lot of talk about 50-50, but, as a matter of fact, for the coastal tribes that I represent, after 1974 our actual catch in fish went down after the Boldt decision. It did not go up; it went down.

MR. ALEXANDER. Has that pattern continued to some extent to today?

MR. McMINDS. That pattern has continued because of the manipulation of a lot of the steelhead fisheries and the spring and summer chinook fisheries, and by the fact that there is a more intensive high seas fishery on these fish right now than ever before, and we're getting less return to these streams.

Our fishermen are saying, "What did the Boldt decision do for us?" We can't seem to get control of those management entities outside of 3 miles to get enough fish to even survive on in many cases.

MR. ALEXANDER. Mr. Frank, how is it affecting Nisqually fishing since the Boldt decision?

MR. FRANK. For the years that I've been fishing on the Nisqually River, I could see the river declining in salmon except for the two species that I mentioned, and that's the chum salmon and the steelhead, which runs together in the months of December and January where there is no prior interception out here in the high seas or in the Puget Sound, except for the last few years on the illegal fishery now that has been going on intercepting these chums and steelhead.

These are the only two fish that we actually rely on, and the chum salmon this year is—the allocation of harvestable salmon is 13,000, and the harvestable steelhead is 2,000. That's really no fish for the

Nisqually Tribe. Those are the only two species of salmon that we can actually rely that we will probably catch.

Now, as far as the 45-55 allocation that took place last year, the thing was that the non-Indian was going to take a much bigger share of the salmon, the coho salmon, in that part of the year. And at the end of the line, where I'm at, he took the majority of the salmon plus he started taking the majority of the only salmon that comes to the Nisqually River in the month of December and January, because there was no enforcement out into the waters by the Coast Guard to arrest these people and get them off the waters.

MR. ALEXANDER. Mr. McMinds?

MR. MCMINDS. I want to point out one thing very strongly and that is, we've heard from the purse seiner that there were a lot of social problems due his fleet because he didn't understand what was going to happen because of the Boldt decision.

Well, because of this task force report that recommends total decommericalization of steelhead for all river systems—steelhead that we depend on, the only fish that's not intercepted by high seas fleet for the coastal Indian fisherman. What do you think this is doing to the coastal Indian tribes?

When we see with their own words and their own report, on page 61:

The task force plan for coastal streams indicates that decommericalization 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 decommericalization on these rivers is likely never to occur.

What that says is that they're not going to get us the salmon that we want, so we're going to take away their steelhead. Now—

MR. ALEXANDER. This is the State plan you're reading now?

MR. MCMINDS. That's the State plan, right. But it's challenging the task force report that says total decommericalization for trading salmon. They say it will never occur, therefore, I want to take your steelhead, too.

MR. ALEXANDER. You say that there's going to—could you expand somewhat on what you mean by the social and economic impact of decommericalizing steelhead for your particular tribe? What kind of substantial economic problem do you perceive that that would cause?

MR. MCMINDS. There's been a lot of talk about free enterprise and businessmen here. Now, the coastal people are business oriented. We want to make money, too. And if you're managers of a resource and two of those resources, namely chinook and coho, are intercepted to the tune of some 95 percent and upwards of 60 percent right out in front of you, and you have a third resource that is not intercepted, which one are you going to raise in your rivers? Which one would be the greatest benefit to your people to raise?

Our future potential for coastal rivers if this massive mismanagement continues is in those fish that are not intercepted.

MR. ALEXANDER. Which are the steelhead?

MR. MCMINDS. Which are the steelhead, the sockeye salmon, and the chum salmon. We want to raise them all, but the point is if mismanagement and selfish interest management and political influence over management system continues, those fish, those native stocks of chinooks and coho that have been very, very healthy and viable up until now, continues, we will not have them left, not by our choice.

MR. ALEXANDER. But by the management—

MR. MCMINDS. By the other management entities out in front of us.

MR. ALEXANDER. Let's get back to the task force negotiations—you had a comment, Mr. Kinley? I'm sorry.

MR. KINLEY. Yes, I wanted to make a comment on the task force and their input as far as interfering with the Boldt decision. In 1977 on the Fourth of July, which was the peak run of the sockeye season last year, that they deprived us of any extra fishing time, and this was done from our regional task force recommendations from out here.

And in this year between somewhere along during the negotiations that Krulitz himself had made some sort of deal with Commerce unbeknownst to Interior that the Indians want to take over 20 percent of the sockeye this year, and we knew nothing about it until the last week that it was proposed by Hough that the Indians not be given any time at all, because this is the starting of the peak run this week and then next week it'll taper off. But it will be this 2 weeks that are the prime fisheries for steelhead—I mean for sockeye.

And Hough proposed that we wouldn't be given any extra time at all, because usually we fish from the time it opens 'til it closes with all our gear, but they wanted our gillnetters to compete with the non-Indians in the same night fisheries and our purse seiners to compete with the purse seiners just in the time that the purse seiners could fish.

And they also, this coming week, give the reef net fishermen a head start on everybody. You know, you'd think that they had the treaty right, because they were the only ones fishing Sunday and we couldn't go fishing until Monday.

Now, this comes directly from the task force, and they say they have not interfered with the fishing and that they are trying to implement this as though it is law over the Boldt decision.

MR. ALEXANDER. In a sense that's an implementation of what people call an equal opportunity fishery, no separate, distinct, treaty fishing days. We've had some testimony about the treaty fishing days as opposed to the equal opportunity fishery. Could you comment on the concept that really is contained in this Federal plan, that if the Indian fleet is geared up to—I assume or I gather it's 28 percent of the total Sound fishery, and the zone concept is put into effect, and the non-Indian fishery is geared down to some level, what is your view of the

ability to harvest your treaty share in a fishery where you are out on the waters in those conditions at the same exact time as the rest of the commercial fleet?

MR. KINLEY. Well, the thing that we face at this time—you know, during my time, I fished all my life—during the time that I fished there was, you know—you heard Wally testify that there was some sort of an equal opportunity at that time, but at that time there was only 25 or 30 non-Indian boats, purse seine boats up there. So that, actually, we were maybe one-third of the fleet that fished in that area and we could actually fish.

Now you're looking at a thousand purse seine boats and the buy-back program is not working in this State. We went through as independent—the Lummi Indian fishing fleet was an independent fleet, owned by independent Indians. We financed our own boats or got financing independently to buy our boats. And at that time, during some of that time, we had to find the companies that had company-owned boats, you know, and it pretty near broke all the independent fisheries.

Now, right now, today, the companies are now buying up the licenses that are being retired, so now the companies are controlling the licenses that are being retired. Pretty soon New England and these other companies will control the fisheries again. And it's the same way in Alaska. I could go fishing this year in Alaska if I wanted to by not even having a boat. I could go to one of these companies and say, "I'd like to go to Alaska," and they'd give me a boat and give me a license to fish in Alaska, which is supposed to be a restricted fishery now.

And this is what's happening in this State. And then, I think Wally said that he would like equal opportunity to fish in here, as for generations, but when this treaty was made, that we were in the majority, they were in the minority. So, if they would look at that, you know, it's actually that we were sharing something with them. And that we would happen to be in the minority, and we taught them what they know about fishing, and then they got so many of them that we couldn't compete. And we just had to compete with that because—it's really against our principle, you know, if you go out there and you fish and it's dog-eat-dog. And our people are not that way. You can come on our reservation and you'll never see another Indian set in front of him within the bounds of our reservation. But if you get out there you can't make a living unless you do it. And our people just couldn't do it, so, rather than go into that type of a fishery we just quit.

MR. ALEXANDER. Mr. McMinds?

MR. McMINDS. I want to reference a couple of important tables that were gathered for the Pacific Regional Management Council that will appear in our submittal to the national task force from which you'll get a copy. And one of the tables says, "The 1977 license fishing vessels and catch per vessel as expressed as a percentage of 1937 levels."

To give you an idea of what's going on in our industry, all of our industry, in the State, purse seiners, there's been 183 percent increase in purse seine vessels, and the catch per license has gone down by 81 percent. Gillnet, there's been a 213 percent increase in license, and the catch has gone down 50 percent. The troll, there's been a—notice the increase here in interceptions. Phil Sutherland is not getting a livelihood primarily because a lot of fish are being intercepted, 795 percent, and even their catch per license has gone down 78 percent.

So, when Mr. Green talks about him not being able to make a living because he is restricted in time, there's why he's restricted in time. There's no fish coming back. There are more fishermen out in the water. And that occurs before the Boldt decision.

Now, the second table is the gross fishing revenue for Washington State salmon fleets in 1977. This shows income. And I want to say inflation in foreign markets affects the management of our resources. They build a false economy into our resource, called the optimum yield. That's the political term for managing a resource, rather than maximum sustainable yield. You fish for the money rather than what the resource will stand.

And the incomes reflect that the fishermen's income is going down, but those high percentage of the fishermen, those competitive fishermen, those guys that are staying in who know how to jockey their position around another seiner and get a good haul in, or their net in front of their fellow fishermen, can make a living because they can capture the fish at these inflated prices and still come out. But the industry is going downhill, and it's going down irregardless of the Boldt decision.

MR. ALEXANDER. Those will be in the submission that we've already set aside to be placed in the record for?

MR. McMINDS. They sure will.

MR. ALEXANDER. Starting with Mr. Kinley, could you comment on how the tribal management zone concept of the task force proposal would impact upon your particular tribe?

MR. KINLEY. Well, the first thing, you know, it cuts down even our reservation. We never even got our total reservation out of it, and we lost all our accustomed fishing grounds, and the area that they give us would, you know—well, what they are trying to do is to make us primitive Indians again. They recommend that we go into a skiff fisheries and this type of thing. The type of water that they reserve for management by the tribal commission—not to the Lummi Tribe, but the tribal commission that they want to form which would take management of the Lummi Tribe out of the management program and give it to somebody else—would manage this area and it would be nothing but skiff fishery. We can't get our bigger gillnets in there; we can't get our seines in there, in the area that they give us.

And I think that—I went through the whole gamut of this and no reservation got anything as an accustomed fishing ground. And the proposals that we submitted for a management program, even coming

up with the percentage of sharing with the non-Indians, you know, that we were willing to make sure that they got their percentage of fish, and that south Sound got their percentage of fish, that we would be responsible for this, that we've lived on these streams that we've fished all our lives, and that we know the movement of fish and when they're going to move. You know, it's water conditions, it's rain, it's weather, it's everything, it's tides, and all of this that's really in the management of fish.

I think that as far as these tribal TMZs—that's all we've got is TMZ. This is the only thing that they took, just these three letters of the recommendations that we put in, you know, as a TMZ. This is all I could see in the whole thing because we set up a TMZ zone, but it wasn't that. We were willing to give up 7 and 7A, that was the international sockeye, to regulate and we would fish under their regulations in that area. But we wanted, you know—then we would be willing to share maybe area 9, which was the mixed stock fisheries for southern Puget Sound in the inner Sound and the straits.

But they never even considered anything that was put in, and we put in a great effort and set up a management system that we felt would be similar to the International Sockeye Commission, or something where it would be governed by a board, and drew up scales and everything for them.

MR. ALEXANDER. Let me understand correctly. The distortion of your proposal on the tribal management zone is the only thing in the task force proposal from all the various submissions that were made by the tribes that made it to this document of any substance. Is that accurate?

MR. KINLEY. There was nothing. There was absolutely nothing put in there, just the letters "TMZ," because there is nothing in there that would even reflect any thinking of Indian tribes in the whole thing.

I went through every one of the reports that the individual tribes made and tried to come up with a draft that would satisfy all tribes. I worked hard at this; I worked 7 months. I spent at least maybe 2 or 3 days a month in my own office, which I was supposed to be running, one of the biggest fishery tribes of the State.

I spent my time working on this, and I read every one of the reports that the tribes submitted, and I tried to come up with a comprehensive plan that would initiate the thinkings of all tribes, so that there would be a cohesive management plan put forth that I felt the State could live with and we could live with, you know, to implement this Boldt decision, and it didn't say that tomorrow we were going to get 50 percent. It was a long-range plan that we would guarantee that they had fisheries.

And the thing that really bothered me was that the State does have some of the best technicians in the fisheries business, but they were forced to go political; you know, and they couldn't be technicians. And this really upset me because we have good friends within that

technical staff that want to manage fish and want to rear fish and manage them in the right sense, but they're forced to be political. And you can't be a technician and be political.

MR. ALEXANDER. Mr. Frank?

MR. FRANK. One of the things in that last report of the task force report—and all it is is a political document—is that it takes away our enforcement. It takes our usual and accustomed fishing areas, and it also takes away our management.

Now, without the management, then I just as well have never even started any kind of a process to have the *U.S. v. Washington*, and go through all these years of putting a good lawsuit against the State of Washington, and all of these Indian people that participated in this, with all the money that's been spent, without—we could have, in fact, have a task force come out at that time and formed that piece of document, which isn't worth the powder to blow it to hell. And that's really my feeling about it.

MR. ALEXANDER. Do you feel, in a sense, betrayed or cheated by the Federal Government?

MR. FRANK. Well, you know, if you take the politics out of the management of salmon, we wouldn't have this purse seiner out here talking about a generation of him being in the fishery; we'd have salmon right now. These salmon would have been protected and the politics stayed out of them.

Now, with this piece of document right here, you'll have the politics right back in them, and you'll have the Indian right out of business.

MR. ALEXANDER. Mr. McMinds?

MR. MCMINDS. I'd like to frame my answer in terms of an attitude which seems to be prevailing right now, and before I do that, I want to ask you a question though, if it's permissible for us to ask you questions, since we're not lawyers.

MR. ALEXANDER. What's the question? I'll tell you.

MR. MCMINDS. Do public officials when they're elected to public office take an oath that they support the Constitution of the United States and the laws thereof?

MR. ALEXANDER. I think that's a rhetorical question. As you know, the answer is yes.

MR. MCMINDS. Well, okay. This letter is from two United States Senators from the State of Washington, and this letter says that because there are violations of the law in the State of Washington, violations that—and I'll read from the letter—"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—"

Notice it says "illegal non-Indian," it doesn't mention Indian. "Illegal non-Indian fishing accounted for an estimated 35 percent of the total non-Indian catch in all of Puget Sound. Last year the number illegally caught doubled."

MR. ALEXANDER. Yes, we have that record.

MR. McMINDS. Okay. Now, that is the attitude going in, the attitude of supporting illegal activities, the same attitude in which you developed tribal commercial fisheries management zones. That attitude is to get the number of Indian fish down so they can be allocated to the non-Indian users.

Okay, on the coast they are giving us our rivers plus a quarter mile around the mouth, yet we're entitled to venture out to sea to capture our fish, and we could become that massive intercepting fishery. We're entitled to all of them, and yet those fish right now would not count in our share.

We're not corkers. The coastal Indians have no intention of going out there and cork any other user group. But what I'm pointing out is that the attitude in developing the tribal commercial management zone stinks.

MR. ALEXANDER. Some people might need a footnote to explain what corking means.

MR. McMINDS. Corking means that when your brother is out there fishing and you know that the fish come in in a certain way, they come from downstream, you put your net in front of him, take the fish that he would have caught.

And our scientists are calling that leapfrogging. Traditionally, the Indian people fished in the streams with traps, the most efficient method. They went out into the marine areas and used troll fishing for subsistence and for trading, as well, but the major fisheries were inside. White people came in—I'm sorry to use that expression—but they put fisheries down in front of us to take those fish away from us, and other white people crept in front of those other white people who were out in front of them, and it just kept going on and on, and the further you get away from the stream of origin, the more you can't account for the fish that should get back to the streams to harvest. And that's what's going on.

Managers have pointed it out, but managers have become powerless. In fact, Leslie Darwin in 1926 who directed this department of fisheries—

MR. ALEXANDER. Washington State department?

MR. McMINDS. Washington State Department of Fisheries, said, "It's impossible for me to manage the fisheries." All a fisherman has to do is get on the phone, call his political legislature, who calls the director of fisheries who puts pressure on him to overharvest the stocks of fish. That will be documented in our report as well.

MR. ALEXANDER. You mentioned the tribal scientists. There was an indication from the trollers' representative that they would welcome the participation of more biologists and scientists in the process if those were to be generated.

Could you indicate for me, at least for your own tribes and perhaps broader, if you can, the extent of the technical skills that are being brought to bear on the resource by the tribes?

MR. McMINDS. Well, the tribes have some of the best salmon people in the business. And the Makah Tribe, for example, has a biologist who is recognized as an international expert in salmon fisheries management. The Quinault Tribe has bright young scientists who are leading the pack in—as far as enhancement in native fish.

The Hoh Tribe, the Northwest Indian Fish Commission, and other tribes have exceptionally fine biological staff, so much so that other companies, businesses like Weyerhaeuser, are competing for the people we have on staff and would like to offer them higher salaries to go to work for them in the production of salmon.

I want to point out one thing. The trollers say they're willing to work with biologists? But I happened to be at a Pacific Regional Management Council meeting in Monterey, California, where the trollers personally attacked the credibility of biologists, openly, the biologists of the Washington State Department of Fisheries.

This is a common game with these people. Sometimes they talk out of one side of their mouths for their convenience, and at other times they talk out of the other side of their mouths.

MR. ALEXANDER. One other final type question. The task force proposal recommends a unified management system of sorts for the tribes, but not for the State. Could you comment on that?

MR. McMINDS. Run that by me again.

MR. ALEXANDER. The task force proposal for the tribal commercial management zone recommends a unified management system for the tribes, with the exception of the Quinault area, the tribal commission, but does not recommend a unified management system for the State, as I understand its plan.

Could you comment on that as to management entities, or groups of management entities?

MR. McMINDS. Well, as Billy Frank said, if they could get the politics out of the management of the fish, we'd have some. Politics dictate that this special interest group, steelhead fishermen, lobbied to get the State legislature to make a State game fish out of the steelhead, and really that fish is not the property of those steelheaders and it shouldn't be interpreted that way. It denies access to that resource for all but a special group of fishermen.

They say, "Well, we're serving the country because we're selling all kinds of stuff, motels and things like that," but it is a special interest resource thing. Now, that's the politics.

Okay. Get into the water which raise the fish. Just recently on the Columbia River, 1.2 million acre feet of water were allocated to reclaim the Columbia Basin, and when there are already surpluses of wheat and that 1.2 acre feet is taken away from a resource that has a crisis—who is kidding who in some of these situations?

This is the State department of ecology doing that with the blessing of the Governor of the State, responding to political pressure, pressure that doesn't make much sense.

And because we as Indian people sit down here with a handful of votes—and we are indeed a mini-minority—we can't get recognized, even to the point where this a critical issue for the United States. The renewing of renewable natural resources is a critical issue. You wipe out a renewable natural resource, and you're done.

MR. ALEXANDER. Mr. Frank, do you have any additional comments?

MR. FRANK. One of the things that I'd like to bring up is, the steelhead problem is not the problem. Decommmercializing steelhead is not the problem. We've met with the sports groups over the past 2 years several times and they took a hard line of decommmercializing steelhead.

We tried to make them realize that that was not the problem, decommmercializing the steelhead. Once we decommmercialize steelhead, then the Indian people have good enhancement programs on steelhead; they benefit by it. The State of Washington don't, period. That would be one of their downfalls.

As far as the Boldt decision is concerned, the Boldt decision is not the problem. You've heard it here today being, by the non-Indian groups, that it is a problem. It is not the problem. The implementation of that Boldt decision is—can be implemented to where the salmon resource is not destroyed, which is being destroyed right this minute.

And the problem is the political situation that the United States is in now. And this lady right over here, Mrs. Freeman, is right on when she says that we better be careful of what we're doing right now, the State of Washington and the United States Attorneys that are representing the Indian people, as far as treaties are concerned.

MR. ALEXANDER. Mr. Kinley, do you have any additional comments?

MR. KINLEY. I don't—you know, it's the attitude. I think this is why you're out here. It's the attitude of the people that live in this State that we're fighting. They refuse to accept us as managers. I think that any one of our fish managers that manage, that manage fish, could manage fish. I think your management is as good as your technicians beneath you are. These are the people that make you.

As far as having, you know, technicians, we've got to go a long way to train Indian biologists to work for Indian people. At the present time we've got to depend on non-Indians for this type of advice on our fisheries, and you just wonder how far you can trust them. There are certain individual non-Indians that are dedicated to the Indian cause, just like there are certain legislators in the government that will stand up for the rights of minorities.

But when you screen and hire, sometimes you can't hire the best because the best is not on your side. So that you've got to come up with some young biologists fresh out of school and train them if they're non-Indians, and if they are Indians, when we get them nearly trained to where they would recognize them, you know, and they recognize a degree more than they do actual experience, because I've seen it within this program myself, that we bring young Indians out of

college that have not had the work experience and we kill them. Actually, we've got to train them to what they're supposed to do; they've never had the work experience.

I think we're quite a ways of getting our own technicians, Indian technicians, that we can depend on. We have a few non-Indians that we've got to screen. And as I say, then we've got to also bring in inexperienced ones and train them. To be honest, we've got to brainwash them to think like we do.

This is the situation that we face as Indian people. On our reservation our fisheries program was initiating this life-saving program that Seattle has here, and we got training money and was training people. Then the *Bellingham Herald* and people come out and said, "We don't think that white people would accept Indians to, if they had a heart attack or something, in an emergency." So, you know, this is the type of a thing that we're actually fighting here.

Now, in the fishing situation itself, we've had poor enforcement. We've had various stealing of gear—nets, boats, motors, and stuff like this. We can't get this Federal enforcement to do anything about it. We have over 67 cases reported to them.

About 2 days ago we had a pusher of dope on our reservation that shot at three young Indians, and they had stolen some marijuana or something, and he come right into the house and shot at them, and they run off, and they may have shot more than that.

We reported this to Seattle, and we still haven't had no response from them. And I called them on some net stealing that went on on the reservation—we knew where the nets was—and I talked to our local FBI in Bellingham, and he told me that he wouldn't come out on our reservation for less than murder. And I felt that if he would come out there, there might be.

They build this attitude to a thing, and I can document that maybe 60 cases that we have on file with them, and this last one just within the past 4 days that there was a shooting at our people. And this guy lives on the reservation; he's a non-Indian. And they still wouldn't come in; they haven't come in up to this date. I called home 2 hours ago.

This is the type of thing that we face, and this is why that we can't accept nothing less than co-management.

CHAIRMAN FLEMMING. Commissioner Freeman and I appreciate very, very much the way you have responded to Mr. Alexander's questions, and the kind of information that you have provided us for the record.

You are the final witnesses in this hearing, and I think you all know that this is a part of a national study that the Commission is making. We are going to hold a national hearing, full Commission, in Washington in the latter part of January, and this record, of course, will be a part of it.

We will weigh the evidence that we have received here, as well as the evidence that we've received in Rapid City, South Dakota, a few

weeks ago and the evidence that we will receive in Washington, D.C. And then we'll make our findings and recommendations to the President and to the Congress. We are very, very appreciative of your being here and sharing with us your experience and your insights in this matter. Thank you very much.

As I indicated just before the recess, we do provide nonsubpenaed witnesses with the opportunity of making 5-minute presentations. If I could be provided now with the list of persons who have registered with the staff, we can proceed to that, and that will be the final part of the hearing.

I have been provided with the names of eight persons who indicate a desire to testify in accordance with the rules that were set forth at the opening of the hearing.

Mr. Kaplan, who is our regional attorney here, will call the names of the persons who have registered. Their names will be called in the order in which they indicated a desire to be heard.

The Commission operates in this connection under a 5-minute rule, which we have to rigidly enforce in fairness to all of the persons who are involved. These witnesses will be put under oath.

I notice that there are eight, so we'll call them four at a time. They can come forward and I'll swear the four witnesses at a time. Mr. Kaplan will introduce them. He will keep time. He will notify the witnesses 1 minute before their time expires.

The witness may complete the sentence. If the witness has a written statement, the entire written statement will be included as a part of the record. You may proceed.

MR. KAPLAN. Will the following people please step forward. Chris Melroe, Richard M. Briggs, David Sohappy, and Jim Sohappy. Remain standing, please.

CHAIRMAN FLEMMING. Not everyone is responding. So, let us call the names again.

MR. KAPLAN. Richard Briggs, Mr. Paul Centarello.

MR. CLINEBELL. Mr. Chairman, Paul Centarello asked me to speak in his stead for the National Lawyers Guild. I'm from the same organization. He's not able to be here today.

CHAIRMAN FLEMMING. What is your name?

MR. CLINEBELL. John Clinebell.

[Christine Bailey, David Sohappy, Jim Sohappy, and John Clinebell were duly sworn.]

TESTIMONY OF CHRISTINE BAILEY

MR. KAPLAN. Would the person coming in place of Chris Melroe state her name, address, and occupation?

MS. BAILEY. My name is Christine Bailey. My address is 343 Northwest 74th in Seattle.

CHAIRMAN FLEMMING. Now, wait a minute. Your name was not called. Did you register?

Ms. BAILEY. Yes, I did. I registered with Paul Alexander today and told him I would be testifying in the place of Chris Melroe.

CHAIRMAN FLEMMING. You're a replacement witness for Chris Melroe?

Ms. BAILEY. Yes.

CHAIRMAN FLEMMING. I see. Go ahead.

Ms. BAILEY. And my occupation, I do community work in organization with the Native American Solidarity Committee in Seattle.

MR. KAPLAN. Thank you. You may begin.

Ms. BAILEY. I think in dealing with the task force there are two major things of concern to our organization. And in the Native American Solidarity Committee, the main thing we do is work with non-Indian people. And the basis about Indian sovereignty and self-determination, we support these things. And the main reason we do this is we feel there are connections between the lives of Indian people and non-Indian people; there's a common interest there. And perhaps the most basic of these is that we're all living on colonized land. We're either living on colonized land or we're living on Indian land.

The basis for our being able to live there is the treaties. And those treaties were made as nation to nation. And they are protected by the United States Constitution as being the supreme law of the land, superior to any State law.

We see that what the task force has proposed, if it were to be put into effect, it would abrogate the treaties altogether. Our organization, which is a national organization, and the communities that we represent and we talk to are totally opposed to any abrogation of the treaties.

We understand that fishing is the economic base of the Indian culture in the Northwest, and we understand the extent to which Indian cultures have been decimated. We understand the force which is being put upon Indian people to negotiate under this task force, with the threat of total abrogation of their treaties, the total theft of what little land they have remaining.

We understand that these things are being hung over their head in the U.S. Congress. We are totally opposed to that. The other thing I feel that the task force has done is that it has eliminated the hearing of phase two of the Boldt decision, which would have dealt with environmental issues.

I feel that this is, you know, may be good or bad. I don't know. But it's unfortunate in that it did not bring out to the general public knowledge the environmental degradation which has gone on under State mismanagement of fisheries and under the Federal Government's failure to enforce these treaties.

With all due respect to non-Indian fisherman, I really feel that they have been cheated in this, but not by the fact that Indians have finally, after fighting—the first Indian fishermen were arrested maybe in 1913, 1915 for illegal fishing. You know, they've been striving for these fishing rights for a long time.

MR. KAPLAN. You have 1 minute remaining.

MS. BAILEY. I feel that non-Indian fishermen, you know, they have gotten a raw deal, but it is not because of *U.S. v. Washington* and it is not because of Indian people. It's because of the neglect and mismanagement of the State government and the U.S. Government.

I believe that a lot of this—these Indian men who were just up here talking about politics were hitting the crux of the situation.

CHAIRMAN FLEMMING. Thank you very much.

MR. KAPLAN. Will the person speaking in place of Dr. Briggs please state his name?

CHAIRMAN FLEMMING. You were not here when your name was called?

MR. KAPLAN. I'm sorry. In place of Mr. Centarello.

CHAIRMAN FLEMMING. No, the next name is David Sohappy.

MR. KAPLAN. Mr. Sohappy, would you please state your name, address, and occupation?

TESTIMONY OF DAVID SOHAPPY

MR. SOHAPPY. My name is David Sohappy. I live at Cooks Landing on the Columbia River. I'm a fisherman. I've been a fisherman most all my life. I was the one that got *Sohappy v. Smith* started, and *U.S. v. Washington* took that up, redefined everything. But they did not define everything that the true Indian understands, the way my father here understands, the way everything is written, what the white man understands, not the way we understand, the way us true Indians that speak our own language.

We could take that treaty and present it, and it comes out way different, like they say, "in common with the citizens." But to the Indians that meant "in common with," the way the interpreters interpret it is "in common with," like four tribes that are affected on the Columbia River, the Nez Perce, Umatilla, Warm Springs, and the Yakima.

That meant to the Indians that they were going to fish in common with their neighbors. They didn't think they were going to include the white race in that. That's the way the Indians understood it, and that's why all this litigation going on is all wrong—everything.

I should have stayed on that case when I first won in *Sohappy v. Smith*. That was a complete victory; there was absolute treaty rights in there that the Indians had, their reserved right, nothing granted, the way I understand it.

Now, we've been harrassed down there. I fish there all the time. I don't care if it's closed or not because I exercise my rights the way I understand it. I fish for ceremonial purposes because we have ceremonies all year round, deaths and everything else. That is our religious way of life, and the Columbia River is our sacred river. That's why we have ceremonies, in memory of people who have drowned in that river. And that river is our sacred river, and mountains where we hunt and gather berries and dig roots—it's all sacred to us.

When you have anything like that pertaining to religion, the State or government has no right to regulate anybody from exercising that. You cannot tell anybody what church he can go to. That's the way my understanding of that whole thing is.

On these other issues, they talk about abrogating treaties. The way I understand it, my ancestors said that treaty was to stand as long as that mountain stood there, as long as the sun rose in the East, and long as the grass grows green in the spring and rivers flow. To me, that meant forever, not to be abrogated or changed or done away with any other way. That's the way the old people talk. That was their understanding.

And now the law book says that the treaty should mean the way the Indians, the unlettered people, understood it, not the way the white people understand it or interpret it.

MR. KAPLAN. You have 1 minute remaining.

MR. SOHAPPY. All this time I've been fishing down there, I've been harrassed by the game [department] and department of fisheries, confiscating my gear at nights. They don't come out in the daytime; they come at nights. I go up there and claim my nets; they say, "No."

They just steal it. They don't give you no kind of ticket or anything. I even asked for a citation, so I could get into court. I finally got one. All they charged me with was possessing a food fish, one salmon. I'd like to get that heard by the people over here, because they just totally deny the Indian fishing when they open the lower river for all kinds of fishing.

MR. KAPLAN. Thank you, Mr. Sohappy.

CHAIRMAN FLEMMING. Thank you very much.

MR. KAPLAN. The next witness will be Jim Sohappy, who will speak in the Yakima language. His son, David, will translate.

TESTIMONY OF JIM SOHAPPY

MR. SOHAPPY. My name is Jim Sohappy.

MR. KAPLAN. Address and occupation?

MR. SOHAPPY. A farmer in Harrah, Washington. I'm the only one left from my generation. I'm the only one left from when my grandfather went overseas and made treaties way back in the 1740s, and he spoke there. He made treaties.

At that time, they made an agreement that the State had nothing to do with regulating Indians or anything. All they wanted was to trade on their land. They were fur traders of the Hudson Bay and Northwest companies.

They took my grandfather from Priest Rapids overseas. And at that time, they took him along the river with a canoe and he marked all the places that were usual and accustomed fishing stations for the Indians.

After he got through marking all them places, he went with the people to go overseas, and he was gone for 20 years. That's one statement, a history of what one of our people had to go through.

His mother and his grandfather, they got a homestead in Walla Walla country, Palouse country. His mother and his father and the people that live on the Columbia River, they were told that they could live the way they lived all their lives without no bother from any State government, that they could go up and down the whole Columbia as they please.

My grandfather went where you see a light and the land laying that was claimed by the Indians for him to live on for the rest of his life. Since time immemorial they have lived on that land, on game and fish, where they traded with the other tribes.

MR. KAPLAN. You have 1 minute.

MR. SOHAPPY. And today I come with my son because I see signs that are not right now, the way the white race is encroaching on Indian land. That's all I've got to say right now. I'll have more statement later.

I was in Washington, D.C., 2 years ago and didn't have an interpreter to tell my story down there.

CHAIRMAN FLEMMING. Thank you very much. Please tell your father that if he desires to add to the statement in writing, we would be very happy to include it in the record of the hearing.

MR. KAPLAN. Will the gentleman speaking in the place of Mr. Centarello identify himself, his address, and occupation? Thank you.

TESTIMONY OF JOHN CLINEBELL

MR. CLINEBELL. My name is John Clinebell, and I'm speaking in place of Paul Centarello on behalf of the Seattle chapter of the National Lawyers Guild. I'm an employee of the Puyallup Indian Tribe. I'm an attorney for the tribe.

The Puyallup Tribe is one of the native nations which has aboriginal and treaty fishing rights in the Pacific Northwest. I'd like to make several points. The first is, it seems to us, that the creation and operation of the task force is part of a larger strategy or policy in a couple of ways.

The first way is that it's simply the latest chapter in what's been a long history of attempts to take away the fishing rights from the Indian people. The earlier witnesses described the ways in which the task force proposal would diminish or take away those rights. As I say, it's simply another attempt to do that, after earlier attempts in the court system and out on the waters have failed to take away those rights.

The second way, in which we believe it's part of a larger strategy or a larger policy, is that the United States and the business interests which have such a heavy influence over its policy have for, throughout the history of this country, prospered by exploiting the resources and peoples in other areas of the world.

They are having a harder and harder time doing that now. And the United States is being forced to look more within its own backyard, within its own country, to find a source for these natural resources.

They are finding that quite a large—quite a significant share of those resources are within Indian reservations. And they realize that if they are going to be able to exploit those resources to the extent they want to, that they're going to have to reduce or take away the control which Indian tribes have over their resources.

We believe that the creation of the task force is part of a policy, of which several recent Supreme Court decisions are also a part, to reduce the control that Indian governments have over their resources.

The second point I'd like to make is that, is to point to the very striking and alarming similarity which the task force proposal has to the termination legislation which was passed by Congress in the 1950s. If you'll recall, that legislation essentially took away the status of Indian tribes, the existence of Indian tribes as unique peoples, as governments and nations in return for money.

The task force proposal would do much the same thing, in that it takes away or would take away the governmental status or some of the governmental authority of the tribes in return for finite block fish, or rather there's a promise of a certain number of fish.

There are at least a couple of ways which the task force proposal would do that, would reduce the management, the governmental authority, and status of the tribes. They've been mentioned earlier. One is the fact that it would require the Indian tribes to structure their governments and to govern there, to manage the fisheries in a form that's been dictated to them by the task force.

The second is that it takes away much of the management prerogative, much of the area, and much of many of the functions over which Indian tribes exercise management authority and gives it back to the State of Washington.

The third point I'd like to make is that we find it quite alarming, as it has alarmed a number of other witnesses today, that the United States seems to be, and has already, simply abandoned its responsibility to enforce, not only its duty toward Indian people, but the law as stated by the courts.

MR. KAPLAN. You have 1 minute.

MR. CLINEBELL. The idea that the United States Attorney should sit up at this table and tell you that because there has been what he interprets as a large public outcry against the rights of a small group of people, that as a result of that process, the United States is simply going to say there's no way of enforcing those rights, and that we simply have to find another solution, whether it's legislative or whether it's another trip back to courts, is, as Commissioner Freeman stated, a very dangerous principle. And we think it should not be tolerated.

There are a couple of other points I'd like to make, so I'd like to ask permission to file a written statement we have prepared, after the session.

CHAIRMAN FLEMMING. We'd be happy to have it.

MR. CLINEBELL. Thank you very much.

CHAIRMAN FLEMMING. Counsel will call the remaining witnesses. Thank you all very much.

MR. KAPLAN. Will the following people please step forward: Richard M. Briggs, James K. Steen, Donald F. Bellinger, and Jack Steen.

[Richard M. Briggs, James K. Steen, and Jack Steen were duly sworn.]

TESTIMONY OF RICHARD M. BRIGGS

MR. KAPLAN. Beginning with Dr. Briggs, will you please state your name, address, and occupation?

DR. BRIGGS. Yes, I'm Dr. Richard Briggs. I'm a gynecologist and I'm on the faculty of the University of Washington. My address is 1435 Southwest 152nd Street in Seattle.

I'm coming to this hearing representing the National Coalition to Support Indian Treaties, which I had the honor to found a little over 1 year ago, and which is actually made up of individuals and groups of people—non-Indian people, including the American Friends Service Committee, the Lutheran Church of America, the Social Ministries of the United Methodist Church, the Washington State Catholic Conference, the Minnesota Conference of the United Church of Christ, the Unitarians for Social Justice, the Church Council of Greater Seattle, and the National Lawyers Guild, from whom you heard momentarily.

Actually, as non-Indians, why did we form this coalition? We formed it primarily because we could see an incredible encroachment on the civil rights and the treaty rights of our Native Americans. We could see that they were being usurped.

But, most important was the fact that we could see the incredible unfairness. I personally had been involved in Indian issues for a number of years. And I remember the "busts" on the Puyallup and on the Nisqually River.

I remember the department of game and law enforcement officers going out, so we were told, on their own time, taking away Indian gear, confiscating it, as Mr. Sohappy has already mentioned, without so much as a care. And this was obviously great injustice.

Then I heard that—all right, fine—"Indians, you go to court, you go to white man's court where I promise you will get justice." So, they went to court, and lo and behold, the white man found that the Indians were winning some court cases.

So, then, they wanted to change the rules. Of course, the change in the rules has taken partly the form of introduction into the House of Representatives of a number of bills, which I will not, of course, go into at this point.

What is the Indian to think? What are concerned citizens like ourselves to think? We often in our—and we are primarily an educational

organization—we often quote Pastor Niemoller, “In the days of Nazi Germany, they came for the communists, and I wasn’t a communist, so I said nothing. They came to the Jews and I wasn’t a Jew, so I said nothing. And then they came for me.” And that’s kind of the attitude we take in this. We see, to some extent, perhaps, a conspiracy with the Indian as the scapegoat.

The tragedy is that the Boldt decision did not give the Indian anything. The Boldt decision simply reaffirmed what our nation had originally affirmed with the Indians at the time of the treaty-making back in the 1850s.

There was no allocation in those days. The Indians got 100 percent of harvestable run. And so now it’s 50 percent of the harvestable run. And then the task force would make it 40 percent, or perhaps at some future date, the task force would, in fact, make it a nice, happy, free enterprise system out there where the resource is dwindling and dwindling.

I’m sure you’ve heard through today the fact that there were 13 million salmon caught back in the early 1900s in Puget Sound, and as recently as 1971, perhaps 3 million were caught.

The Indian, historically, is fishing at the mouth of the rivers. And of course, some Indians fish out to sea. But with this incredible pressure upon the resource, with a totally uncontrolled trolling fishery and, until recently, an uncontrolled foreign fishery, I don’t see how nor do any of the members of our organization and the marine biologists we’ve talked to see how it would be possible to simply accomplish taking care of an uncontrolled fishery with just an increase in the resource.

MR. KAPLAN. You have 1 minute remaining.

DR. BRIGGS. The main fact, however, simply is that the Indian has been the scapegoat. And quite frankly, I would charge the State of Washington as a real culprit in this, not the gillnetters, probably not the trollers, certainly not the Indians.

The State of Washington is illegally in violation of the treaties, has told non-Indian fishery groups to go out and spend hundreds of thousands of dollars on gear and run up and down the oceans trying to catch a fish.

Even today, or at least as recently as late last year, the gillnetters had to call a special line to find out whether the fishery was legally closed by Boldt, because the State supreme court was unwilling to agree to the Boldt decision.

It’s an incredible situation. And I dare say that it’s the State of Washington that is really at fault here. Thank you.

CHAIRMAN FLEMMING. Thank you very much. If you’d like to file a longer statement with us, we’d be very happy to make it a part of the record.

TESTIMONY OF JAMES STEEN

MR. KAPLAN. Mr. James Steen, will you please state your name, address, and occupation?

MR. STEEN. My name is James K. Steen. I live at 5910 49th Avenue, southwestern Seattle. I'm unemployed at the present time. Taxpayer, can't afford a lawyer. But may I proceed?

MR. KAPLAN. Yes, sir.

MR. STEEN. I got pretty confused in this issue and I've watched it over a period of time on the radio, television, and news media. Like I say, I can't afford a lawyer. So, I went down and I got some books and started reading on the American government. It says, "a relative rank of laws in the United States, the number one, the top dog, is the United States Constitution. Number two, the United States statutes and treaties, which are on the same level," then it goes on to cities and counties, so forth.

It says this: 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 statutes which conflict with the Constitution of the United States or if the President and Senate make any treaties which conflict with the United States, such statutes or treaties will not be enforced by the courts.

Now, it's very obvious our former Governor of the territory couldn't go around here making treaties that violate the Constitution and the treaties didn't. But Judge Boldt's interpretation does violate it.

When he tells one man that "you can fish," and the other "you can't," that there is violation of the traditional laws of the white man. And that's what I have to say about the Federal judge.

Now, on the State fisheries department, it says in the State constitution that public taxes shall be used for public funding. The State fisheries department is licensing a privileged few to harvest a natural resource which is public funded. The State constitution specifically states that it's designed to protect and maintain the individual's rights.

In here, it says: "Special privileges are prohibited." It also states that State taxes shall be used for public purposes. The U.S. Constitution has a list that we know as the Bill of Rights and I believe it's number 10.

It says that if one citizen enjoys a privilege in this country, it won't be denied to the next. So, I think the State of Washington should be looked at in regards to Federal monies that they are receiving from the Federal Government, because the State fisheries department discriminates with the money when they say, "You can have a license, and you can't."

That's all I've got to say.

MR. KAPLAN. Thank you. Mr. Jack Steen, will you please state your name, address, and occupation?

TESTIMONY OF JACK STEEN

MR. STEEN. My name is Jack Steen; I live at 22106 28th South, Des Moines, Washington. I have my mailing address the same as my brother because of problems in the neighborhood where I live.

Since they use State and Federal funds from the public treasury to operate the fisheries department and to limit licenses to a certain few people with the public funds, it seems like to me this is discrimination 100 percent.

They talk about the commercial fishermen that are fishing are violating the law, and it's against the law to fish, but it's also against the law, from my understanding, to discriminate.

Now, so many people have said that their fishing is going downhill. Well, then, why doesn't the fisheries department, how are they able to supply fish eggs to Chile and to France and to other countries, so they can start their own business, but not buy our fresh fish or marketable products?

The fish they find in this country before the non-Indian came along, the white men came along with their hatcheries and all that, and the fish—there were plenty of fish and the streams were flooded with them.

Now, since this hatchery business, they keep on saying the hatcheries are handling all they can. Why don't they let the fish run wild in the rivers? If you look at a map between Cape Flattery and the Columbia River, you'll see about a hundred creeks, rivers, and streams.

How many fish are they ever put in, even they didn't all produce, they should supply all those. On this limitation of licenses and putting people out of work, they keep on complaining about people on welfare. We've got people here that can work and want work, but they won't let them work.

A lot of men in the fishing business are from age 40 to 70 years old. If they were retrained who will hire these older people? There are a great many serious problems involved altogether, but as far as the limitation of licenses, discrimination, selling of fish eggs, and if you have any of your committee go down and go through the Washington State Department of Fish books, find out how many tons of eggs are sold for caviar, or labeled as diseased eggs, are sold for caviar. Go back through the years.

There are many, many things. I can't recall them all right to the instant. But I will go over this, and I wish to submit a letter to be added to the record when I can more clearly think and submit the rest of the material I have in mind.

I realize the limitation time. And I thank you very much for this opportunity to say what I have. Thank you.

CHAIRMAN FLEMMING. We are very happy to receive your communication.

MR. KAPLAN. Will Mr. Donald F. Bellinger please step forward. Please begin with your name, address, and occupation.

[Donald F. Bellinger was duly sworn.]

TESTIMONY OF DONALD F. BELLINGER

MR. BELLINGER. My name is Donald F. Bellinger. I live at 820 Cherry Street, Apartment F, Seattle, Washington.

I'm a Native American research assistant for the Duwamish Tribe, dealing mainly with statutory law, legal background on fishing.

First of all I'd like to submit a letter that was written to the *Times* on April 3, 1978, and I subsequently asked that they print the letter in the editorial. And I'd like to have somebody from the staff read it, because I'm coming out of a reaction from a penicillin pill. So, I'm a little shaky here.

CHAIRMAN FLEMMING. I'll be very happy to make that a part of the record. You want to make this a part of the record; is that right?

MR. BELLINGER. Yes, I would like to have it read.

CHAIRMAN FLEMMING. You would like some of your time used for the purpose of reading it?

MR. BELLINGER. I would rather have somebody else read it. And I think from there, I'll just go into a couple more matters.

CHAIRMAN FLEMMING. I just want to make it clear that this counts against your 5 minutes.

MR. BELLINGER. Yes. Well, I want the Commission to be aware of this letter and the fact that it wasn't published. That's mainly the purpose of submitting it.

CHAIRMAN FLEMMING. Fine. We'll take note of it and make it a part of the record, and then you can proceed with the comments that you want to make.

MR. BELLINGER. Thank you. The reason why I suggested reading it is because the letter pertained basically to several important matters that I think all the public, Indian and non-Indian, persons that are involved with the enforcement should be made aware of, and that is that it has come out now that at least 40 to 50 percent of the chinook run is being confiscated, as we've heard from prior testimony, off the shores through interception by the Canadians.

Thirty percent of the fall run of the chinook is being taken. The tragedy of this thing is that there are 13 landless tribes in western Washington that have treaties and agreements with the United States Government, and they're not even allowed to fish for even subsistence allowance.

I happen to work for the Duwamish Tribe, whose number is now about 225 senior adult persons and about 120 children. These people have fished on the Duwamish River and its tributaries, Shilshole Bay and Lake Washington; they've been in the *U.S. v. Washington* for 4 years. And the records will show and the criteria set down in the courts that all of the evidence that would support their being able to fish at their usual grounds has never been presented to the court.

We argued and begged the attorneys to submit the evidence like the Indian Claims Commission findings on which the Government had agreed to pay the tribes \$1.35 an acre for the land area here has not been put before the court.

So, we have a disparity, an injustice, that's happening right before our eyes. And taxpayers' money, Indian and non-Indian as well, is going down the tubes in a lot of this lost motion.

A matter that pertains to interception by the Canadians I think is a germane issue that is contingent upon the entire settlement of this case. This whole projection that has been put out by the task force ties in dramatically to the type of negotiation that Canada and the United States come up with in settlement.

And all the projections you get in your enhancement and your escapement programs are all theoretical, if you look at the charts, because until you can come up with a certain percentage of the catch off the coast that would come into the Sound and into the tributaries of the rivers and the streams, you have nothing. It's all a farce.

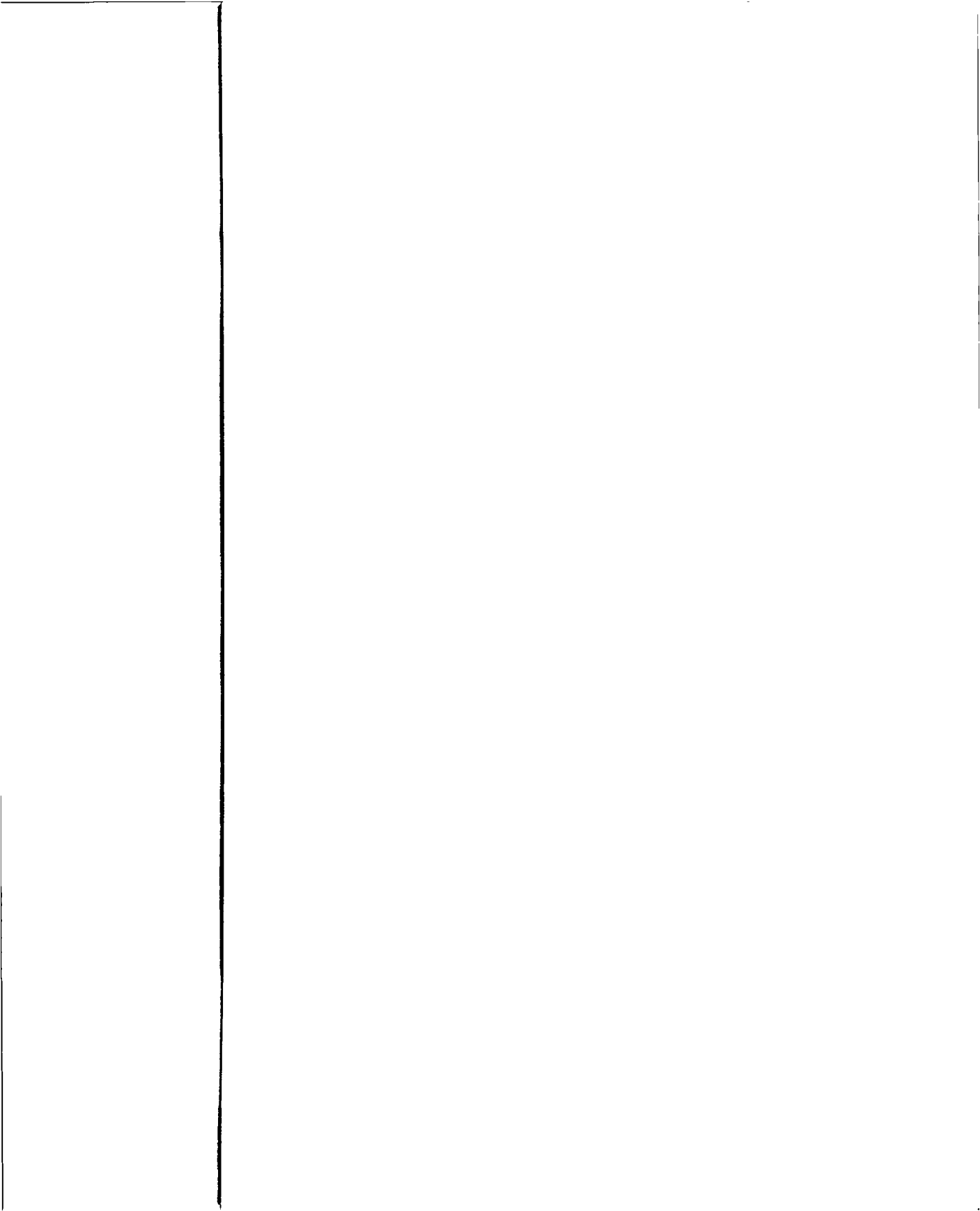
MR. KAPLAN. You have 1 minute remaining.

MR. BELLINGER. So, I would suggest to this Commission, and I know that we had an hour and a half notice on knowing that this hearing existed. And my tribal chairperson is tied up with other matters, and we have been assured by the staff counsel that we can submit written additional testimony.

We will try to contact some of the other tribes so that they can submit, too. And we appreciate your interest, in coming out and giving us an opportunity to be heard.

CHAIRMAN FLEMMING. Thank you very, very much. This hearing is adjourned.

[Whereupon, the hearing was concluded at 5 p.m.]



[6335-01]**CIVIL RIGHTS COMMISSION****WASHINGTON STATE****Hearing**

Notice is hereby given pursuant to the provisions of the Civil Rights Act of 1957, 71 Stat. 634, as amended, that a public hearing of the U.S. Commission on Civil Rights will commence on August 25, 1978, at the Federal Building, Room 514, 1915 Second Avenue, Seattle, Wash. An executive session, if appropriate, may be convened at any time before or during the hearing.

The purpose of the hearing is to 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, particularly concerning American Indians; to appraise the laws and policies of the Federal Government with respect to denials of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice, particularly concerning American Indians; and to disseminate information with respect to denials of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice, particularly concerning American Indians.

Dated at Washington, D.C., July 24, 1978.

ARTHUR S. FLEMMING,
Chairman

IFR Doc-78-20849 Filed 7-25-78: 9:32 am

*Exhibit No. 2*TESTIMONY OF JOHN MERKEL, LEE ALVERSON
AND JOHN HOUGH BEFORE THE
U. S. CIVIL RIGHTS COMMISSION
ON AUGUST 25, 1978

We are pleased to provide this testimony and we wish to begin by thanking the United States Civil Rights Commission for permitting us to postpone this hearing until the completion of our work as a Regional Task Force. We will keep our testimony short and specific to the history of the Task Force and some of the concepts behind our plan in order to allow as much time as possible for the questions from the Civil Rights Commission. This Task Force effort was started in the spring of 1977. It was born out of the realization that the fishing controversy in the Northwest was not heading towards some resolution but rather towards increased conflicts: conflicts between the State and Federal courts, conflicts between law enforcement and non-Indian fishermen, and some signs of increasing conflicts between Indian and non-Indian fishermen. Everyone shared a sense of concern and apprehension about the breakdown in law enforcement, the increased tension and the hostility and the apparent failure of the presently existing management entities under their present authority to cope with the problem. Further, this is a controversy in which each side can lay claim to justice and equity on their side of the issue. For a hundred years the Indians have claimed and attempted to establish that the

treaties meant more than simply providing them access to the fishing grounds like everyone else. In the last decade, the courts generally, and particularly the Federal courts, have accepted that theory and have vindicated the Indian claims. The tribes now take the position that they have utilized the American judicial system to establish the extent of their fishing rights and that these rights should now be honored.

The non-Indian commercial and sports fishermen claim on their side that when they entered the fishery years ago no one informed them that the treaty rights entitled the tribes to fifty percent or more of the fishery, that many of them, like tribal fishermen, come from fishing families and want to continue to fish and do not want to be bought out or to move into another profession. And, finally, they claim that one generation of commercial fishermen are bearing the entire cost of implementing a treaty that benefits the entire population of Western Washington and in a less immediate sense the United States. It became clear that these claims for justice could not both be satisfied under the status quo. Thus, the Administration established a Task Force with representatives of the three agencies, Commerce, Interior and Justice, who have major responsibilities in the various areas of this controversy. The Task Force was given the

assignment to devise a new set of arrangements under which the principal concerns of each of the affected parties could be accommodated.

In the late spring and early summer, after assembling our initial staff, the Regional Team held a series of meetings and discussions with representatives of all of the affected parties. These meetings, which lasted from three to four hours apiece, were designed to allow the leadership of the affected parties to tell us what they saw as the problems and any possible solutions to those problems.

By midsummer we had completed the first round of discussions with each of the affected parties and several things had become clear. First, that a major staff effort would be required to compile, analyze, and disseminate data and information to all of the affected parties in order that a commonly accepted data base could be created for any future discussions or negotiations. Second, all of the major participants had substantial and deeply felt disagreements in almost every area of the fishery. It was clear that we had a long way to go if there was even to be a chance for an agreed-upon settlement; and that putting all of the participants in face-to-face negotiations at that time would simply have led to further estrangement, bad feelings and no progress towards a solution. In August through September, the Regional Team and the staff held

and the staff held numerous meetings with representatives of all the groups on various particular subjects and particular problems. Many of these related to the 1977 season where, at one time or another, every major group or institution involved in the salmon fishing season approached us and requested that we investigate this issue. The failure to at least look into the issue would have destroyed our credibility. Therefore, a great deal of time was consumed in issues that were of no long-term consequence but were of short-term consequence to either a tribe, the State of Washington, or the non-Indian fisherman. Also, during this period, we created a technical committee to review the State and the tribes enhancement proposals. We chose representatives with biological backgrounds from all of the affected groups to participate on this committee.

Based on these preliminary meetings, discussions and staff work, we requested that the participants submit proposals to us suggesting alternatives or plans for resolving the various critical issues. These were due in early October and every major group involved submitted a proposal of one form or another, ranging from a two to three page letter up to an eight volume submission by the tribes, containing hundreds of pages of alternative proposals. Based on these submissions, we issued a report on the proposals, recommendations and suggestions submitted by all

interested parties through November 1, 1977. The paper was organized around eleven topics, ranging from fisheries' management to gear regulation to enforcement resource distribution, etc. Under each topic, the current problems as described by the participants, apparent principles for resolution, and the options posed by each of the participants in our meetings and in their submissions were laid out. This permitted everyone to understand the wide range of aspirations and concerns of the participants in the fisheries. At that time, we reviewed again whether the desirability of bringing the participants into the face-to-face negotiations, and based on their initial response to the November paper, concluded that such face-to-face negotiations would not be productive at that time. Therefore, the decision was made to set up an intensive round of negotiations between the Task Force and the participants on a group by group basis, using the November paper and our understanding of the viewpoints of parties with different interests as a means of testing possible alternatives on each group. The staff prepared individual gear group and tribal fishing charts which described that group's catch for all species and by each species from 1970 to 1976. This catch data, the proposals that that group had submitted, and the November paper were all used as tools to discuss the various options or

possibilities for resolving the major issue. In order to maximize the amount of time available for discussion with each group, we decided to utilize a conference room in the Olympic Hotel and thereby not waste time in travel or setup or confusion over the location of a meeting place. We were thus able to meet with three to five groups a day with the meetings ranging from two to three and a half hours per meeting. Thus, we not only met with each commercial interest separately and the collective sports' representative several times, but were able to meet with individual tribes or treaty areas who had separate and distinct fisheries possibilities and problems.

This round of negotiations continued for approximately a month from early November until late December. From mid-December until early January, we drafted our proposed settlement which was issued in mid-January. The comment period and process was extended by the Cabinet, and so indicated to the parties by Secretary Andrus on a trip to Seattle, in order to permit the parties, the State and the tribes, and ultimately the commercial and sportsfishermen, to engage in face-to-face negotiations in order to improve upon or find alternatives to our plan. During this period, we engaged in an additional round of discussions with anyone who requested such an opportunity in order to address problems that were specific to a particular area or group

of people and to rectify either omissions or the unintended side effects of certain proposals in January. We then incorporated those areas of agreement between the State and the tribes regarding enhancement and enforcement and research and published our final proposal in June of 1978.

We turn now to some specific areas of the plan. It is not our intent in this presentation to discuss the mechanical workings of the plan. Those are set forth in the settlement document. It is rather our intent to discuss some of the thinking and the rationale behind the various proposals.

MANAGEMENT SYSTEM FOR WASHINGTON STATE FISHERIES

We received a number of proposals and recommendations from the state agencies, the tribes and numerous comments from other affected parties regarding what was right and wrong with the present management system and proposals for alternative arrangements. These proposals fell in two groups. The first of which was usually labeled "Single Management Control" and the second which generally fall under the category of "Commission Management." Given the federal management presence under the 200-mile bill and under the IPSFC, a consolidation into a single management agency would have required federal management of the fisheries, and consequently the preempting of the State

fisheries and game department jurisdiction and tribal jurisdiction. It was evident immediately that this concept was not acceptable to either the state agencies, the tribes or the commercial and sports fishermen. In terms of lesser consolidations, it was unacceptable to the tribes to consolidate the management in the State agencies or a State agency in light of the past history of those departments, vis-a-vis the Indian fishing rights. It was unacceptable to the commercial fishermen to talk about altering the IPSFC jurisdiction in any way. And it was unacceptable to the sportsmen to consolidate the steelhead management function with the Department of Fisheries. Thus, after the first several rounds of negotiations, it was clear that any consensus decision could not involve a single management entity managing all salmon and steelhead fisheries.

The second concept, that of a commission, was proposed on a number of occasions by various parties particularly the tribes. This was a concept that was seriously considered and reviewed by the Regional team. The most successful commission management, that of the IPSFC, occurs where the commission has its own staff free from the biases of either party. The Commission and staff make all of the major management and enhancement decisions and essentially only the enforcement and execution are left to the individual parties. This concept would have preempted most of the

present state and tribal management functions and was therefore unacceptable to both sides. Thus, we began developing a framework which would provide a system which could maintain the positive benefits of split jurisdiction, namely open access to information, pure group review and innovation, while at the same time minimizing duplication, overlapping jurisdiction and in-season uncertainty. We proposed procedures requiring the parties to cooperate and resolve differences prior to the fishing season which would maximize the advantages of split jurisdiction and minimize many of the negative features. This was further reinforced by establishing areas or zones of primary management control. For the Federal Government this would be from 3 to 200 miles and in the IPSFC area, the state would manage sports fishing (for salmon and steelhead) within 3 miles and throughout the state except on reservation and the state would manage the major portion of the marine net-fishing areas. The Tribal Commission, a new entity managing on behalf of all the tribes, would manage the tribal commercial management zones as laid out in the plan. The plan provides several opportunities for problems to be resolved at the informal level, at the technical level or between the directors of the Department of Fisheries and the tribal commission. If that is not possible, then the dissatisfied party may raise the issue to the review board and the review

board may indicate, based on the facts, that the agency with the responsibility and accountability appears to be acting correctly or incorrectly. However, the party with the accountability and responsibility may, if it chooses, proceed ahead based on the advise of its own staff. However, in the event that the predictions of the dissatisfied parties turned out to be correct, then the results present a question of food faith to the review board. Should a series of such events re-occur a number of times there would be a basis for the board to suspend that agency's management functions until such time as they establish that they are able to comply with the settlement terms.

SALMON RESOURCE DISTRIBUTION PLAN

Obviously, one of the most controversial elements of the plan is what is opportunity to harvest salmon. The commercial and sportsfishermen have responded to our plan by claiming that we provided the Indians with too much opportunity and them with too little. They charge that all we have done is to implement the Boldt decision in a slightly different format. The tribes on the other hand charge that to accept this plan would be to "surrender" what they have won in the Boldt decision and that the plan (when compared with the status quo) does not sufficiently

guarantee their opportunity to harvest salmon. Our plan was designed to meet the four guidelines laid down by the National Task Force. In developing the plan to meet the guidelines, we ultimately settled upon the seven principles listed under Chapter 5, beginning on page 152 and running through page 158. The principles, as generalizations, did not cover every situation and, in fact, in some situations some of the principles would actually come into conflict. For example, in the outer Straits, the Makahs have historically had a winter troll fishery. Such a fishery would fall under Principle D of guaranteeing the opportunity for harvest in treaty terminal or a special fisheries. However, this conflicts with Principle C, which states that the right to participate and harvest the surplus production should be based on an equal opportunity fishery. In situations like this one, we had to weigh the value of the various options available and determine both how important the traditional fishery was to the one side and how detrimental or harmful such a decision would be to other participants or to the resource. In this particular instance we decided to maintain the traditional fishery while applying certain safeguards or limitations that we felt might be necessary either to protect the interests of others or to protect the resource. We worked with each major party during the course of our negotiations to

determine what was necessary or desirable to insure a better future for their people. It is our belief that everyone who remains in the fishery after this plan is adopted will be better off in the future than they are today. We further believe that we satisfied the terms of our four goals and the principles discussed earlier in the area of resource distribution.

STEELHEAD RESOURCE DISTRIBUTION PLAN

The steelhead issue was one of the most emotional and difficult issues which confronted us. The sportsmen and many public officials requested that the Task Force urge the total decommercialization of steelhead with financial compensation to the tribes. The tribes opposed the decommercialization of steelhead and argued instead that we should take a river by river approach discussing the steelhead question with each tribe and attempting to reach a solution on that basis. In their proposals to the Task Force in October and November of 1977, many tribes indicated a willingness to replace the steelhead fishery with another suitable fishery, but only on the condition that there was no abridgement to their treaty right in terms of a congressional decommercialization bill. We ultimately adopted that approach as our own. Under our plan, the

Nisqually and the Puyallup tribes would continue to fish for steelhead. Three tribes, the Quinault, Quileute, and Hoh would continue to fish commercially for steelhead until such time as certain specified salmon returns were available for them to harvest. In the case of three other tribes, the Muckleshoots, the Upper Skagit, and the Lower Elwha, we estimated that returns from the resource distribution plan and enhancement would return earlier than to the aforementioned tribes, but not as quickly as to many others. Therefore, we recommended an interim financial compensation program, in addition to the long-term enhancement and resource distribution benefits of the plan. Through this process, we attempted to weigh the present and future economic dependence and the mixed stock fisheries problems of the tribes in each river system. Due to the limited number of steelhead and the fact that steelhead are the only major fresh water sport fish in the State of Washington we attempted to replace the steelhead income to a particular tribe with income from a species of salmon and thereby increase the opportunity for sportsmen while not depriving the tribes of income opportunities. While this compromise is difficult for either side to accept, in the long run this will provide the most equitable means of resolving this conflict.

FLEET ADJUSTMENTS, BUY BACK, AND GEAR-UP

These programs are described in Chapters 7 and 8 of our report. These programs were designed to substantially reduce the total number of fishermen licensed to commercially fish within the waters of the State of Washington and off the Washington coast. Second, the program is designed to remove the tremendous excess potential which presently exists in each fleet and which would wipe out the future benefits of the proposed enhancement program to the present fishermen. Third, the proposal provides substantial economic relief for those non-Indian fishermen who wish to retire from the fishery through the buyback program. Fourth, the program provides for an upgrading and modernization of the tribal fleet.

This combination of programs must be reviewed in the light of the need to reduce the overall fishing on the presently existing stocks and as a major tool which we used in order to accomplish resource distribution plan described earlier.

CONCLUSION

There are no perfect or easy answers to this controversy which has existed for well over a century. We do not believe that the solutions that we have proposed are the only solutions possible. Previously, we had indicated that

we would support any resolution of the remaining issues that the participants could agree upon. Unfortunately, they have not been able to agree upon any other alternative schemes, nor have we seen anything which has changed our minds that this proposal is a fair and equitable settlement for each of the participants in this fishery and controversy.

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Exhibit No. 3

[Vol. I of this exhibit has been retained in Commission files. For a description of vol. I see page 160.]

TRIBAL REPORT
TO THE
PRESIDENTIAL TASK FORCE ON
TREATY FISHING RIGHTS IN THE NORTHWEST

Volume II

Presented by
The Northwest Indian Fisheries Commission

November 14, 1977

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VOLUME II - TRIBAL REPORT

Volume I of this report contained a history of fishing and the fishing rights struggle in the Pacific Northwest which provides background information needed to understand the current situation and the problems and questions which now affect the fishery. This second volume contains a discussion of several issues and problems which are centrally important to Indian tribes and which must be resolved and a statement of principles which must be included in any resolution of current problems. Subsequent volumes will contain reports of individual tribes and treaty areas which discuss particular situations, needs, and solutions.

I. Discussion of Issues

A. Some Important Misconceptions

Publicity which has been generated by the State of Washington and non-treaty fishermen and spread by the media has created a number of mistaken ideas among the public. It is very important that solutions to current problems be based on accurate information and understandings.

One very important misconception is that U. S. v. Washington created the decline in the salmon fishery. In fact, the fishing industry in the State of Washington was already in serious difficulty before United States v. Washington. As Volume I described, the size of most of the salmon runs had been decreasing. Destruction and impairment of the fish habitat and water quality in the area and management policies of the Washington Department of Fisheries which seemed to change depending on competing economic needs within the fishing industry but paid too little attention to the need for protection of the resource contributed to this decline. (See discussion below.) Yet despite the decline, the State of Washington continued to increase the

number of commercial fishing licenses. This resulted in increasing competition among more fishermen and among different gear types for a dwindling number of fish, a very inefficient and uneconomical situation. These factors, when combined with the State's mismanagement of the resource (a factor which non-Indian fishermen also complain of) meant that the fishing industry was having serious difficulty and would have reached a crisis stage wholly apart from United States v. Washington. The trial of that case simply focused attention on the problem. The decision provided a convenient scapegoat - Indians - on whom to place the blame for the existing State and industry problems. Indians have been and are victims of the destruction of the resource just as non-Indians are. In fact, they are more severely affected because of the importance of the resource to their lives and the special interest they have in it because of their treaty rights.

Another misperception is that the introduction of tribal governments as co-managers has created an unworkable situation. Rather than causing problems, tribal management has been the catalyst for significant improvement in management of the salmon resource. After decades of being excluded from management, the Indian tribes have finally been able to have some input and control, bringing with it the knowledge of their fishermen to aid in protection, enhancement, and rehabilitation of the resource. In addition, they have hired biologists and technical people to lend their knowledge to the process. Tribal fisheries are often centered in terminal areas. This fact has allowed tribes 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, tribal involvement has provided a mechanism for reviewing action by state agencies and holding them

accountable for their deeds and misdeeds which were largely hidden from public scrutiny before the decision. This exposure has made State practices more visible to all fishermen.

Any management problems created after the decision in U. S. v. Washington are more directly traceable to the illegal actions of certain non-Indian fishermen, the recalcitrance of the Washington departments of Game and Fisheries, and by actions of the Washington courts, and not to tribal governmental involvement. The seeming proliferation of other governmental agencies which have a hand in fisheries management has occurred wholly apart from the effects of United States v. Washington. Almost all of the federal and state agencies which have input into fisheries or related matters were involved prior to the courts' rulings on Indian treaty rights. With greater care now required in management, those agencies have simply become more visible. Other agencies which have become involved only since the decision have been required to do so not because of any technical or management considerations but because of the illegal actions of non-treaty fishermen. Absent the need for the law enforcement functions of these other federal agencies, fisheries management by the tribes and the State could proceed quite smoothly. In fact, several cooperative management programs were developed which would have coordinated the responsibilities and authorities of state and tribal governments but were rendered inoperative by state court rulings.

As noted above, the involvement of Indian tribes in fisheries management has improved the quality of management. It has permitted greater attention to each river and fishing area, which results in better protection for each individual stock and also more sensible overall management. Also, the tribes have established cooperative management committees and programs to

harmonize fisheries management in the various areas of Puget Sound. Tribes within each treaty area set cooperative fishing regulations. Plans have been developed to coordinate harvest and management by the State of Washington in many areas under its jurisdiction, tribal involvement has significantly improved fisheries management in Western Washington.

It is somewhat ironic that the positive advances being made by tribes in fishery management are being affected by State ineptness.

As noted above, the tribes have developed cooperative management plans within particular areas and between areas of Puget Sound. The effectiveness of these plans depends in large part on knowing where non-Indian fishermen will fish. The State's inability to control its fishermen plays havoc with the tribal plans, and has an especially severe impact on South Puget Sound tribes.

Fisheries management should be based not on what is simplest or what has historically been used, but rather on what is best for the resource. Management would be in much better hands if controlled by the Indian tribes. They have fished the waters of Western Washington for centuries, and preserved the fish runs in abundance until the arrival of white people. Their attitude toward the fish and fish habitat is an important reason for their ability to better manage the resource based on many years and generations of experience. To that they have added the input of technical people. They act for the good of the resource, not for political reasons as the State does.

Volume I gives examples of some of the enhancement and rehabilitation programs which the tribes operate. As tribal economic resources expand, these activities have been increased. Tribal governments 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; conducting tagging studies and other research and study tools; conducting detailed stream surveys documenting the conditions and needs of the rivers and streams; stream cleanup and rehabilitation; data collection and education of Indian children to the importance and methods of protecting the resource.

B. State of Washington - Management Record

The quality and positive contribution of tribal management is even more starkly highlighted when compared to the disappointing record of state management. The State of Washington has a poor record of managing the resource. The State has caused and/or allowed such deterioration in the environment that many salmon runs are significantly smaller than they were before the State managed the fisheries. Industrialization and the pollution that it dumps into rivers and bays, covering too much of the land with asphalt and buildings, improper logging practices and other destructive uses of land, dredging and channelization of rivers and a seemingly endless list of other such actions are a stark reminder of the State's inability to respect and protect the fish habitat. (See report of Kenneth A. Henry, Preliminary Report of Task Force Regional Team.)

The management practices of the Washington Department of Fisheries have been so insensitive to the protection of the resource as have been general State policies. A complete description of the State's mismanagement would go far beyond the scope of this report. However, several general categories will serve to give an overview of the problem.

(1) State Political Pressure

An underlying cause of many of the State's management problems is that its Department of Fisheries is controlled by political pressures. It is

directed by political appointees and responds to a variety of competing groups, depending on which is most effective at lobbying for its particular interest. Among fisheries management agencies in western states, the Washington Department of Fisheries has a reputation for basing its management on political considerations and only inadequately taking into account scientific consideration. The State's campaign to limit treaty fishing is just one example of such political interference.

(2) Harvest Management

Various aspects of the State's harvest management program have proven extremely destructive to the resource and the treaty right. The State allows high rates of harvest in those areas where several stocks are intermixed. This, coupled with overly broad definitions of region of origin, results in the weaker natural stocks being over harvested. Secondly, such high mixed State harvest rates result invariably in non-treaty fishermen exceeding their share with a corresponding premature closure of treaty fishing. The creation of large management and terminal areas results from an inability of the State to manage individual rivers. Current tagging studies done by the State are not helpful in harvest management.

The willful destruction of natural stocks is exacerbated by the State-sanctioned sports fishery—which is largely unregulated. In 1977 the State allowed a sports fishery for chinook in the Strait of Juan de Fuca even though there were no harvestable chinook remaining. The State of Washington in its technical report reviewing the 1975 salmon fishery admitted that it was incapable of managing the sport fishery.

(3) Hatchery Practices

The State's hatchery program has no overall plan to coordinate its various facets. A large hatchery run is often planted in an area with a weak native 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 run to name but a few examples. Furthermore, transfers of hatchery plants are often designed to reduce the opportunity available to Indian fishermen.

(4) State Enforcement

A major problem is the State's enforcement system and its failure to adequately enforce the law. One aspect of this failure relates to fish buyers. Non-Indians are protected by buyers who falsify or simply withhold reports in order to conceal illegal fishing. State action against, or even investigation of, the buyers who are licensed by the State has been almost non-existent.

The major problems with the State enforcement relates to on-the-water arrest of illegal fishermen. Simply stated, the State fails utterly to stop illegal fishing. For the 1977 coho run alone, the State admits to the illegal harvest of 29,000 salmon, 4000 coming from Hood Canal stocks. Thus far for the 1977 chum fishery, which is still on-going, illegal fishermen have taken 15,000 chum from Hood Canal alone. The inevitable consequence of such lawlessness and failure of law enforce-

ment is either an elimination of the treaty opportunity or destruction of the run, or as often is the case, both.

The lawlessness of non-treaty fishermen reached such a high level in 1977 that the District Court was forced to severely limit the State's ability to regulate. Although the ensuing federal regulation was an improvement, the failure to assign sufficient federal personnel to enforcement severely inhibited the effectiveness of the effort.

State enforcement people continued to complain that they were too understaffed to be effective. However, even when tribal police officers pinpointed violations, the State made no response. While the non-treaty violators never found their way to state court, treaty fishermen were subjected to continued discriminatory enforcement in state courts.

C. Treaty Share

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 primarily by non-treaty fishermen) are not included in the allocation because they are caught by foreign fishermen or by Americans who do not sell them in Washington. Of course, non-treaty Washington fishermen suffer to some extent when Puget Sound origin fish are harvested by foreign fishermen. However, they also benefit. The United States and Canada agree by treaty on regulation of those fish. 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 tribal fishermen. In return, U. S. fishermen are permitted more fish from runs originating in the Fraser River in Canada, 85% of which are taken by non-

treaty fishermen. Thus, the United States is trading away chinook and coho which are two of the most important species for Puget Sound tribal fishermen in return for Fraser River fish which are harvested predominately by non-treaty fishermen.

Treaty fishermen do not take 50% even of those fish which are counted in the allocation. There are two primary reasons for that. First, tribal fishermen bear the brunt of in-season run size 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 at first planned. Because the non-Indians have taken their share first, it is treaty fishermen 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 fishermen 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 fishermen in southern Puget Sound.

Secondly, illegal fishing continues to take fish from tribal fishermen.

D. Efforts to Reduce Treaty Rights are Unfounded

In the face of State mismanagement, and the fact that tribes do not receive 50% of Puget Sound fish (due to illegal fishing), it is somewhat surprising that there are proposals to restrict the treaty harvest even further. One of the justifications used to support a restriction (in addition to the general opposition to treaty fishing rights) is the argument that there is a group of non-treaty fishermen suffering financial hardship because they are unable to fish in Puget Sound. It might well be true that because of the State's inability to regulate its ocean fishermen most of the non-Indian 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 fishermen and Sound fishermen with ocean fishermen receiving the lion's share. While the unfairness of the State's action is clear, it cannot be remedied by the tribes. How the State allocates its share is within its 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-Indian 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.

The majority of non-treaty fishermen 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 on the Fraser River runs. Finally, the smallest and least mobile boats are often owned by people who have other fulltime employment and fish only part-time. Therefore, legal requirements aside, it is unjustified to reduce the treaty opportunity in favor of non-treaty fishermen in Puget Sound, since they are able to fish in other areas, something treaty fishermen cannot do because of limitations placed upon them by United States v. Washington.

Others attempt to limit the treaty right by arguing that the rights were somehow created by the decision in United States v. Washington in 1974. Of course, this is untrue. Those rights are based on centuries of living in this area and harvesting and protecting the fish. The treaties with the United States simply recognized those rights and obligated the United States to protect them. United States v. Washington was simply a recognition of what the

treaties meant, that the treaties are still valid and binding, and that the United States Supreme Court has affirmed those rights throughout this century. Nevertheless, non-treaty fishermen and their supporters have tried to give the impression that the district court created a new category of rights. They ignore the historical and legal basis of those rights as well as the fact that the Ninth Circuit Court of Appeals affirmed the district court's rulings. Unfortunately, the distortion and misrepresentation of the facts has been supported by several Washington state legislators and members of the Washington congressional delegation.

An important aspect of the dispute over fishing has, unfortunately, turned out to be enforcement of fishing regulations, especially those closing various fisheries. The State's enforcement practices have been openly discriminatory. The federal court's decision in United States v. Washington left the State of Washington with responsibility for enforcement of State regulations in a manner that would prevent interference by non-treaty fishermen with treaty fishing rights; however, the State has been unwilling or unable to enforce those regulations against non-treaty fishermen. The refusal of white fishermen to obey court orders has intensified in 1977.

E. Washington State's Proposal

The management proposal suggested by the State of Washington is inconsistent with the Task Force goals of insuring sensible management of the resource and protecting treaty fishing rights. Further, it would only perpetuate the legal disputes which currently plague fisheries management. The State wants to be given primary responsibility for fisheries management. Volume I of the Tribes' report demonstrates that for 90 years the State exercised that kind of authority and continuously violated treaty rights.

Rulings by the Washington Supreme Court preventing the State from respecting treaty rights make it clear that that pattern will continue if the State is given control of the fishery. Furthermore, legal considerations aside, the State's record of mismanagement of the resource is another important reason for rejecting its proposal.

The State wants to have responsibility for setting fishing regulations. The State's own courts have told the Department of Fisheries that it cannot set regulations in a way which will protect treaty rights. The State proposal is therefore inconsistent with the Task Force's goals. The State proposes to circumvent that problem by increasing the size of the Indian fleet until the Indian capability equals that of the non-Indian fishing fleet. Even if that were possible, it would not be acceptable. It would force all treaty fishermen to abandon their traditional river fisheries and move into the marine areas and compete with the highly capitalized but less efficient non-Indian fleet. Giving up their traditional fishing areas is something tribes will never do. Therefore, regulations must be established which will restrict fishing effort in the marine areas to allow fish to return to the terminal areas.

The State proposes to allow extra days for Indian fishermen only if it is "constitutionally appropriate." Rulings of the Washington Supreme Court have indicated that any State regulations designed to accomplish that will not be enforced by the state courts. The State, therefore, has no way to carry out its plan. Further, the State proposes to increase the tribal capability, and therefore harvest, only gradually and would not complete the process until 1987. Tribes have waited long enough for their treaty rights to be implemented; they are not about to wait ten more years.

The State's proposal for enforcement of fishing regulations would only compound the confusion and ineffectiveness which exist in the current system, and would continue to violate tribal treaty rights. Both state and federal courts would continue to be involved in the State's plan, and the State would add another level to the adjudicative process by creating an administrative review board. The State offers no explanation of how that would simplify the process, but its proposal that primary enforcement jurisdiction be in state court gives a good indication that simplification would be achieved at the expense of treaty rights.

In short, the management scheme proposed by the State would perpetuate the same mismanagement and confused enforcement which now characterize its practices. The only change is that now it wants the federal government to pay for it. That proposal is inconsistent with the Task Force's goals in that it would not simplify management, it would not improve the quality of management, and it would continue to violate treaty fishing rights.

F. Conclusion

The Task Force, the Congress and the public must study carefully the information provided in the tribal reports in order to understand that opposition to treaty fishing rights is based largely on misinformation and scare tactics. Upholding the treaty right and respecting tribal authority to manage fisheries is in the best interest of the resource as well as required by the laws of the United States and any concept of fairness. The fisheries problems which the Task Force is studying were created by State mismanagement, state court rulings, destruction of the resource by the non-Indian society, and "outlaw" activities of non-treaty fishermen who violate and interfere with lawful

federal court orders. Those court orders have been issued to provide the Indians a remedy from the interference with their rights caused by the State of Washington and certain non-treaty fishermen. That interference has gone on for decades and continues today, despite repeated rulings by the United States Supreme Court that such interference is illegal and violates federally-protected rights. In short, non-treaty fishermen are attempting, by means of their illegal actions, to create a picture of chaos and conflict which they then claim is a reason for modifying the very laws which they violate. Their tactic has become increasingly clear: create as much discord, lawlessness and chaos as possible (so that the Task Force and Congress will feel a need to remedy the situation), attribute the problem to Indian treaty fishing rights, and then apply political pressure to induce Congress to resolve the matter at the expense of the group with the least political impact, the Indian Tribes. For the sake of the nation's integrity, as well as the continued preservation of Indian sovereignty, these attacks must be repelled.

2. Management Principles

The State's preliminary proposal is not only unworkable and impossible under state law, but would seek to perpetuate the existing faulty practices at the total expense of tribal self-government and their equal participation in the management process. Tribes recognize that the present system must be in some ways altered. There is certainly a need for better coordination in collecting data, proposing regulations, planning and carrying out enhancement and protection programs, and a variety of other matters. That coordination, however, must not be accomplished at the expense of tribal self-government. The State's refusal to join with the tribes in the management of the resource is no justification for a drastic new proposal which would eliminate or restrict the tribes' management rights, as the State plan would.

The tribes are acutely aware of the problems that exist in fisheries management (and whose causes have been discussed in Volumes I and II). Some tribal reports will contain specific management proposals. Any solution to management of the fisheries must be consistent with the following principles:

A. Protection and Implementation of Treaty Rights

The overriding consideration for all tribes is that their treaty fishing rights not be abrogated or further restricted, and that procedures be agreed to which will insure full exercise of those rights. Any system that is implemented or created to resolve conflicts in Northwest fisheries must observe that underlying principle.

B. Control of Prior Interceptions

There must be restrictions on ocean harvests of fish bound for tribal fishing areas. Regulations must insure that the treaty right is not diminished or avoided through the interception of fish prior to their return to Puget Sound. They must insure not only the return of the treaty share as defined in U. S. v. Washington, but also enough fish to meet the needs of non-treaty fishermen, so as to eliminate present discord. There must be tribal representation on the various commissions, councils, and negotiating teams through which the United States deals with other countries that engage in commercial fishing.

C. Protection of Treaty Fishermen from State Prosecution

Treaty fishermen continue to be tried in state courts for alleged fishing violations in disproportionately large numbers. They suffer a much higher risk of conviction for similar offenses than do non-treaty fishermen. Any management system must define mechanisms to protect treaty fishermen from the present system of state court prosecution and discrimination.

D. Mechanism to Control Non-Compliance

The major roadblock to full implementation of the treaty right, and to adequate protection of the resource, continues to be the state's inability or refusal to prevent interference with the treaty right. Procedures must be enforced that will require the state to regulate non-treaty citizens in a manner that will not violate treaty rights. This must include provision for emergency enforcement.

E. Establishment of a Federal Crime

Just as the treaty fishermen find state courts always anxious to convict them, non-treaty fishermen can be reasonably sure their illegal activity will be sanctioned by state court dismissals and prosecutorial inaction. Thus, to protect the treaty right, and insure proper enforcement, it must be made a federal crime to violate the treaty right.

F. Establishment of Run Size Estimates

A prime consideration in the management of the salmon resource is the establishment of the initial run size estimate, and subsequent changes thereto. Historically the state has acted independently in the creation of these estimates. Errors made by the State have had a devastating effect on treaty fishing. Tribal governments must be assured an equal voice in the creation and modification of these important estimates.

G. Tribal Control over Hatchery Transfers and Stock Manipulation

With the increased reliance on hatchery fish by the state, the state has acquired the ability to manipulate and to severely affect natural stocks. Hatchery planting, release and general development does affect the treaty right. Tribal governments must have control over the stock plantings and

manipulations that occur on fish that would be harvested by each tribe's fishermen.

H. Protection of Weak Natural Stocks

Any management system must recognize not only the value of the natural stocks, but that they must be protected and, where necessary, rebuilt.

NORTHWEST INDIAN FISHERIES COMMISSION 10/12/77

ANTICIPATED EFFORT IN THE U.S. v. WASHINGTON CASE AREA BY
TREATY INDIANS FOR 1977 ^{1/}

<u>Tribe</u>	<u>Troll</u>	<u>Marine Gillnet</u>	<u>Purse Seine</u>	<u>Marine Skiffs</u>	<u>River Fishermen</u>	<u>Beach Seines</u>	<u>Beach Set Nets</u>
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	25	0	6	0
Upper Skagit	0	5	0	0	70	0	0
TOTAL	51	244	10	313	548	6	35

^{1/} These data are pre-season estimates based on a survey of all Tribes conducted by the NWIFC 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 was not available for the Duwamish, Snohomish, Snoqualmie, and Samish Tribes.

TRIBAL REPORT
TO THE
PRESIDENTIAL TASK FORCE ON
TREATY FISHING RIGHTS IN THE NORTHWEST

Volume III

Presented by
The Quinault Treaty Area
(The Quinault, Quileute and Hoh Indian Tribes)

November 14, 1977

Volume III

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PROPOSED UNIFIED MANAGEMENT SYSTEM
FOR WASHINGTON SALMON FISHING

1. Preamble:

The United States of America, in order to secure clear Title to those lands located in what is now Washington State negotiated treaties with the occupant Indian tribes. Through those treaties the tribal governments retained, as a matter of right, the right to fish off their reserves in common with other citizens of the territory. The United States of America, as part of its consideration for the enactment of the treaties, pledged their continuing support and protection to the Indian Tribes in their off-reservation fishing. The United States' duty to protect the off-reservation fishing rights of Indian tribes within what is now Washington State remains today. In addition, the United States is compelled to act to protect the vital fisheries resources of the Pacific Northwest in view of the fact that the State of Washington has stripped itself of such authority.

The scope and content of the treaty reserved right to fish was clarified and affirmed by the United States District Court for the Western District of Washington in 1974, and the opinion of that Court was affirmed on appeal. That interpretation of the Federal treaties with Indian Tribes forms the basis of this act. The rightful and legal management prerogatives of the tribal gov-

ernments must be accomodated in any unified management plan. The treaties and the long-standing policy of the United States recognizes the regulatory authority of tribes over their members and fishery experience since the 1974 treaty decision has shown that Indian tribes have the desire and ability to fully exercise their management powers.

It is the purpose of this act to insure and preserve, as far as possible, the management function of both the State of Washington and the tribal governments. It is apparent that, without some federal supervisory authority, the treaty rights will not be realized. The treaty rights of Indian people, the management authority of tribes and the State, and the conservation of the resource can best be achieved through the creation of a federal commission designed to oversee the management of the fisheries affected by Indian treaty rights while reserving primary responsibility for management to the tribes and State.

The unified management plan established herein is not intended to abrogate or modify any part of the treaty reserved rights, or the rights of the State to manage its share of the fishery, but rather is designed to insure proper implementation of those rights.

II. Northwest Fisheries Commission Established:

There is hereby created the Northwest Fisheries Commission (N.F.C.). NFC shall have the power and authority and shall perform such activities as are hereinafter set out.

A. Jurisdiction:

Within the limits of this Act, and consistent with the guidelines and criteria set out, NFC shall have jurisdiction outside any established Indian Reservation to supervise the management of fisheries of common concern to the State of Washington and treaty Indian Tribes entering Puget Sound, the Straits of Juan de Fuca, and coastal streams north of Willapa Bay and any other waters found to be within the usual and accustomed fishing places of Treaty Indian Tribes by the United States District Court for the Western District of Washington.

B. Membership:

NFC shall be composed of six Commissioners selected by the President in the following manner: Three commissioners shall be selected from a list of nominees presented by the State of Washington; three commissioners shall be selected from a list of nominees presented by the Northwest Indian Fish Commission, Indian commissioners shall be selected to represent South Puget Sound, North Puget Sound (including Straits of Juan de Fuca), and coastal tribes. All commissioners shall serve a term of four years. All commissioners shall serve at the pleasure of the President.

C. Removal:

The President shall remove any commissioner who fails to act in a manner consistent with the principles and guidelines established by this Act, or who fails to uphold the Federal Indian Treaties and other federal laws.

If a vacancy occurs on the commission, the President shall fill the vacancy as provided in paragraph II-B above.

D. Advisory Panels:

NFC may establish one or more advisory panels which shall serve to assist the Commission in the development of the information necessary to fully implement this Act, and to advise on the appropriateness of proposed Commission action. The members of the advisory panels may be drawn from whatever field necessary to insure proper support of the Commission, and shall represent both appropriate treaty Indian tribes and the State of Washington. Advisory panels shall be advisory only and shall not have the power to mandate Commission action.

E. Commission Staff:

NFC shall employ qualified fisheries scientists and other support personnel necessary to carry out the Commission's purpose under this Act. The staff shall be advisory to the Commission and shall engage in such studies, data gathering, analysis, and summarization and coordination of state and tribal biological personnel or other functions as deemed necessary by the Commission to supervise management under the criteria and guidelines established under this Act.

III. Commission Functions:

A. NFC:

1. Supervise the fish management activities of the State of Washington and the Treaty Indian Tribes when conducted outside any Reservation to insure compliance with criteria and guidelines established under this Act.

2. Insure State and Tribal management entities are coordinated in order to provide for continued production of the effected fisheries resources.
3. Adopt off-Reservation harvest regulations of the State of Washington and Treaty Indian Tribes found to be in compliance with criteria and guidelines established under this Act. Regulations so adopted would be regulations of NFC and the originating agency.
4. To provide emergency and reserved regulatory and enforcement power to carry out the principles set out.
5. Supervise, coordinate, and implement data acquisition programs so that NFC has the information available to fulfill the provisions and intent of this Act.
6. Act in all ways necessary to provide increasing numbers of harvestable chinook and coho salmon to terminal area fisheries; including the reduction of high seas take of chinook and coho salmon destined for waters covered by Commission jurisdiction.

B. Treaty Indian Tribes:

1. Plan and implement fisheries resource management programs in compliance with criteria and guidelines established under this Act.
2. Promulgate, adopt and enforce harvest regulations in compliance with criteria and guidelines established under this Act.
3. Submit all such plans and regulations to NFC for review, evaluation, and approval.

C. State of Washington:

1. Plan and implement fisheries resource management programs in compliance with criteria and guidelines established under this Act.
2. Promulgate, adopt, and enforce harvest regulations in compliance with criteria and guidelines established under this Act.

3. Submit all such plans and regulations to NFC for review, evaluation, and approval.

D. Duties of Parties:

All management agencies shall have the responsibility of providing regulations to the Commission at such times and in such a manner to give the Commission adequate time to evaluate and comment on those regulations. No fishing shall be allowed by, or authorized by, any management agency unless such regulations have been approved by the Commission or are emergency regulations adopted consistent with this Act. Failure to submit regulations to the Commission shall result in an automatic closure of the fishery for those fishermen regulated by the particular management agency until regulations are properly proposed to the Commission and approved.

IV. To insure compliance with the purposes of this Act, the Commission shall engage in the activities set out herein.

A. Base Information:

The Commission shall have the responsibility to determine the base information that will be utilized by each management agency in the development of implementing fishery regulations. To this end, the Commission shall determine, in compliance with federal law: (a) treaty and non-treaty share; (b) interceptions; (c) run size estimates; (d) harvestable number and corresponding harvest rates; and (e) escapement goals.

B. Review of Base Information:

The Commission shall publish the criteria set out in paragraph IV-A at least sixty (60) days prior to the entrance of each run into a harvest area: Unless modified by the Commission or modified on Appeal, these criteria shall form the basis of all proposed harvest regulation, submitted by any management agency.

Within ten (10) days of the publishing of the criteria set out in paragraph IV-A, any management agency may apply to the Commission for a hearing at which time the management agency may seek modification of any of the established criteria. Appeal from a decision of the Commission shall only be allowed as provided for in paragraph VII herein.

C. Approval of Management Agency Regulations:

1. Submission of Regulations:

Each management agency shall submit harvest management regulations for each stock to the Commission for review. Regulations proposed by the various management agencies shall be based upon the criteria and data determined under paragraph VIII. The proposed regulations from the State of Washington shall cover the fishing by non-treaty fishermen and shall not attempt to regulate treaty fishermen. The proposed regulations from the Indian tribes shall cover the fishing of treaty fishermen.

2. Approval of Regulations:

NFC shall approve those regulations submitted by any management agency that meet the standards set out in paragraphs III and

VIII and, in addition, are consistent with the adjudicated rights of treaty Indian tribes. Regulations approved by the Commission may then be adopted by the respective management agency.

3. Review of NFC Action:

Any action taken by the Commission to either approve or disapprove regulations proposed by any management agency shall govern unless subsequently modified by the Commission or reversed on appeal.

Any management agency feeling aggrieved by an action of the Commission to either approve or disapprove a proposed regulation may appeal the Commission decision under paragraph herein, within ten (10) days. Any management agency may seek reconsideration before the Commission at any time. Any decision made by the Commission on application for reconsideration may be appealed within ten (10) days under paragraph herein.

4. Emergency Regulations by the Management Agencies:

A management agency may close any fishery authorized by it when necessary for the perpetuation of a particular run. A management agency may propose to the Commission an emergency opening of a particular fishery. The Commission shall have forty-eight (48) hours to disapprove of such proposed emergency opening, or if it within the forty-eight hours approves of the proposed emergency opening, the management agency may implement the opening.

5. Effect of Approved NFC Regulations:

All regulations approved by the Commission and adopted by any management agency, conservation and all emergency closures adopted by a management agency, shall become regulations of the Commission enforceable by the United States under the provisions of this Act. All emergency closures adopted by the Commission shall supersede and displace any inconsistent regulation then in effect by any management agency.

6. Emergency Regulations by Commission:

The Commission is herein invested with the power to issue emergency closures in the following circumstances:

- (a) to insure the perpetuation of the resource. Whenever it appears to the Commission that the continued implementation of the regulations adopted by any management agency will adversely impact the salmon resource the Commission may enact an emergency order closing fishing to all persons regulated by a particular management agency until the management agency has modified such regulations.
- (b) To insure allocations between Treaty and non-treaty fishermen. Whenever it appears to the Commission that the continued implementation of regulations adopted by any management agency will not insure proper allocation between treaty and non-treaty fishermen, the Commission may enact an emergency order closing fishing to all persons regulated by a particular management agency until the management agency has modified such regulations.

D. Data Collection:

In order to provide the best information for harvest management, accurate data is an essential prerequisite. It is recognized that,

at the present time, all of the data necessary to fully establish the criteria set out in paragraph IV-A is not available in a useable form. It is possible to have a fully developed data base within ten years. To this end, the Commission through its staff and the advisory panels shall undertake a comprehensive effort to develop all necessary data to fully implement this Act within ten years. The Commission through its staff shall seek to develop the following information:

1. Interceptions:
 - a. Stock identification
 - b. Natural mortality rates
 - c. Hooking mortality
 - d. Canadian interceptions
2. Methods of run size estimation:
 - a. Long range
 - b. Within season
3. Terminal area management methods
4. Determination of harvestable numbers
5. Escapement goals:
 - a. To establish sole criteria by which escapement goals are defined for each terminal management area
 - b. To establish sole criteria by which in-season changes in hatchery escapement goals may be considered
 - c. Investigate methods of quantifying escapement goals
 - d. Investigate methods of estimating spawning escapement

Until the data base is fully developed, the Commission shall rely upon the best data available.

V. Effective NFC regulations:

A. Violation:

It shall be unlawful for any person to engage in any fishing for anadromous species within the waters described in paragraph II-A unless such person is fishing pursuant to regulations which have been approved by the Commission as provided herein.

B. Penalty:

Any person convicted of violating any provision of this Act shall be guilty of a crime, and shall be punished by a fine of not more than \$1,000 or imprisonment of not longer than one (1) year, or both. In addition to these penalties, any person found violating any provision of this Act may be assessed an additional fine in an amount equaling the value of all fish in the possession of the fisherman at the time of arrest, and the value of the fishing gear utilized to violate this Act.

Any person found violating any provision of this Act three times within a three-year period shall, in addition to the penalties set out above, forfeit all fishing gear, boats, or other apparatus used at the time of arrest, to the United States.

VI. United States Enforcement:

A. U. S. Responsibility:

It shall be the responsibility of the United States of America to enforce all emergency closures adopted by the Commission. The

United States shall, at the request of the Commission, enforce any regulation approved by the Commission pursuant to paragraph III-A. Each management agency shall retain the primary responsibility for enforcing approved regulations. If any management agency proves unable or unwilling to effectively enforce any approved regulation, the Commission may request U. S. enforcement.

B. U. S. Effort:

It shall be the responsibility of the United States Coast Guard, National Marine Fisheries Service, and the National Oceanographic and Atmospheric Administration to insure that all enforcement operations mandated by this statute are carried out. When necessary, any party may apply to the Commission for enforcement assistance, and the Commission if it deems it appropriate may apply to the President for the declaration of an emergency allowing for a calling up of additional military personnel.

VII. Appeal:

A. Any management agency may appeal any determination of baselind information, approval or disapproval of any regulation, adopted emergency regulation, enforcement action, or failure to respond to a request for enforcement action made by the Commission.

B. All appeals allowed under this paragraph shall be heard before an administrative law judge.

C. Review of the determination of the administrative law judge shall be before the United States District Court for Western Washington.

VIII. Management Criteria and Guidelines:

Criteria and guidelines shall reflect the unique characteristics of regional stocks and fisheries. The following are criteria and guidelines for the Washington coastal regions. Criteria and guidelines for other areas, binding on the commission, including agreements among tribal governments, tribal and State governments and tribal, State and/or Federal agencies will be added as they are formed.

A. COMPACT FOR MANAGEMENT OF SALMON AND STEELHEAD RESOURCES
WITHIN WATERS OF THE QUINULT TREATY AREA

1. Preamble

1.1 The purpose of this compact is to establish definite guidelines and plans for management of salmon and steelhead resources originating in or passing through the Quinault Treaty Area. The parties hereto, the Quinault Indian Nation, Hoh Indian Tribe, Quileute Indian Tribe and State of Washington agree to a basic philosophy of cooperation to implement management programs with a goal of providing optimum perpetual production from salmon and steelhead resources included herein.

2. Definitions

- 2.1 Quinault Treaty Area - For the purpose of this compact the area shall include lands ceded under the Treaty of Olympia (1855-56), the reservations of the tribes included herein, all usual and accustomed fishing places of the tribes included herein and offshore waters westerly thereof.
- 2.2 Party(s) - Any one or all of the signatory governments to this compact, those being:
- Quinault Indian Nation
Hoh Indian Tribe
Quileute Indian Tribe
State of Washington
- 2.3 Joint-In common and/or Cooperative. Joint activities referred to in this compact should be construed in a broad, non-restrictive sense. The parties are not restricted from independent action in addition to the joint actions referred to herein.
- 2.4 Salmon - The following species of the family salmonidae:
- a. Chinook salmon - Oncorhynchus tsawytscha
 - b. Coho salmon - O. kisutch
 - c. Chum salmon - O. gorbuscha
 - d. Sockeye salmon - O. nerka
 - e. Pink salmon - O. keta
- 2.5 Steelhead - Anadromous components of populations of rainbow trout (Salmo gairdneri), a member of the family salmonidae commonly referred to as steelhead trout or steelhead salmon.
- 2.6 Stock - A spawning population of a particular species usually restricted to a particular river section, tributary or lake.

- 2.7 Run - A stock or group of stocks identifiable as a fisheries management unit usually a particular species originating from and returning to a particular river system with some specified timing.
- 2.8 Inshore Fisheries - Regulated harvest of salmon and/or steelhead occurring within the confines of Grays Harbor or any river system included herein.
- 2.9 Ocean Fisheries - Regulated harvest of salmon and/or steelhead in the Pacific Ocean or any waters outside the westerly boundaries of Grays Harbor and the rivers included herein.

3. General Policy Agreements

- 3.1 The parties agree to the following statements as premises for subsequent planning and policy:
- 3.1.1 The number of salmon available to Washington coastal inshore fisheries has generally declined in recent years. Reasons for the decline include environmental degradation in excess of habitat enhancement, foreign interception and increased harvests by U. S. and foreign ocean troll and sport fisheries.
 - 3.1.2 Certain characteristics of the ocean fisheries cause unnecessary and excessive loss or wastage of resource due to fishing related mortality (i.e. salmon killed but not landed) and loss of potential benefit because the salmon are captured while still having significant potential growth. The offshore fisheries also present complex and highly technical management problems since they harvest at potentially high rates on mixed stocks.
 - 3.1.3 Ocean fisheries should be managed and regulated to reduce fishery related mortalities and resource waste to the greatest extent consistent with maintaining each fishery as a viable component of the overall salmon fisheries industry.
 - 3.1.4 The harvestable numbers of salmon available to Washington coastal inshore fisheries can be increased to levels specified in Sections 4 and 5 herein. These harvest goals can be reached through any one or a combination of the following:
 - a. artificial propagation
 - b. habitat enhancement
 - c. improved conservation regulations for Canadian ocean fisheries

- d. decreased Canadian interception of salmon stocks included herein
- e. improved management of and conservation regulations for U. S. ocean fisheries.

- 3.1.5 Tribal ocean fisheries have a special status recognized by the Federal Government (Federal Courts and Dept. of Commerce) and controlled expansion of these fisheries over the next several years may be necessary to harvest their rightful shares. In formulating regulations for ocean fisheries, parties to this compact shall recognize the special status of Tribal ocean fisheries.
- 3.1.6 Steelhead stocks included herein have declined during the past several years. Reasons for this decline are not apparent but include environmental degradation in some cases.
- 3.1.7 Management agencies of the parties possess the technical ability and basic knowledge to regulate fisheries and generally manage the resource to provide all fisheries with equitable shares and to increase the total yields of salmon and steelhead available to all fisheries.
- 3.1.8 Optimum production of the affected salmon and steelhead stocks, under present conditions of the fisheries and resource, means maximum production utilizing both artificial and natural sources. Artificial and natural production must be balanced to provide maximum overall production consistent with full utilization of natural rearing areas.
- 3.1.9 Harvest and enhancement policies and programs must be tempered with the understanding that certain natural stocks of salmon and steelhead native to particular river systems (as specified in Sections 4 and 5) should be preserved and protected sufficiently

to insure their perpetual existence and production.

3.1.10 The total production, both artificial and natural, of salmon and steelhead stocks affected shall be shared pursuant to this compact.

3.1.11 Management policies or criteria considered best and/or necessary for a particular fishery or stock considered in this compact are not necessarily general for all fisheries or stocks considered herein.

3.1.12 An annual meeting of the parties hereto shall be held during the month of April at a mutually agreeable location. The Compact Committee shall present a report concerning agreements made pursuant to this compact.

3.2 This compact is based upon the unique circumstances relating to the Washington coastal fisheries and salmon or steelhead stocks referred to herein and does not necessarily have application to other fisheries or stocks.

3.3 Parties to this compact shall work jointly to advocate and recommend to the Pacific Fishery Management Council (PFMC) and other appropriate management entities wise and prudent regulation of ocean fisheries to produce the following:

3.3.1 Minimal loss of salmon resource due to the waste caused by fishery related mortality, e.g. shaker mortality

3.3.2 Minimal loss of salmon resource due to commercial harvest of immature salmon with significant remaining potential growth.

3.3.3 Sufficient escapement past the ocean fisheries to provide the necessary numbers of mature salmon to inshore fisheries for management and sharing goals pursuant to this compact.

3.3.4 Limited entry, or more appropriately limited fishing rates, for the aggregate of all ocean salmon fisheries.

- 3.4 Parties to this compact shall jointly recommend to and advise appropriate governmental and regulatory entities appropriate mechanisms to minimize foreign interception of salmon originating from waters included herein.
- 3.5 Parties to this compact shall propose regulations governing ocean fisheries under their jurisdiction to attain the goals listed in paragraphs 3.3.1 through 3.3.4.
- 3.6 Parties to this compact shall advocate and recommend limited entry (or limited rate of fishing) concepts governing fisheries under their respective jurisdictions.
- 3.6.1 The purpose of the limited entry (or rate of fishing) programs shall be to:
- A. Provide an adequate basis for long-term resource management planning.
 - B. Simplify regulation and management.
 - C. Reduce the probability of overfishing.
 - D. Prevent over-capitalization in commercial fisheries.
- 3.7 The parties shall participate in a single, coordinated catch recording system utilizing reliable and accepted statistical methods. The system must include both catch and effort data and will not include data or information unnecessary for fisheries management.
- 3.7.1 Commercial Fisheries -- The system shall include catch and effort reporting on a real time basis ("soft data") during each fishing season as well as a complete compilation and verification ("hard data") at the end of each fishing season.
- 3.7.2 Sport Fisheries - Whenever practical the system should include catch estimates during each fishing season. The system shall include estimates of total catch and effort at the end of each fishing season. The sport fisheries data shall be in a form

that will allow compilation and summary by time periods as for instance weekly catch and effort.

- 3.8 Parties to this compact shall work jointly to protect and enhance the habitat and halt the degradation of spawning and rearing environments of salmon and steelhead stocks included herein.
- 3.9 The State shall bring hydraulic permit requests, requests for comment on environmental impact statements and other such environment related matters pertaining to off-reservation waters included herein, to the attention of the Compact Committee for their review and comment prior to approval of the affected activities. The tribes must respond within ten (10) days of receipt of notification.
- 3.10 Parties to this compact shall establish formal procedures for coordinating off-reservation fisheries enforcement activities.
- 3.11 The Tribes shall promulgate and enforce regulations governing sport fishing by tribal members in their respective usual and accustomed fishing areas.
- 3.12 The State shall not attempt to license non-treaty fishermen who are fishing in reservation waters.
- 3.12.1 Non-treaty fishermen fishing in reservation waters must have a tribal permit.
- 3.13 This compact shall in no way affect or be considered by any person, party or court to affect the continuing jurisdiction of the United States District Court for the Western District of Washington over all issues and matters within the jurisdiction of that Court pursuant to the ruling in United States v. Washington, No. 9213.
- 3.13.1 This compact shall in no way affect or be construed to affect or supersede in any manner, mechanisms, including the fisheries advisory board established by the United States District Court

for the Western District of Washington in United States v. Washington, No. 9213, for the resolution of fisheries disputes.

3.13.2 This compact shall in no way be considered to change the decision of the United States District Court for the Western District of Washington in United States v. Washington, No. 9213, with regard to sharing principles, usual and accustomed places, treaty rights, the self-regulating status of Indian tribes, the off-reservation jurisdiction of Indian tribal governments, the obligations of the State of Washington or any other matter.

3.14 This compact shall not be construed to provide the State of Washington with any jurisdiction over the on-reservation fisheries of any of the tribal parties except as provided for by the United States District Court for the Western District of Washington in United States v. Washington, No. 9213.

3.15 The duration of this compact shall be for five (5) years from the date of final ratification.

3.16 One (1) year prior to expiration of this compact parties hereto shall submit in writing to the Compact Committee (Section 6) their respective positions as to extension, extension with modification or termination of this compact.

3.16.1 Upon receipt of said notifications the Compact Committee shall begin negotiations and/or other actions toward final determination as to continuation of a coastal compact.

3.16.2 Extension of this compact must be by unanimous vote of the parties hereto.

3.17 This compact may be amended by approval of all parties (Section 6).

4. Harvest Management and Sharing Principles

4.1 General Principles

- 4.1.1 Harvest management shall be based on in-season estimators of run strength and fisheries performance where sufficient, reliable data are available.
 - 4.1.1.1 Where reliable data are available for in-season harvest management, pre-season run forecasts shall be used as management aids for preliminary planning and shall not be used to establish catch quotas or allocations.
- 4.1.2 Harvest shall be managed to provide necessary spawning escapement for artificial and/or natural production as established under specific guidelines in this section (4).
 - 4.1.2.1 The escapement goals listed in Appendix I are estimates of the number of spawning adults necessary to perpetuate production of the respective stocks. Since total escapement counts or estimates are generally difficult or impossible to make for the rivers included herein, these goals shall serve only as guides or aids for harvest management.
 - 4.1.2.2 Escapement shall be measured by a set of indexes (Appendix II) that correlate relative abundance of observed spawners to the specified escapement goals.
 - 4.1.2.3 The escapement indexes shall be used to improve and adjust in-season harvest management criteria on an annual, season to season basis.
- 4.1.3 The sharing formulas and allocations contained herein refer to adult salmon or steelhead available for harvest (opportunity).

The actual catch will depend upon the respective powers of the fisheries as well as other factors unrelated to the fishery, e.g., weather, marketing, industry disputes.

4.1.4 If treaty or non-treaty fisheries are not provided the opportunity to harvest their share pursuant to this compact, such deficiencies shall be made up during the next succeeding run of the same stock. In some cases it may be necessary to apportion the adjustment over a longer period but total adjustment shall be made within a five (5) year period. This principle shall apply except as otherwise specified in the remainder of this section (4). Adjustments shall not be made for steelhead fisheries.

4.1.5 River sport fisheries shall be regulated through area and season closures to prevent fishing at places and times of major spawning activity.

4.1.5.1 Whenever treaty fisheries are not allowed because harvestable numbers of a particular run are not available, river sport fisheries shall not occur on the same run or in a place or manner that would harvest that run incidentally.

4.2 Grays Harbor Fisheries

4.2.1 Harvestable numbers of adult fall run chinook salmon entering Grays Harbor shall be shared based on the following allocation criteria:

4.2.1.1 Harvestable numbers available to the early ("dip-in") drift gill net fishery from early July through mid-August shall be shared equally between treaty and non-treaty fisheries.

4.2.1.2 Ocean fisheries shall be managed to provide a minimum annual average harvestable number of 12,000 fall run

chinook salmon (subsequent to mid-August) to Grays Harbor gill net fisheries. These adult chinook salmon shall be shared 70% to treaty fisheries, 30% to non-treaty fisheries, except that treaty catch must be a minimum of 3,500.

4.2.2 Harvestable numbers of adult fall run coho salmon entering Grays Harbor shall be shared based on the following allocation criteria:

4.2.2.1 Ocean fisheries shall be managed to provide a minimum annual harvestable number of 50,000 fall run coho salmon to Grays Harbor gill net fisheries. These adult coho salmon shall be shared 70% to treaty fisheries, 30% to non-treaty fisheries, except that treaty catch must be a minimum of 15,000.

4.2.3 Harvestable numbers of chum salmon entering Grays Harbor shall be shared by the allocation of 50% to treaty fisheries and 50% to non-treaty fisheries.

4.2.4 A treaty net fishery for steelhead shall not be opened in Grays Harbor or its tributaries. Steelhead may be captured during the salmon fishing season but this impact shall be minimized by terminating treaty salmon fisheries on or before December 10.

4.3 Quinault River

4.3.1 Harvest management for fall chinook and coho salmon shall emphasize natural production until sufficient returns from hatchery production accrue to the system to allow a shift of emphasis to hatchery production.

- 4.3.2 Harvest management for chum salmon shall emphasize hatchery production.
- 4.3.3 Harvest management for other salmon stocks shall emphasize natural production.
- 4.3.4 Ocean fisheries shall be managed to provide minimum annual average harvestable numbers of 2,400 fall run chinook and 12,000 fall run coho salmon to the Quinault River.
- 4.3.5 Steelhead fisheries shall be managed to provide equitable shares, as specified below, to treaty and non-treaty fisheries and maintain or improve production.
 - 4.3.5.1 All steelhead fisheries on the Quinault River shall be reduced until returns from hatchery releases accrue to the system in sufficient numbers to allow increased fisheries.
 - 4.3.5.2 Steelhead net fisheries shall be reduced from seven (7) to five (5) days per week.
 - 4.3.5.3 Steelhead sport fisheries shall be reduced from seven (7) to five (5) days per week and shall end on or before April 1st of each year to protect spawning fish.
 - 4.3.5.4 When production is increased sufficiently to provide ~~an~~ an average harvest to the net fishery of 4,000 steelhead in the Quinault River the sport fisheries may be increased to seven (7) days per week. Increased production beyond these levels shall be shared equally among the steelhead net fisheries and sport fisheries.

4.3.5.4.1 The Compact Committee shall evaluate steelhead harvest data annually to determine when the sport fishery may be increased to seven (7) days per week.

4.3.5.4.2 When annual steelhead production has reached prescribed levels the Quinault Nation shall manage their steelhead net fishery to provide opportunity for sharing as specified in paragraph 4.3.5.4.

4.4 Queets River

4.4.1 Harvest management for spring chinook and fall coho salmon shall emphasize natural production until sufficient returns from hatchery releases accrue to the system to allow a shift of emphasis to hatchery production.

4.4.2 Harvest management for chum salmon shall emphasize hatchery production.

4.4.3 Harvest management for fall chinook shall emphasize natural production.

4.4.4 Ocean fisheries shall be managed to provide minimum annual average harvestable numbers of 1,000 adult-spring run chinook, 4,000 fall run chinook and 5,500 fall run coho salmon to the Queets River.

4.4.5 Steelhead fisheries shall be managed to provide equitable shares, as specified below, to treaty and non-treaty fisheries and maintain or increase production.

4.4.5.1 All steelhead fisheries in the Queets River shall be reduced until returns from hatchery releases accrue to the system in sufficient numbers to allow increased fisheries.

- 4.4.5.2 Steelhead net fisheries shall be reduced from seven (7) to five (5) days per week.
- 4.4.5.3 Steelhead sport fisheries shall be reduced from seven (7) to five (5) days per week and shall end on or before April 1st of each year to protect spawning fish.
- 4.4.5.4 When the production is increased sufficiently to provide an average harvest to the net fishery of 8,000 steelhead in the Queets River the sport fisheries may be increased to seven (7) days per week. Increased production beyond these levels shall be shared equally among the steelhead net fisheries and sport fisheries.
 - 4.4.5.4.1 The Compact Committee shall evaluate steelhead harvest data annually to determine when the sport fishery may be increased to seven (7) days per week.
 - 4.4.5.4.2 When annual steelhead production has reached prescribed levels the Quinault Nation shall manage their steelhead net fishery to provide opportunity for sharing as specified in paragraph 4.4.5.4.

4.5 Hoh River

- 4.5.1 Harvest management for spring and summer chinook stocks shall emphasize natural production.
- 4.5.2 Harvest management for early-run coho and chum salmon shall emphasize hatchery production.

- 4.5.3 Harvest management for fall chinook and fall coho salmon shall emphasize natural production until sufficient returns from hatchery production accrue to the system to allow a shift of emphasis to hatchery production.
- 4.5.4 Ocean fisheries shall be managed to provide minimum annual harvestable numbers of 1,200 spring and summer chinook, 1,200 fall chinook and 5,000 fall coho to the Hoh River.
- 4.5.5 The Hoh River shall be closed to salmon fisheries upstream from Winfield Creek from April 15 to September 15 of each year. A jacks only fishery shall be allowed downstream from Winfield Creek during this same period.
- 4.5.6 Steelhead fisheries in the Hoh River shall be managed to provide equitable shares, as specified below, to treaty and non-treaty fisheries and maintain or improve production.
- 4.5.6.1 All steelhead fisheries in the Hoh River shall be reduced until returns from hatchery releases of native stocks accrue to the system in sufficient numbers to allow increased fisheries.
- 4.5.6.2 The steelhead net fisheries shall be reduced from seven (7) days to five (5) days per week.
- 4.5.6.3 The steelhead sport fisheries shall be reduced from seven (7) to five (5) days per week and shall be terminated by April 1st of each year.
- 4.5.6.4 When production has increased sufficiently to provide an annual average harvest of 4,000 steelhead to the net fishery in the Hoh River, the sport fishery may be increased to seven (7) days per week. Increased production beyond these levels shall be shared equally among the steelhead net and sport fisheries.

- 4.5.6.4.1 The Compact Committee shall evaluate steelhead harvest data annually to determine when the sport fishery may be increased to seven (7) days per week.
- 4.5.6.4.2 When annual steelhead production has reached prescribed levels the Hoh Tribe shall manage their steelhead net fishery to provide opportunity for sharing as specified in paragraph 4.5.6.4.

4.6 Quileute River

- 4.6.1 Henceforth harvest strategies shall be incorporated in order that "stock" rehabilitation within the Quileute River System can be achieved as rapidly as possible, without incurring unnecessary economic hardships to any of the parties.
 - 4.6.1.1 Harvest strategies shall be exercised in such a manner that incremental rehabilitation of stocks indigenous to the Quileute System can be attained.
 - 4.6.1.2 The Quileute System shall be managed in order to progress toward and to sustain an average natural production of indigenous stocks (anadromous) which insures, either in part or as a whole, an average annual harvest yield to the Quileute Tribal fishery, as stated in 5.6 section.
- 4.6.2 Harvest management for early-run and fall coho and summer and fall chinook shall be consistent with the goal specified in paragraph 5.9.4.

- 4.6.3 Harvest management for spring chinook shall emphasize hatchery production (see paragraph 5.9.5).
- 4.6.4 Harvest management for winter racial stocks of steelhead shall be consistent with the goal specified in paragraph 5.9.4.
- 4.6.5 Summer steelhead shall not be specifically targeted for commercial net harvest, but will be harvested incidentally to summer chinook and coho.

4.7 Ocean Fisheries

- 4.7.1 Tribal regulations governing ocean fisheries in waters under PFMC jurisdiction shall be presented annually to the PFMC.
- 4.7.2 Quileute Ocean Fisheries
 - 4.7.2.1 The Quileute ocean troll fisheries will continue to operate under annual Quileute fishing regulations.
 - 4.7.2.1.1 The Quileute ocean troll fleet size will not be limited until sufficient benefit to the inshore fisheries is realized.
- 4.7.3 Hoh Ocean Fisheries
 - 4.7.3.1 The Hoh Tribe may expand their fishing effort into ocean waters especially if increased catches do not develop in their river fisheries.
- 4.7.4 Quinault Ocean Fisheries
 - 4.7.4.1 The Quinault troll fleet size shall be limited to ten (10) trollers, except that if catches in their river and Grays Harbor fisheries do not increase, the Quinault Nation may have to expand their ocean fisheries beyond the ten (10) troller limit.
- 4.7.5 The State of Washington agrees to forego the establishment of any non-treaty ocean commercial net fishery within three (3)

miles of the external boundaries of the Quinault Treaty Area.

4.7.6 Whenever a river gill net fishery is not allowed on a particular run for conservation reasons, ocean fisheries shall not be allowed within a three (3) mile radius of said river mouth for the duration of the effected salmon run.

5. Enhancement and Propagation

- 5.1 The parties shall work jointly to preserve and enhance salmon and steelhead production in all waters included herein using combinations of habitat and stock rehabilitation, hatchery production or whatever method is most appropriate for each specific environment and/or stock.
- 5.2 The goal shall be to maximize production in accordance with other sections of this compact.
- 5.3 The parties shall work jointly and assist each other to plan, promote and seek funding for salmon and steelhead stock enhancement programs pursuant to this compact.
- 5.4 Careful and conservative judgement shall be used to program salmon or steelhead releases into any particular river. Evaluation shall be made to weigh the necessity of immediate production against the practical feasibility of capturing and utilizing brood stock indigenous to said river system. Whenever feasible, brood shall be taken from the salmon or steelhead stock to be enhanced.
- 5.5 All newly established releases of salmon or steelhead within waters included herein shall have a sufficient proportion tagged or otherwise marked for analysis and evaluation of rates of return, total contribution to fisheries and distribution of catch among fisheries. Certain stocks from existing production shall also be tagged or otherwise marked as the necessary equipment and man-power are available.

5.6 The parties, to this compact shall work jointly and with other agencies to develop artificial propagation programs designed to provide the following minimum harvestable numbers of salmon and steelhead annually to the following terminal areas for harvest by commercial net fisheries:

A. Grays Harbor

30,000 fall chinook

100,000 coho

200,00 chum

B. Quinault River

7,000 fall chinook

30,000 coho

25,000 chum

5,000 steelhead (Quinault stock)

C. Queets River

10,000 fall chinook (Queets stock)

15,000 coho

5,000 chum

3,000 spring chinook

10,000 steelhead (Queets stock)

D. Hoh River

2,500 spring and summer chinook (Hoh stock)

3,700 fall chinook (Hoh stock)

3,000 early-run coho

10,000 fall coho (Hoh stock)

15,000 chum (Quilcene stock)

4,000 steelhead (Hoh stock)

E. Quileute River

- 10,000 spring chinook
- 5,000 summer chinook
- 10,000 fall chinook
- 15,000 summer coho
- 40,000 fall coho
- 12,000 winter steelhead

F. Specific goals for chum, pink and sockeye salmon in the Quileute River system shall be established in the future.

- 5.7 The Quinault Nation may release 100,000 steelhead smolts into the Humpulips River annually. A program to develop a brood stock from the Humpulips River shall begin in the winter of 1977-78. This release level may be altered to be commensurate with the level of incidental catch of steelhead in the Quinault Humpulips salmon fishery.
- 5.8 The Quinault Nation may release steelhead smolts into the Chehalis River System. The need for and level of these releases will depend upon the level of incidental catch of steelhead in the Quinault Chehalis River fishery and the level of releases by the State of Washington.
- 5.9 Quileute River
- 5.9.1 Until such time that annual harvest yields, as stated in section 5.6 are guaranteed to the Quileute Tribal fishery, and rehabilitation of the Quileute System is achieved, transfers of either indigenous fish stocks or their eggs shall not be undertaken unless all affected parties to these transfers agree upon the biological and economical feasibility to said transfers.

- 5.9.2 In years when average natural production cannot be sustained solely by a natural spawning stock of a particular drainage (i.e. Soleduck, Bogachiel, etc.) the deficit shall be alleviated, to an extent possible, by means of off station planting of fry of that deficient stock.
- 5.9.3 Propagation of non-indigenous stocks within facilities of the Quileute System shall be allowed on condition that:
- A. non-indigenous production, for release outside of the Quileute System, does not either impede or conflict with production of stocks which are to be used in rehabilitation efforts as stated in section 4.6.1;
 - B. and non-indigenous stocks have been certified disease free prior to introduction and agreed to by parties involved.
- 5.9.3.1 Introduction and release of non-indigenous stocks shall not occur within the Quileute System unless all parties involved, agree upon the biological compatibility of the non-indigenous stocks with all indigenous stocks.
- 5.9.3.2 The technical committee pursuant to this compact shall review all proposals pertaining to rearing and release of non-indigenous stocks, and provide its recommendations to all parties of this compact.
- 5.9.4 The ultimate goal of the Quileute Tribe is to restore the natural production of indigenous early-run and fall coho, summer and fall chinook and winter steelhead to levels sufficient to manage the harvest for natural production while maintaining an economically viable commercial fishery. This will be reached over several years by making necessary incremental adjustments in harvest management and enhancement programs.

- 5.9.5 Artificial production of spring chinook shall utilize Cowlitz stock or Cowlitz x Umpqua stocks that are presently returning and being recaptured at the Solduck Hatchery.
 - 5.9.5.1 All production from these stocks shall be released on station at the Solduck Hatchery.
 - 5.9.5.2 Dungeness spring chinook stocks shall be deemphasized in order to avoid overlap of summer chinook of Quileute origin and other species.
- 5.9.6 Propagation programs within the Quileute System shall emphasize utilization of indigenous stocks of summer and fall chinook, summer and fall coho, winter steelhead and those other species agreed upon by the parties involved.
 - 5.9.6.1 Propagation programs shall be used primarily as a tool for stock rehabilitation, except in cases where sustained artificial production is necessary.
- 5.9.7 Propagation programs involving introduced summer steelhead shall be deemphasized and phased out over a five year period which begins at the signing of this compact.
- 5.9.8 Management strategies shall emphasize natural production of winter racial stocks of Quileute steelhead.
 - 5.9.8.1 Non-indigenous winter steelhead stocks shall be deemphasized in order to avoid overlap with winter steelhead stock of Quileute origin and other species.
 - 5.9.8.2 By the termination of this compact term no introduction of non-indigenous winter steelhead stocks shall take place in the Quileute System.

- 5.9.8.3 All existing steelhead rearing facilities within the Quileute River System shall utilize eggs collected from adults returning to the particular facility, and said eggs shall be incubated and reared within the system. All releases shall be on-station from that particular facility.
- 5.9.8.4 Production from each facility shall not deviate $\pm 25\%$ from the mean five year production level.
- 5.9.8.5 Production from each facility shall be marked at an agreed upon percentage.

6. Compact Committee and Procedures

6.1 Establishment. A Compact Committee is hereby established to coordinate activities, act as an avenue for communication among the parties hereto and carry out other functions enumerated in this compact.

6.2 Subcommittees. The Compact Committee shall be composed of a Policy Subcommittee and a Technical Subcommittee.

6.2.1 The Policy Subcommittee shall be composed of the chairman from each of the respective tribes and the Governor of the State of Washington or their designees. This subcommittee shall have responsibility for issues and activities of a binding nature, e.g. amendments of this compact.

6.2.2 The Technical Subcommittee shall be composed of qualified fisheries scientists from each of the parties hereto. The fisheries scientists must be familiar with management problems of the coastal fisheries. The subcommittee shall have responsibility for issues and activities within the realm of technical resource management, e.g. run forecasts, escapement requirements, catch and effort data analysis.

6.3 Functioning of the Committee and Subcommittees

6.3.1 Each member of the Committee shall have one vote.

6.3.2 Members of the Committee may act or vote to bind the parties to agreements or activities pursuant to this compact only if specifically authorized to do so by their respective governments.

6.3.3 All decisions of the Committee or Subcommittees must be unanimous by vote of all parties to the compact. No party shall be bound by any action of the Committee or Subcommittee unless present and voting in the affirmative for such action.

6.4 Responsibilities of the Compact Committee

- 6.4.1 The Committee shall make recommendations to fisheries management agencies to assure agreements contained herein are realized.
- 6.4.2 The Committee shall jointly prepare recommendations to the National Park Service concerning fishing regulations within the boundaries of the Olympic National Park.
- 6.4.3 The Committee shall gather, organize, analyze and report on data pertinent to this compact including but not limited to run size forecasts, escapement goals, catch distributions including ocean fisheries, artificial and natural production, habitat protection and restoration, in-season catch by fisheries included herein.
- 6.4.4 The Committee shall prepare reports including but not limited to the following:
- (a) Annual status of coastal salmon and steelhead stocks.
 - (b) Annual report of the coastal compact including but not limited to:
 - 1. Annual salmon and steelhead catch report.
 - 2. Annual report of coastal artificial propagation and habitat enhancement activities.
- 6.4.5 The Committee shall review fisheries regulations, plans and proposals for resource management studies, propagation and enhancement programs, etc., pertaining to salmon and steelhead stocks included herein and provide technical assistance and advice for said regulations, plans and proposals.
- 6.4.6 The Committee shall mediate issues and disputes among the parties hereto. The purpose is to have initial mediation by the body most knowledgeable concerning coastal issues. If not resolved, the

dispute could then proceed to the Federal District Court's Fisheries Advisory Board System.

- 6.4.7 The Committee shall establish within 60 days of ratification of this compact guidelines and by-laws for their operations including meeting schedules, procedures for calling meetings, time limits for processing disputes, reporting schedules, etc.
- 6.4.8 The Compact Committee shall receive, review and act upon proposals to amend this compact. Policies and procedures for amendment of this compact shall be as follows:
- 6.4.8.1 All proposed amendments shall be submitted to the Compact Committee Policy Subcommittee for review and discussion.
- 6.4.8.2 If so authorized, the Policy Subcommittee shall vote on said amendment. Approval shall be by unanimous vote with all parties present.
- 6.4.8.3 If Policy Subcommittee members are not authorized to vote on specific issues contained within the proposed amendment, said amendment shall be presented to each of the parties hereto by their respective Subcommittee representative.
- 6.4.8.4 The parties shall then make their vote on the proposed amendment known in writing to the Compact Committee through their respective representatives at the next Policy Subcommittee meeting. Approval must be by unanimous vote of all parties hereto.
- 6.4.8.5 If the amendment is not approved, the party or parties supporting the amendment may arbitrate the amendment as a dispute pursuant to this compact (paragraphs 6.4.6 and 3.13.1).

6.4.8.6 Criteria for amendment of this compact shall include but not be limited to the following:

6.4.8.6.1 Sections of this compact prove impracticable.

6.4.8.6.2 New data or results of studies indicate technical portions of this compact are incorrect or should be improved.

6.4.8.6.3 A fishery included in this compact expands or a new fishery is initiated so as to harvest in additional areas or on additional stocks.

6.4.8.6.3.1 Fisheries may be expanded to include other places within the usual and accustomed areas of each tribe. These places include but shall not be limited to the following:

A. Quinault Nation

1. Copalis River
2. Joe Creek
3. Tributaries to Grays Harbor

B. Hoh Tribe

1. Cedar Creek
2. Kalaloch Creek
3. Goodman Creek

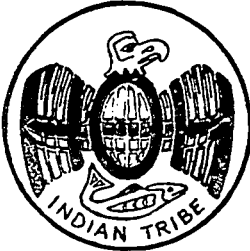
C. Quileute Tribe

1. Cedar Creek
2. Jackson Creek
3. Goodman Creek
4. Scott Creek
5. Mosquito Creek

- 6.4.8.6.4 The usual and accustomed fishing areas are changed by Federal Court order or agreement between the State and individual Tribal parties.
- 6.4.8.6.5 Specific portions of this compact dealing with harvest management, sharing, adjustments and enhancement are based on the premise that ocean fisheries under United States control shall be regulated by PFMC (or any other Federal agency), the State of Washington and Treaty Tribes to provide the numbers of adult salmon to inshore fisheries necessary to attain goals pursuant to this compact. If subsequent action by regulatory agencies or new data shows this premise to be incorrect, the compact shall be amended accordingly.
- 6.4.8.6.6 Specific portions of this compact dealing with sharing principles are based on the premise that reasonable commitment shall be made and action taken by the State of Washington and the Federal Government to implement the artificial propagation and habitat enhancement programs necessary to increase the salmon and steelhead resources sufficient to attain the harvest goals specified in paragraph 5.6. If subsequent action or data show this premise to be incorrect the compact shall be amended to adjust the sharing principles accordingly.

7. Resource Management Studies

- 7.1 The parties shall pursue and coordinate joint studies of the salmon and steelhead resources included herein.
- 7.2 The parties shall cooperate to plan, fund and/or seek funding for special studies directed toward realizing goals or improving management methods utilized pursuant to this compact.
- 7.3 There shall be a system of free exchange of data, information and results compiled from such studies.
- 7.4 The parties shall coordinate tagging studies referred to in Section 5.5.



HOH INDIAN TRIBE

STAR ROUTE 1, BOX 963 FORKS, WASHINGTON
TELEPHONE 206-374-8582

November 4, 1977

Mason Morrisett
Ziontz, Pirtle, Morrisett, Ernstoff, & Chestnut
208 Pioneer Bldg., 600 1st Avenue
Seattle, Wa. 98104

RECEIVED
NOV 7 1977

ZIONTZ, PIRTLER, MORRISSETT, ERNSTOFF & CHESTNUT

Dear Mason;

Enclosed is the Hoh Tribe's response for Part VI, for Volume II of the unified tribal response to the Task Force as requested in your memorandum of October 25, 1977. Some material on Hoh enhancement and management has already been presented to the Task Force as part of the Quinault's presentation of their intergrated enhancement package and the proposed Coastal Compact, but this should round out our response.

Sincerely,

Esther I Penn by em

Esther I. Penn
Tribal Chairperson

cc: Mr. Heckman

HOH TRIBE REPORT TO TASK FORCE

ENHANCEMENT REQUIREMENTS

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ZOME, STATE, FISHERY, DEPT OF L. RESERVE

INTRODUCTION

The Hoh Tribe wishes to enhance natural production and develop artificial production of salmon and steelhead in its area. This proposal is divisible into two major categories; new program and existing programs.

NEW PROGRAMSINTRODUCTION

Hoh Tribal fishermen depend almost entirely on the chinook, coho, and steelhead runs in the Hoh River for their subsistence and livelihood, although they historically have fished the adjoining coastal streams and waters. The salmon runs are essentially wild fish and have not been supplemented by significant artificial plants to date. Catches have been fairly stable until recently when increased ocean interceptions apparently have caused declining returns to the river. Steelhead catches have been fairly stable through the early 1970's and have generally increased since then. Conversely steelhead sport catches have declined since this period. Since 1959, the native steelhead run has been supplemented by plants of Chambers Creek (Puget Sound) stock, averaging 25,000 fish annually.

The status of the runs indicates that natural production needs to be enhanced to meet the increased harvest pressures and demands by all fisheries. The Hoh supports viable native stocks of chinook, coho, and steelhead which provide the best stocks for artificial propagation. The Tribe is presently evaluating enhancement methods and specific sites for the Hoh River.

The most promising proposal involves developing a satellite terminal rearing facility in conjunction with the Quinault Tribe and U.S. Fish & Wildlife service. The Hoh Tribe facility located on the reservation would consist of four (40' x 150' x 6') concrete rearing ponds, fish trap, egg incubation boxes, pumped water system, and office. The Tribe would capture and spawn broodstock and ship the eggs, green or eyed, to a primary hatchery facility. The primary facility would hatch the eggs, rear the fish until release size, and return them to the satellite hatchery for final rearing and release. The Quinault Tribe is now preparing an integrated hatchery operation in which they will construct a primary hatchery at Lake Quinault and a satellite hatchery on the Queets River. They will also coordinate their activities with the U.S. Fish & Wildlife service hatchery at Cook Creek.

We are planning to tie our facility in with their operation. Such an operation will utilize area facilities most efficiently and will significantly reduce operation and maintenance costs for the Hoh Tribe. The Hoh satellite hatchery, however, will be designed so that it can be also do a full-time hatchery. Construction and operation costs are shown in Table 1.

Enhancement will not depend solely on wholly artificial methods. Preliminary data on rearing densities of coho in various Hoh tributaries indicate that natural rearing areas are under-utilized. We propose to supplement natural rearing populations with eyed egg and fry plants to determine optimum rearing densities and achieve maximum natural production. Optimum production in the Hoh system will be achieved by wisely balancing natural and artificial production.

ENHANCEMENT GOALS

Enhancement goals are based on peak catches of the previous 15-year period (Table 2). The Hoh System has shown itself capable of producing runs of these magnitudes and with proper enhancement and management these goals can be achieved for normal production. The chum production goal is higher than historic peaks because these fish will primarily be harvested as a source of operating revenue for the tribal fisheries programs, enabling the hatchery operations to be self-supporting.

CURRENT HATCHERY OPERATION PROPOSAL

The Tribe has undertaken several enhancement activities on a small-scale basis, which will be expanded under the proposal discussed previously. A Netarts-style gravel incubation box has been used on an experimental basis to raise coho, chinook, and chum salmon on-reservation. In 1976, 5,000 Chum fry and 5,000 Coho and Chinook fingerling were released into Chalaat Creek. In 1977, failure of the water intake system resulted in the total loss of the intended plant of 23,000 Chinook and 14,000 Coho. This fall coho and chum will be raised in the Netarts hatchery and then transferred to a natural rearing ponds just off reservation.

The Tribe is also involved in cooperative enhancement efforts with the Quinault Tribe, U.S. Fish & Wildlife Service, and the state fishery agencies. Since 1975, the Tribe has planted 150-300,000 coho smolts provided by the Quinault National Hatchery. The fish are held and fed several weeks in a screened area of Braden Creek located several miles upstream from the reservation, so they may imprint and home back to the creek. This fall we anticipate capturing broodstock from returning spawners to provide eggs for the National Hatchery for future Braden Creek plants.

This spring the Tribe invited local sportsmen to join them to capture steelhead for their native steelhead enhancement program. These fish were held and spawned at the Soleduck salmon hatchery and the eggs were incubated there until the eyed stage.

TABLE 1. Construction and operation costs for Hoh River hatchery.
r r h

<u>Facility</u>	<u>Cost</u>
Hatchery capital cost	\$400,000.00
4 150' x 40' x 6' concrete rearing ponds	
egg incubation boxes	
fish trap, fish way	
water system	
buildings	
Annual propagation operation and maintenance	\$50,000.00
Harvest Management	\$50,000.00
Research	\$60,000.00
Administration	\$40,000.00

TABLE 2. Projected production of salmon and steelhead for Hoh River hatchery.

<u>Species</u>	<u>Number released</u>	<u>Release size</u>	<u>Expected return</u>
Fall chinook	200,000	20/16	2,000
Spring chinook	150,000	20/16	,750
Coho	250,000	15/16	3,500
Chum	3,000,000	250/16	3,500
Steelhead	70,000	6/16	30,000

The eggs were transported to the Quinault National Hatchery for final incubation and initial rearing. The fish were then transported to the Quinault Tribe's pen rearing station at Lake Quinault for rearing until next spring. At release size the fish will be transported back to the Hoh for final rearing and release. This program will be continued until a steelhead broodstock run can be developed for the Hoh hatchery.

In September, spring chinook spawners were captured for broodstock in a cooperative program between the Tribe and the State Dept. of Fisheries. The eggs will be incubated at the Soleduck hatchery and the fish reared until release size. They will then be returned to Hoh for final rearing and release.

Fall chinook will be captured by the tribal fishermen this fall and the eggs will be shipped green to the Quinault tribal hatchery for incubation. The fish will be reared at Lake Quinault and returned to the Hoh at release size for final rearing at a site just off reservation.

These cooperative projects have worked well so far and we plan to continue them at least until our proposed hatchery can become operational.

OFF-RESERVATION SALMON HARVEST ALLOCATION

POSITION STATEMENT

The Hoh Tribe will settle for no less than 50% of the harvestable numbers of chinook, coho, and chum of Hoh River origin. Furthermore, the Tribe wants a 50% share for each of the two major chinook runs; the spring-summer run and the fall run. Any debit in the Tribe's share of one run shall be made up by an equitable share of another run or species catch.

ON-RESERVATION FISHERIES POLICY

On-reservation catches of salmon and steelhead can be included in the overall Treaty share, provided that the separate and distinct existence of on-reservation fisheries continues to be recognized and further provided that the Tribally proposed fishery enhancement goals are realized.

SUBSISTENCE AND CERMONIAL FISHERIES POLICY

Subsistence and ceremonial catch of salmon and steelhead can be included in the overall Treaty share provided that the existence of subsistence and ceremonial fisheries continues to be recognized and provided that the Tribally propose enhancement goals are realized.

STEELHEAD HARVEST MANAGEMENT POLICYINTRODUCTION

The Hoh River winter steelhead fishery is the single most important fishery for the Hoh Tribe as it provides the longest season (November, March) and is the most valuable. In the 1976-1977 season, the Tribe's commercial net fishery landed 37,955 lbs. of fish worth \$44,174 to tribe fishermen. About 85% of the catch was taken on-reservation. About 100 fish were taken for subsistence and ceremonial purposes.

METHODS

Pre-season run predictions furnished by WDG are acceptable as a beginning reference point. Management will depend on in-season run strength estimates based on historic and in-season catch data. Several catch-effort models are being developed by Treaty Area fishery biologist which can be applied to determine acceptable harvest rates in-season. Minimum harvest goal for Hoh steelhead is 3,500 fish, based on average catches between 1970 and 1975.

The Tribe plans to supplement natural and Chambers Creek hatchery stock with plants of native Hoh stock from its hatchery operations. Plants will be made on and off reservation. Fish will be tagged with wire micro-tags to determine contribution of the adult returns to the river fisheries, and if possible, the contribution to the natural spawning population.

GEAR AND EFFORT PROPOSALS

The Hoh Tribe is almost totally dependent on its Hoh River gillnet fishery although a few fishermen occasionally troll with sport gear or hand gurdies in summer months. The river net fishery uses both drift nets (150 foot maximum) and set nets (set no more than 1/3 the river width). Hand held pole nets (short gillnet hung on poles) are used occasionally during freshets in the fall. Miscellaneous gear permitted includes dip nets, spear, gaff, and hook and line. Hook and line gear is used to take fish for personal use.

The Tribe has an approved enrollment of about 100 adults. Use of set and drift gillnets are limited to heads of households who maintain residence on reservation, approximately 20 adults. Average effort varies with season, shown in the following table;

<u>Fishery</u>	<u>Period</u>	<u>Fishermen</u>		<u>Total</u>
		<u>Full time</u>	<u>Part time</u>	
Spring-summer Chinook	April-August	4	2	6
Fall Salmon	September-November	6	8	14
Winter Steelhead	November-March	6	7	13

TRIBAL MANAGEMENT

The Hoh Tribe is governed by four-person Business Committee, which enacts all rules and regulations for the Tribe. Fisheries matters are reviewed by a five person Fishing Committee and which recommends appropriate actions to the Business Committee. In practice, the Business Committee lets the Fishing Committee handle the fishing activities and regulations.

Tribal operations are directed by an executive director, who also serves as program director for the tribal fisheries program. Two fisheries biologists are presently employed by the Tribe to gather catch and escapement data, develop enhancement plans and programs, and gather research data on natural production of the Hoh watershed. The biologists monitor each fishery and recommend appropriate regulations for the tribal fisheries. Catch, effort, escapement, and other data is freely exchanged between the Tribe, other tribal, state, and federal biologists. The Tribe is planning to link up to a computer catch monitoring system with other tribes and the State Dept. of Fisheries.

One of the greatest needs for the Fisheries is to develop better understanding of the exploitation rates by various fisheries and escapement of the salmon and steelhead runs. Tagging studies need to be implemented for native fish. A model of the river fishery in relation to escapement needs to be developed for better in-season management of all runs. Better understanding of natural salmon and steelhead production is needed.

The tribe levies a fish tax of three cents per pound on all fish sold to fish buyers on-reservation. The tax goes into the Tribes general operating revenues. Tribal members have indicated a willingness to increase the tax to help fund fisheries management and enhancement activities. Another potential funding source is the sale of surplus hatchery fish.

The Tribe has retained counsel for legal assistance, but it has no funds for future needs. The Tribe generally favors having a Treaty Area lawyer since the three Quinault Treaty Tribes face much the same legal needs.

TRIBAL ENFORCEMENT

One enforcement officer is employed by the Tribe for fisheries enforcement. The officer is furnished with uniforms, protective equipment, and a river patrol boat. The Tribe also has a second-hand patrol car with a CB radio and a VHF radio linked with the Quinault Tribal radio network. The patrol car has proven inadequate for enforcement, so a new vehicle is needed.

The Tribe does not have its own Tribal court but requests a judge from the Makah or Quinault Tribes when the need arises.

OTHER COMMENTS

The Hoh Tribe is desirous of full co-management of its fisheries with the State and has joined with the other Quinault Treaty Area tribes to develop a workable management framework with a coastal compact, drawn up on similar lines to one recently developed for the Columbia River fisheries. The Tribe feels that the principles and goals set forth in the draft Coastal Compact are reasonable and hopes that the Task Force will give utmost

consideration to them in its recommendations for coastal fisheries management and enhancement.

Perhaps the most critical matter facing the Hoh and other tribes is the heavy ocean fishery interceptions of stocks bound for the tribal terminal area fisheries. The last two seasons have demonstrated without much doubt that the Tribe and other coastal tribes are not getting their fair share of Chinook and Coho salmon because of ocean interception. The State claims to be powerless because of its political situation. The Tribe strongly urges the Task Force to recommend high level action to reduce the pressure of the ocean fisheries on its stock.

**TRIBAL REPORT
TO THE
PRESIDENTIAL TASK FORCE ON
TREATY FISHING RIGHTS IN THE NORTHWEST**

Volume IV

**Presented by
The Makah Indian Nation of the Makah Treaty Area**

November 14, 1977



MAKAH TRIBAL COUNCIL

P.O. BOX 115 · NEAH BAY, WA. 98357 · 206-645-2205



PREAMBLE

The Makah Tribal Council on behalf of the Makah Tribe of the Makah Treaty Area presents this report to the Presidential Task Force concerning fisheries matters in the Makah Treaty Area. It is intended to supplement Volumes I and II of the Tribal Report presented by the Northwest Indian Fisheries Commission and to present the particular views and requirements of the Makah Tribe.

It is imperative to remember that the matters discussed in this report are discussed with the understanding that those areas of concern mentioned in Volume I of the Tribal Report will be substantively dealt with to the satisfaction of the Makah Tribe. Further the views expressed herein are subject to modification as discussions with the Task Force continue.

REPORT OF THE MAKAH TRIBE ON
SALMON MANAGEMENT PLANS AND NEEDS

INTRODUCTION

The Makah Tribe views its salmon management problems under two major headings; first and foremost, a need for immediate changes in present salmon regulation that will restore to the Makahs their opportunity to harvest an equitable share of the salmon in their traditional marine fishing waters, and secondly, a longer-term need for a cooperative program of rehabilitation and enhancement of salmon runs in Makah on- and off-reservation rivers which will benefit both treaty and non-treaty fishermen. The following brief description of the Makah situation will amplify the above points:

- A. The population of the Makah Tribe is approximately 1200, of which approximately 172 are part or fulltime fishermen. Many Makahs would like to exercise the treaty right to fish, but lack efficient gear or opportunity.
- B. The Makah Reservation, measuring about six miles on a side is located in the extreme northwest tip of Washington State (Fig. 1). On- and off-reservation rivers extend from the Ozette to the Elwha in the Straits of Juan de Fuca.
- C. Rivers are relatively small and are presently at a very low level of productivity. Former productivity was much higher, but actual numbers of salmon by species during pristine conditions are not available.
- D. Most of the Makah salmon catch at present is derived from a fleet

- of combination troll and gillnet vessels fishing in traditional tribal marine waters extending about 48° N. on the Pacific side to about 123° 30' E. in the Strait of Juan de Fuca (Fig. 1). In addition, marine coastal set nets are fished at several sites within this range.
- E. The total salmon catch by Makahs in 1976 for example, was 333,000 pounds of which 276,000 pounds (83%) were caught in marine fisheries and the remainder (17%) in river fisheries.
- F. U. S. v. Washington did not increase the Makah river salmon catch as it did for tribes with fishing rights in large rivers. This is because Makah rivers are small and at a low productivity level, and management regulations which would allow more fish to enter the streams are not practical. Management in marine waters off Makah rivers is based mainly upon the more abundant stocks which are in transit to a wide range of distant rivers.
- G. U. S. v. Washington also indirectly curtailed Makah marine catches, because the IPSFC, in reviewing the previously permitted Makah special gillnet fishery, ruled against its continuance. Thus the Makahs are presently being allowed less fishing time than formerly during the period of IPSFC control.
- H. A national fish hatchery which the Makahs have been promoting since the early 1950's for the benefit of all fishermen (commercial, sport, etc.) was started in 1975. Funds for completion are anticipated to be included in the budget for FY 1979. It is located on the Sooes River, and together with appropriate rehabilitation and enhancement of streams, offers the potential for greatly increasing runs in Makah rivers and in other rivers of the Olympic

Peninsula as will be described in the section on enhancement needs.

Completion of this hatchery is essential.

MANAGEMENT PRINCIPLES

In view of the above factors the Makah Tribe places highest priority upon implementing (starting in 1978) the following management principles in catch reporting areas 3, 4, 4B, 5, and 6C with a view toward providing opportunity for the Makah Tribe to harvest an equitable share of the salmon passing through these traditional Makah fishing waters:

- A. Recognition in the regulations to be formulated that because of the geographic location of the Makah Reservation and because of the unique character of the salmon runs in their traditional marine waters, the Makah Tribe must fish on mixed stocks, and at some seasons, on immature fish not unlike the ocean troll fishery except in scope.
- B. Recognition also that salmon are generally more dispersed in Makah fishing areas than in terminal fishing areas, and that consequently more fishing time is required to provide opportunity for a reasonable catch, particularly in view of the more prevalent rough sea conditions, fog, steamer traffic, and an abundance of kelp, driftwood, and scrap fish.
- C. Provision in the annual regulations by IPSFC (or its successor) of five days fishing per week for Makah fishermen in areas 4B, 5, and 6C. In the event that weather makes fishing impractical, additional days must be provided.
- D. During non-IPSFC control periods, a seven-day week open period in areas 4B, 5, and 6C in order that Makahs have opportunity to catch

an equipable share of all salmon species.

- E. Development of a formula for a maximum size of the Makah marine fishing effort and/or catch. The Makahs recognize the ultimate need for such a formula in view of their mixed stock fishery in "outer" salmon waters and in view of the need for equitable shares of the catch by both treaty and non-treaty fishermen. We are presently studying our data base to determine the optimum fleet size or catch quota.
- F. The Makah Tribe plans to conduct research and test fisheries within all of their recognized treaty waters as necessary to gather facts needed to improve salmon fisheries and management. Such activity would be expected to be subject to review by the state or federal fishery agencies.

I. ENHANCEMENT

As mentioned with respect to Fig. 1, the recognized Makah on- and off-reservation rivers include those from the Ozette River and Lake system on the Pacific to the Elwha River on the Strait of Juan de Fuca. Although production in these streams is presently at low level, their potential is substantial. The needs will be discussed according to: (1) Those that are being or can be met by tribal personnel, and (2) those that presently do, or will require outside aid in the form of personnel and/or funding.

Tribal Fishery Enhancement

Tribal fishery personnel are a Fisheries Director, a secretary, two fishery technicians and two fishery biologists, in addition to an enforcement staff of six. In the spring of 1977, short and long-range fishery management priorities and plans were drawn up, and these are being modified as the fishery program develops. The

principles guiding these plans were outlined in our Salmon Management Plan which was submitted to the Federal District Court Fishery Advisory Board and to the State of Washington Department of Fisheries in July 1977.

Present activities with respect to enhancement are primarily in building a data base for guiding future options. A first step is assessing the status of natural and introduced stock production in Makah streams. This is being done by:

- A. Assembling historical data on catch and escapement on conferring with tribal, state and federal fisheries personnel who have knowledge of salmon runs in our area.
- B. Initiating a thorough annual census of salmon spawning including distribution and timing by species, plus an effort to determine whether spawners are natural stocks or introduced stocks.
- C. Determination of optimum escapement levels and optimum carrying capacities of fry and fingerlings under present stream conditions.
- D. Controlling river fisheries so as to achieve present escapement goals as set by WSDF.
- E. Performing pilot tests of gravel incubation boxes and barrels in selected areas where natural spawning conditions appear unsuitable or questionable.
- F. Measuring egg-fry survival in selected natural spawning areas for comparison with container-incubated eggs.

Future enhancement activities that can be done by tribal personnel are in the planning stages and hopefully will include participation by fishermen during their off-season.

Additional Fishery Enhancement in Progress or Needed

- A. The USFWS Fishery Assistance Office is presently conducting a study of the Ozette River and Lake System with a view toward increasing the sockeye and coho salmon production. In addition, Dr. Brannon, Professor of salmonid culture at the University of Washington, has proposed thesis research projects for one or two graduate students who would participate in a portion of the overall study. Dr. Brannon has also prepared a review of the principles that need to be considered in conducting the most effective enhancement scheme for the system. Makah personnel have been and will continue to participate in FWS & UW enhancement work at Ozette Lake.
- B. Work on the Makah National Fish Hatchery on the Sooes River was started in 1975. Completion of the hatchery is badly needed for maximizing enhancement of salmon runs on the Olympic Peninsula at the earliest possible date. The hatchery is expected to enhance runs on a number of streams in addition to the Sooes River by providing eggs and/or fry for ponds and rearing pens in fresh, brackish, or salt water. Any agreements with the Makah Tribe must be conditioned on full funding for completion of the hatchery by FY 1979.
- C. A major enhancement need in the Makah area is for satellite facilities that will maximize the adult return potential of the Makah hatchery. We are presently surveying Makah rivers, lakes, estuaries and bays for appropriate sites. The types of projects and facilities needed are:

- (1) Stream enhancement and rehabilitation,
- (2) Spawning channels,
- (3) Egg incubation installations,
- (4) Fresh water rearing ponds (and adult recapture sites), and
- (5) Salt water rearing or ranching sites.

These facilities should be developed as soon as possible in order to fully utilize the hatchery capability. Funds are needed in two increments—immediate funds for stream rehabilitation and then annual funding for construction and operation.

It is premature to place target figures on production of either fry or adult returns from the several means mentioned above, but given the river, lake and hatchery potential, and properly conceived facilities and procedures, the expectation is for a many-fold increase in production for the benefit of both treaty and non-treaty fishermen.

Estimated Costs

1. Immediate needs:
 - (a) Fish barrier removal, building approach routes and trails - \$50,000
 - (b) Survey and assessment by qualified consultants - \$50,000
 - (c) Engineering and design on sites selected in the surveys - \$100,000
2. Continuing funding needs:
 - (a) Construction of spawning channels, incubation sites and fresh water and estuary rearing facilities that showed cost-effectiveness in the above design studies. Given the large potential in the Makah area based upon surveys to date, the

need is for a minimum of 1 million dollars per year for four years, including maintenance and operation. After four years, cost of maintenance and operation should be available from sale of returning fish.

- (b) Construction costs of salt water rearing and ranching facilities will depend upon the results of the surveys proposed, but an estimated figure is for 1 million dollars the first year, followed by 200 thousand dollars per year for three additional years after which costs should be covered by the sale of fish.

It should be added that the return after one salmon cycle (4 - 5 years) should greatly exceed both construction and operating costs, and would benefit both commercial and sport fishermen in addition to Makah fishermen.

II. OFF-RESERVATION SHARING

The Makah Tribe is of the opinion that with appropriate regulations, the treaty Indians are presently capable of harvesting 50% of the salmon and steelhead in the case area with the exception of Fraser River stocks of sockeye and pink salmon. Therefore, the phase-in period working toward 50% of other than Fraser River fish should be considered completed, and future regulations should be set accordingly. Regulations are also needed to provide substantial annual increases of the treaty share of Fraser River sockeye and pink salmon with 50% to be achieved within five years. Where exact parity for all species cannot be achieved, a formula for prescribing species equivalents such as that proposed by the Point No Point Treaty Tribes, would be acceptable. The Makahs view tribal representation on IPSFC and PRFMC at the policy level as essential if the necessary progress is to be made in achieving parity on the Fraser River stocks. Also, grants or loans will be

needed to appropriately expand the Makah fleet within five years.

III. ON-RESERVATION ACCOUNTING

On-reservation fisheries continue to be recognized as separate and distinct Makah fisheries thus those fish must continue to be accounted for separately.

IV. SUBSISTENCE AND CEREMONIAL ACCOUNTING

The Makah Tribe would be agreeable for the subsistence and ceremonial catches to be included in the overall treaty share provided; (1) that a reasonable estimate of personal use fish be included in the non-treaty share; (2) that subsistence and ceremonial fisheries continue to be recognized as separate and distinct fisheries; (3) that fishing for ceremonial fish for use in annual Makah Days Celebration be specifically sanctioned in annual regulation; (4) that the needs of Makah marine fisheries as set forth in the introduction are reflected in future regulations; and (5) that the goals in the previous section on enhancement are realized.

V. STEELHEAD FISHING

The Makah steelhead fishery, though small, remains an essential winter fishery for many Makah families who are primarily river fishermen. Whether or not the Tribe could afford to forego net commercial fishing on steelhead would depend upon the nature of concessions which might be made for such forbearance such as substantial enhancement of steelhead-bearing rivers with another species which could provide proper subsistence and commercial value to Makah families now dependent upon steelhead.

Special steelhead management plans will be developed by the Makah Tribe in cooperation with the WSDG with a view toward increasing the runs in Makah on- and off-reservation rivers by:

- (1) Monitoring catches and escapements to provide more precise figures on the numbers in the run, the numbers and distribution of spawners, and the success of spawning.
- (2) Applying the above information in adjusting tribal catches to comply with escapement needs and court-sharing formulas.

VI. GEAR AND EFFORT PROPOSALS

The Makah gear and effort proposal is made in view of the factors discussed in the introduction section.

- A. A reduction in the non-treaty fleet in Makah usual and accustomed marine waters is essential if the Makahs are to achieve an equitable share of the available salmon. This is particularly the case considering that most Makah marine fishermen rely upon fishing for their total year-round income.
- B. Competition and conflict with non-Indian commercial trolling gear is particularly a problem in the area immediately west of the Makah Reservation. Makah trolling boats of all sizes have traditionally fished these waters where chinook salmon tend to concentrate close to shore. In recent years, non-Indian vessels have increased their effort in the area to the point that effective fishing and maneuvering is impossible. Therefore, it is recommended that an exclusive Makah commercial fishing area be established east of a line drawn from Spike Rock (approximately 48° 15' N.) to a point one mile due west of the Duncan Rock buoy. This is a limited area just west and northwest of Mukkaw Bay and Cape Flattery.
- C. Because of the present low level of productivity in Makah rivers,

there is a pressing need for Makah river fishermen to transfer to marine fisheries in order to bring the effort in rivers to a level that will afford a reasonable income to participants in this part-time type of fishery. In 1976, a total of about 172 Makahs fished. The total value of the catch sold was \$451,485, or \$2,625 average income per fisherman. Figures for 1977 are incomplete, but in general, marine fishermen enjoyed an increased catch whereas river catches have been far below those of 1976.

D. Makah river fishing is already too intensive and over-capitalized, but there is room for expansion of our marine fishing capacity. The main features are:

- (1) The construction of two training/fishing vessels approximately 60 feet with ocean capabilities equipped to fish for albacore, salmon, bottomfish, and crabs. Estimated costs are \$350,000 each or \$700,000 total.
- (2) Loans for financing the purchase of an additional 18 combination gillnet/trollers of about 36' length. The above 18 vessels added to the present 12 would bring the fleet to 30, which is the number determined by a USFWS study team in their review of levels of effort needed to achieve equitable shares of salmon by various tribes. Estimated costs are \$56,000 each.
- (3) Loans to provide improved or additional skiffs, motors and gillnets for marine set-net operations costs of up to \$6,000 per unit, and a maximum of 20 units.

VII. TRIBAL MANAGEMENT

The Makah treaty fishery is managed by the Makah Department of Fisheries consisting of a director, two tribal biologists, two fishery technicians and support and enforcement staff. Regulation is done by the Makah Tribal Council, governing body of the Makah Indian Tribe. Regulations are developed through the use of a fisheries management team consisting of fishing department personnel, tribal biologists, the tribal attorney, tribal fishermen, and representatives of the Makah Tribal Council. After consultation with tribal fishermen, and a review of biological and legal requirements, the fisheries management team recommends regulations to the Tribal Council for approval.

VIII. TRIBAL ENFORCEMENT

Enforcement is under the Department of Fisheries with six full-time officers. Two patrol boats plus other support vehicles, radio equipment, etc., are available. Patrol officers serve both on marine patrol and river patrol during fisheries times. Citations are returnable to the Makah Tribal Court. The Makah Tribal Court has jurisdiction over all persons on the reservation and Makah members only for off-reservation fishing activities.

IX. OCEAN FISHING

In Volume I of the Tribal Reports, it was noted that PRFMC regulations must recognize the Makah Treaty right to ocean fishing. It is a further particular requirement of the Makah Tribe that its fishing rights north of the current proposed international boundary be recognized. (See Fig. 1). Until the 200-mile Fisheries Zone legislation was passed, Makahs regularly fished on Swiftsure Banks (Fig. 1). Since that time, difficulties have arisen over exercise of that right. This fishing area must be restored.

X. MANAGEMENT PROPOSAL

To deal with the various problems raised by the failure of the State of Washington to properly manage fisheries and the refusal of non-treaty fishermen to obey federal law, the Makah Tribe proposes that a federal commission be established with certain powers and authorities over fisheries matters in the Northwest. This proposal has the following chief elements:

1. Introduction and Purpose:

A. The purpose of the Commission is to implement the treaty right as defined by the federal courts. Since U. S. v. Washington was decided in 1974 the State has continued to fight treaty rights and has proved itself unable and unwilling to allow treaty rights to be upheld. Tribal governments have experienced a dramatic increase in their ability to manage the fishery. This successful tribal management is particularly gratifying when compared with the total breakdown of State management.

2. Commission Establishment and Duties:

- A. The Commission would supervise the State of Washington's management of its share marine resources in the case area.
- B. Eight Commissioners selected by the President would form the Commission. Four to be selected from the State of Washington and four from a list presented by the Northwest Indian Fisheries Commission. All Commissioners to serve at the pleasure of the President. The Commission would be assisted by technical advisory panels equally representing tribes and the State of Washington. The Commission also may be advised by user-group panels.
- C. The purposes of the Commission would be (a) to implement treaty rights, (b) to insure that management is conducted in a manner designed to

insure perpetuation of the resource, and that certain management considerations are met, and (3) that emergency regulatory and enforcement regulations may be implemented.

- D. The Commission would determine allocation numbers, run size predictions, harvestable numbers, spawning grounds and the like.
- E. In carrying out its activities, the Commission would follow certain management criteria which insures that the Boldt share will be met and that run sizes, harvestable numbers, and escapement goals will be scientifically determined. To carry out this function the Commission would set up data collection activities.
- F. The Commission would study the interaction between hatchery and wild fish and determine which should be declared viable stocks. All natural stocks would be viable in the interim unless agreed otherwise by the affected parties.

3. State Regulation.

The State would adopt regulations for the non-treaty fishery which comply with Commission guidelines and would file its regulations with the Commission. If approved by the Commission, they then may be adopted by the State agency. If the State failed to submit regulations the State fishery would automatically be closed. The State or tribal governments could administratively appeal Commission actions.

4. Treaty Fishing.

Tribal management agencies would file regulations governing treaty fishing with the Commission for information purposes. Tribal agencies should endeavor to follow Commission guidelines.

5. Enforcement.

It must be a violation of federal law for a non-treaty person to fish except

pursuant to Commission-approved regulations. Treaty fishermen also should not fish contrary to emergency conservation closures of the Commission.

6. Commission Regulation.

The Commission would also regulate in the interests of conservation or in the interest of allocation between treaty and non-treaty fishermen if State regulations failed to do so.

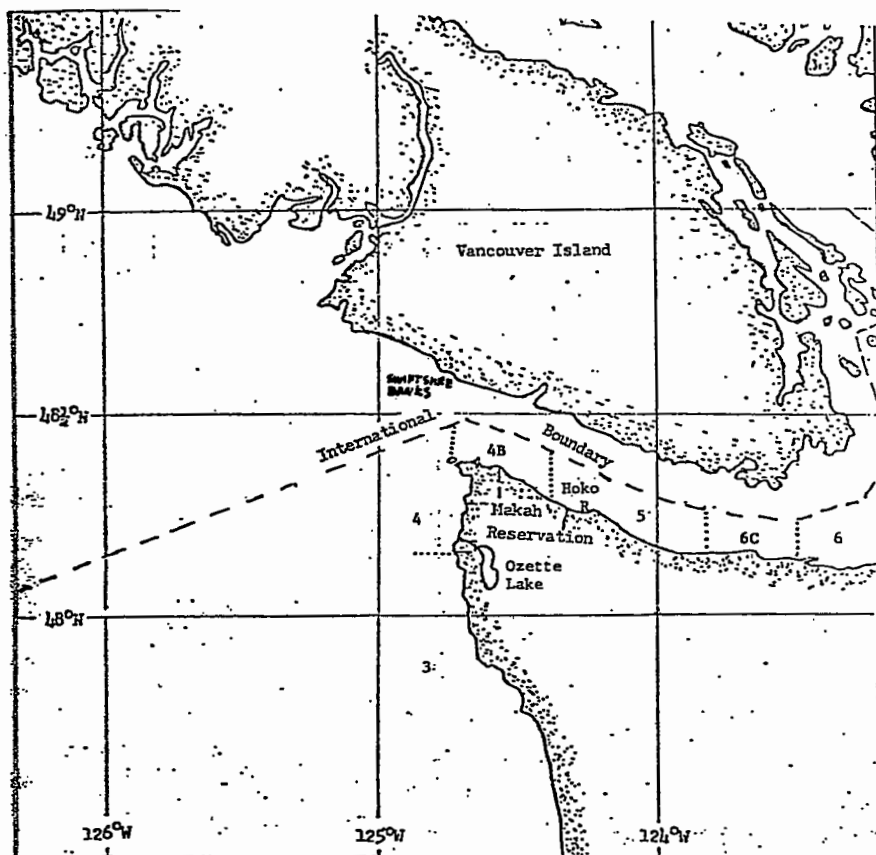


Fig. 1 BASE CHART

TRIBAL REPORT
TO THE
PRESIDENTIAL TASK FORCE ON
TREATY FISHING RIGHTS IN THE NORTHWEST

Volume V

Presented by
The Point No Point Treaty Council
(Lower Elwha, Port Gamble, and Skokomish Indian Tribes)

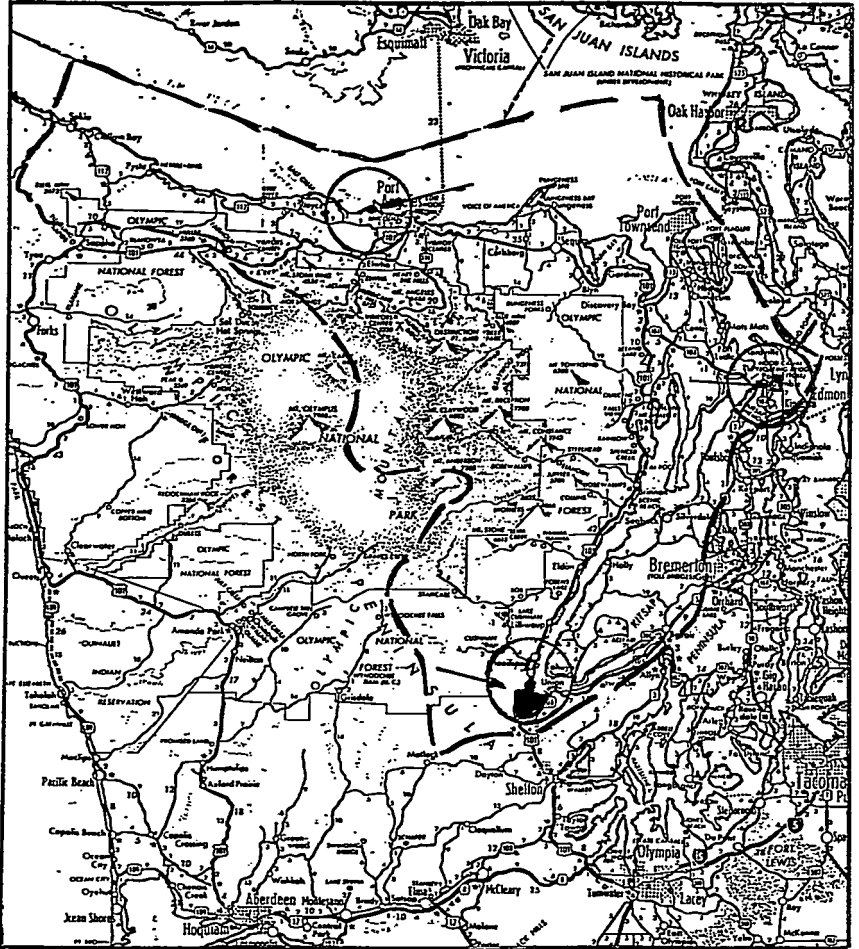
November 14, 1977



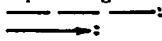
POINT NO POINT TREATY COUNCIL
P.O. Box 146 Kingston, Washington 98348 Ph. 887-9488

POINT NO POINT TREATY COUNCIL PROPOSALS
REGARDING PUGET SOUND FISHERIES

October, 1977



Map showing:



The boundaries of the Point No Point Treaty Area.
 Location of Tribal Reservations.

Scale: 1" = 12.5 mi.

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POINT NO POINT TREATY COUNCIL PROPOSALS

INTRODUCTION

Recent action by Regional Task Force and statements contained in Task Force reports have made it apparent that the Presidential Task Force considers the Tribes as another user group in the State's fisheries. This view is further bolstered by the proposal of the WDF to the Task Force and the Washington Legislature which proposes to provide additional fish by major enhancement and "assist" the Tribes through a massive "gear up" program.

The following proposal and position statement oppose the above as untrue and unworkable.

Any discussion and/or "negotiation" between the Tribes and other entities must be based on the following premises:

- a) Treaty Tribes are self-governing sovereigns, subordinate only to the U.S.
- b) Treaty Tribes in their sovereign capacity, possess a co-tenancy status over fishery resources with the States of Washington and Oregon. This status was secured by Federal Treaties, affirmed by U.S. District Courts and U.S. Courts of Appeals and undisputed by the U.S. Supreme Court. Treaty Tribes cannot and will not abide by any "user group" designation.

Co-tenancy of fishery resources by Tribes solves more problems than it creates:

A quasi-property right definition of fishery resources in this area is in agreement with positions recently adopted by the U.S. and long espoused by many other nations in the Law of the Sea Conference. The State of Alaska refers to fishing in its limited entry legislation as "a privilege granted by the State"

The Tribes in this case, by exercising their "property" right are able to protect, conserve and eventually enhance the resources for their own benefit. The Tribes are interested in a biologically sound enhancement program which will provide full rehabilitation of depressed runs of all

species (not just the fastest producers) for the eventual full utilization of natural producing areas, production of the greatest possible variety and numbers resulting in steadier and longer employment of all fishermen, lower capitalization in the production sector, production at lower costs and an eventual boon to producers and consumers alike.

In this way, in spite of the present clamor, both the resources and the economic condition of the industry will be much better off in the long run.

State and Task Force Proposals

Various proposals from the State of Washington and the Regional Task Force, having pointed out the economic plight of non-Treaty fishermen have called for reduction in the potential harvest of Treaty Tribes "temporarily" or "permanently" by removing portions of runs or entire species from the Tribes' allocation. No mention has been made of the economic plight of Tribal fishermen whose very livelihood depends on the fishery.

Recognizing however, that some negotiations may have to take place, the Tribes wish to place certain guidelines on record.

- Any Treaty fishing reduction must be a part of time-limited interim plan leading to full implementation of Treaty Rights.
- Any negotiations, must be conducted on a run by run basis for each Tribe, taking full measure of Tribal fishermen's dependence on the fishery as well as the fishermen's capability to capture their full allocation.
- Keeping in mind the variable nature of non-Treaty fisheries in space and time and the varying needs of the Tribes, quid-pro-quo assistance given to the Tribes in return for limited abstention must again be done on a Tribe-by-Tribe basis.
- In all cases, the State of Washington must commit itself to a time frame within which orderly disinvest-

ment must take place in the non-Treaty fleet. This disinvestment must show substantial results within any interim-plan period preceding full implementation of Treaty Rights.

- As regards the State's proposal for a tribal "gear-up" program: It is fully understood and accepted that the present amount of gear in the non-Treaty fleet must be reduced to provide sufficient economic opportunity to participants, better returns to fishermen, and satisfy the requirements of effective fishery management. The reverse proposition (that of capitalizing Treaty fishermen to reach the present level of non-Treaty ones) to make Treaty fishermen "more competitive" is not an acceptable solution. Such a hastily conceived program which would overcapitalize an otherwise quite efficient sector of the fishing industry is not wise or even desirable at present. "Gearing up" for the capture of a limited resource is necessary only in the face of competition. If a "share" is guaranteed there is no need to undertake such waste.

The proposals which follow are representation of the positions adopted by the Point No Point Treaty Tribes and are governed by the principles and guidelines set out above. The proposals are set out in the following order:

- I. Management and enforcement system
- II. Point No Point Treaty Area Proposals.
 1. Fishing effort and fishing power
 2. Off reservation fisheries
 3. On-Reservation, Subsistence, and Ceremonial fisheries
 4. Stock enhancement and Restoration.

Generally speaking, specific Treaty Area proposals deal with negotiated and negotiable items while the proposed management and enforcement system may well represent one of a very limited number of long term solutions to the

Northwest fisheries controversy and could well be the vehicle through which most specific goals may be met.

PROPOSED
FISHERIES MANAGEMENT, ENFORCEMENT AND ENHANCEMENT
REGULATORY SYSTEM

Introduction

The present adversary posture of the Tribes and the State of Washington is all too well known to be further elaborated.

Some of the effects have been, lack of cooperation in management, gaps in law enforcement (quickly filled in by poachers), confusion in the courts, misallocation of resources, hastily conceived enhancement planning, misuse of the "conservation closures", unwise allocation of effort to mixed stock area fisheries, a rush to capture an ever-diminishing resource, threats of violence etc. etc. . The list is actually almost endless.

GOALS

Goals for the present in formulating a management system along well prescribed guidelines and premises presented in this report are:

- Elimination of the bulk of legal confrontation
- Better management by way of a clear airing of scientific opinion
- Co-management of a resource by sovereign co-tenants.
- Effective enforcement of conservation and management regulations.

It is our view that experience has shown the Court's Advisory Board to be totally unsuited for the difficult and often complex task of day to day management of the fishery resource in question. The WDF proposal to the Legislature to create an environment in which WDF shall be the sole manager and director of harvest, enhancement and distribution is of course as unacceptable to the Tribes as a Tribal proposal placing a Tribal organization as the sole manager of the Washington fisheries would be to WDF. Statements by Task Force staff to the effect that "there are too many biologists

and managers" although patently in error and biased (meaning too many Tribal managers) has a basis in the fact that there is a growing public uneasiness over the lack of any vertical integration in management.

Such a vertical integration structure must be trusted by all parties concerned, if it is to ever be accepted, let alone be able to accomplish its goals. Finally, such a structure must provide efficiency in management without resorting to the political subjugation of one sovereign to the wishes of another.

Management System

In order to resolve many of the present real and apparent difficulties in the Case Area. We propose that a Fisheries Commission (Pacific Northwest Fisheries Commission) be established independent of State, Tribal or Federal influence. Such a Commission must be established by Congress and given full jurisdiction over fisheries in this area. The objectives of the Commission would be to facilitate management for the preservation, rehabilitation, and enhancement of exploited aquatic species of animals (not exclusively anadromous, since there are indications that a large number of other species may be added to the Case). The Commission is to accomplish this by recommending management measures, supervising all allocation agreements, administer interim plans, and seek to optimize the economic and social benefits from the resource for each participant, subject to resource and allocation limitations.

Membership: Commissioners, in Delegations, representing

- a) the United States
- b) each Treaty group of Tribes
- c) the State of Washington

Additionally, the commission should not be exclusive, but allow for further membership by other Treaty groups or States with similar interests (i.e. Columbia River Tribes, the State of Oregon)

Committees: Policy and Allocation, and Biology and Research.

Regional Panels: Membership in regional panels must be open to all governments with an interest in the management, conservation and enhancement of fisheries resources of the region in question. Regional panels would carry primary responsibility for management conservation, and supervision of enhancement in each region (i.e. Coastal, Puget Sound, Columbia, etc.)

Representation: Commissioners would be chosen by their respective governments who would also be responsible for setting their terms of office. The appointment of each Commissioner would be ratified by the President. Each government would also designate staffs of experts and advisers attached to the commissioners.

For the Tribes, the term Treaty groups is used because it envisioned that in order to eliminate potential conflicts and disagreements, and make this proposal more acceptable to the other parties, as well as eliminate the objection that "there are too many managers and voices", it would be preferable to use the Treaty Council method of representation since each Treaty represents a contiguous area ceded to the U.S. over which one or more Tribes have primary interest, over whose stocks there is more contiguity and over which enhancement planning should be better coordinated. This method increases efficiency without compromising Tribal sovereign rights as will become apparent.

Termination: Termination of membership by any section of the Commission upon notice (1 year) should not terminate the Commission.

Observers and Advisory Committees: Each section would be

entitled to name an observer or advisory committee group, composed of resource users and other interested parties directly affected by the actions of the Commission. Such observers would make the views of their constituency known to the Commission and maintain a link between the Commission and user groups by participating at non-executive sessions.

Legal capacity grant: The Commission must have full legal capacity to enter into agreements and contracts with other organizations with similar objectives, contract services as an independent entity, acquire and dispose of real and personal property and most important, be able to initiate legal proceedings.

Participation in similar organizations: The United States must upon establishment of this Commission take necessary steps to ensure that the Commission is granted membership and/or voting representation in Pacific Regional Management Council, the International Pacific Salmon Commission, the International Halibut Commission, and the International North Pacific Fisheries Commission.

Staff: Although an independent staff may be a credit to a number of Commissions now in existence, we feel it would not be appropriate in this case. The various governments involved possess varying numbers of professionally qualified scientists and technicians in their fisheries staffs. A new independent staff would a) be a totally new entity, duplicating many functions of current bodies, or b) draw primarily from WDF and WDG and thus lose all credibility from

the start, at least as far as the Tribes are concerned. Further, in the present state of affairs, an independent bureaucracy, would tend to develop a vested interest in its own point of view and become overly défensive of its own decisions and use claims of impartiality against all criticism.

In order to foster free argument and contention which would lead to constructive criticism, it is expected that minimal staff would be required for the Commission with the exception of the Secretariat.

Executive Secretary: The Executive Secretary of the Commission would be responsible for the collection, collation and dissemination of statistics, maintenance of strong links with various fisheries groups via a communication system, compilation and dissemination of reports, coordination of a licensing system and buy back programs, etc.

Data gathering and Research: All research pertinent to the function of the Commission would be undertaken by the member governments under coordination by the Commission, however research must be divorced from the recommending body.

Recommendation: The Commission with assistance from experts shall recommend management guidelines and regulations to the member governments. Proposed regulations would become effective upon acceptance by the Commission. Governments rejecting regulations would be subject to the continuing jurisdiction of

the U.S. District Court. For anadromous species, in-season emergency regulations would be promulgated by the Commission and become effective without further action by member governments who have signified their acceptance of seasonal regulations for the species in questions.

Law enforcement: As part of enabling legislation for the creation of the Commission, member governments must relinquish some enforcement authority to the Commission by arranging for full cross-deputization of their appropriate law enforcement staff who would be required to enforce regulations promulgated by the Commission. The recent allocation decision in U.S. District Court has effectively created a class of "Treaty Fish". Violations of regulations are now to some extent subject to prosecution in Federal Court.

Since much of the lawlessness now found to flourish, exists because of gaps between courts and jurisdictions, it is proposed that the President of the United States be petitioned to authorize a Court to hear cases of violations against Commission regulations.

Expected areas of activities for the Commission:

- a) Interim allocation plans and species tradeoffs.
- b) Supervision of limited entry and disinvestment programs coordination between governments
- c) Setting of seasons, limits, gear quotas, area quotas.
- d) Proposing other regulations

- e) Research coordination for establishing stock strength, pre-season and in season run estimates, migration routes, milling areas, run timing, catch monitoring, etc.
- f) Coordination of habitat monitoring, establishing stock rehabilitation criteria, evaluating of rehabilitation and enhancement schemes, etc.
- g) Coordinating of licensing systems used by the parties
- h) Representing regional fishery interests in similar commissions of international scope
- i) Maintain a unified data bank, coordinate fisheries data generating between the parties
- j) Provide fully coordinated fisheries law enforcement.

MINIMUM REQUIREMENTS FOR ANY PROPOSED UNIFIED MANAGEMENT
SYSTEM

In any negotiations leading to the establishment of a management authority (whatever its final form), it must be kept in mind that the Tribes must have a voice equal to that of the State and furthermore the following guidelines describe the basic criteria by which any comprehensive management system will be evaluated prior to acceptance.

- Harvest management - Need someone with jurisdiction over the entire harvest management process including all fisheries (sport too).
- Regardless of who writes the individual regulations, need a negotiated, cohesive and rational, comprehensive system of regulations for both preseason and in-season matters, with the stamp of approval of the parties.
 - Need harvest management planning that is formulated to take into account all allocation agreements and judgements, terminal area harvest, regional management needs, prior interception problems, local regulation of harvest, mobility of fishermen, expected impact of individual fisheries, and the establishment of area and gear quotas which would assure a timely and equitable harvest share.
 - Need a structure which would assure that inter Tribal differences would be resolved between Tribes only.
 - Need a structure capable of accomodating more parties and fish stocks and species as necessary.
 - Need a structure that keeps the data base and technical processes independent of central control.
- Economic management- Need a structure to oversee gear-resource parity for all parties and keep to a minimum the proliferation of users and efficiency of gear.
- Resource management- Need jurisdiction over the entire life cycle and areas of occurrence of harvested stocks that is, escapement, artificial production, natural production, stock restoration, prior interception and final harvest.

- Enhancement management- Need a structure which will facilitate basic enhancement guideline development between the various parties.
Need a system which will allow independent enhancement planning by the parties, subject to review and negotiated modification through the system for final implementation by the parties.
- Enforcement management- Need centralized coordination of enforcement and something like full cross deputization of assure that there are no jurisdictional gaps for lawbreakers to use.
- Relations of other managers - Need a system which would assure full voting participation in other fisheries managing bodies. Such participation should have the strength usually accorded to a major regional manager (not a minor participant or user)
- Research Need a system which ensures the right of Tribes to conduct research within their recognized Treaty waters as necessary to gather facts needed to improve their fisheries.

The principles and guidelines above represent bottom-line positions for any future regional management system. Elimination or severe modification of any of them would not only render the system impotent or useless in some respects, but might also prove harmful to the Tribes' interests.

EXAMPLES

As a general example of baseline management recommendations which were accepted by the Tribes in January, 1977, we include the following Joint Biological Task Team Draft Management Proposal:

JBTT DRAFT III

PROPOSED RULES

1. Sharing

- 1.1 A share shall be computed by run.¹
- 1.2 Shares are determined on the basis of the best available run size estimate made at or before a specified date for each salmon run.
- 1.3 Subsequent to the determination of the shares on the date specified for a given salmon run, the shares are never altered except in the interest of conservation.
- 1.4 A share is fifty percent of the run size minus total escapement goals of the run (hatchery plus natural) minus on-reservation catch minus ceremonial-subsistence catch plus Indian debit plus non-Indian debit plus prior net interceptions.
- 1.5 Each party is entitled to a share less its respective debit less its prior net interceptions.
- 1.6 The party that first completes harvest of its share shall fish no more on that run of salmon. The other party shall then proceed to harvest the balance of the harvestable number of fish.

2. Interceptions

- 2.1 Debts shall be determined for each run prior to April 1 of the calendar year in which the run is to be harvested.
- 2.2 Debts for the current calendar year shall be determined on the basis of events which occurred prior to January 1 of the current calendar year.
- 2.3 Debts shall be an average of observations from the three years immediately preceding the current calendar year.
- 2.4 The contribution to the debit of a run made by any one of the three years to be included in the average (2.3) shall be the sum of all fish caught by hook and line fisheries and illegal net fisheries that would have been recruited into the region of origin of the run in the year of harvest.
- 2.5 Debts shall be computed separately for treaty and non-treaty entities.

¹Words and phrases underlined in the text are defined in Section III.

2.6 Prior net interceptions used in the sharing formula (1.4 and 1.5) shall be the best estimate thereof available by the nth week of the run management period.

3. Run size estimation

- 3.1 Run size, as applied to the sharing formula (1.2), is the best estimate available prior to the nth week of the run management period.
- 3.2 The first net fishery for each salmon run shall be conducted by the party which has the smallest prior harvest of the run in question. In the event that both parties are equal in prior harvests, the parties shall alternate the opening fishery between years.
- 3.3 Procedures for determining the best estimate of run size are to be agreed upon by both parties prior to April 1 of the year in which the runs are to be harvested.

4. Harvestable numbers

- 4.1 Harvestable numbers of salmon in mixed stock areas shall be determined by the method which seeks to minimize the risk of over harvest.
- 4.2 The maximum harvest rate for a stock or set of stocks of a run in a mixed stock area shall be defined as follows:

$$H = \frac{S' - E}{S}$$

where

H is maximum harvest rate (fish to be harvested per fish vulnerable to harvest)

S is numerical abundance of a defined stock or set of stocks

S' is the lower bound of a p % symmetrical confidence interval of the estimate of S.

E is the sum of escapement goals applicable to the stock or set of stocks.

- 4.3 The maximum harvest rates in a mixed stock area shall be determined separately for hatchery and viable natural stocks.
- 4.4 Of the maximum harvest rates computed for collections of stocks in mixed stock areas, the minimum value shall prevail in the management of the area during the course of the run.

5. Escapement goals

- 5.1 Escapement goals are defined separately for hatchery and for natural stock requirements.

Hatchery. Hatchery stock requirements apply to those stocks from which eggs are collected and fertilized artificially.

The escapement goal is that number of spawners needed from a stock to meet a specified smolt production level.

Natural. Natural stock requirements apply to those stocks where egg deposition and fertilization occurs naturally.

The escapement goal is the optimal number of spawners in an average year which produces the largest biomass of out-migrant smolts. Application of each escapement goal shall be to a stock or stocks of a run returning to a geographically defined terminal management area.

The escapement goal may not be estimable as defined. Then a number is used which is the best estimate approaching the defined escapement goal.

- 5.2 Prior to the fishing season, parties shall agree a) upon which stock or stocks of each run shall have escapement goals and b) upon each escapement goal number.
- 5.3 Escapement goals for natural stock requirements do not change throughout the fishing season.
- 5.4 Escapement goals for hatchery stock requirements may be flexible within the fishing season dependent upon run strength of returning stocks. However, procedures for changing escapement requirements by stock and limiting escapement goal changes by stock are to be set prior to the fishing season.
- 5.5 Once established, a viable stock remains a viable stock from year to year unless there is a concurrence for change by the parties. (A viable stock is one for which an escapement goal is set.)
- 5.6 A stock considered non-viable in a mixed stock fishery can not be considered viable in a terminal area fishery.

DEFINITIONS

Debits, Indian. A quantity computed for each run on the basis of prior Indian harvest in the manner defined by Rules 2.1 - 2.5.

Debits, non-Indian. A quantity computed for each run on the basis of prior non-Indian harvest in the manner defined by Rules 2.1 - 2.5.

Escapement goal. See Rule 5.1.

Hook and line fishery. Any commercial troll or sport fishery.

Party. Refers to either treaty Indian fishermen or to non-treaty fishermen.

Priornet interceptions. Harvest by net fisheries of a run outside of its region of origin. Computed separately for Indians and non-Indians.

Region of origin. A geographic area which can be used to separate runs of the same species. The following geographic areas are recognized regions of origin for the Boldt case area: 1) Strait of Juan de Fuca, 2) Nooksack-Samish, 3) Skagit, 4) Stillaguamish-Snohomish, 5) South Puget Sound, 6) Hood Canal, 7) Pacific Coastal. NB: Tribal biologists may want to define subdivisions of the regions above. Subdivisions so defined should become an integral part of the management plan.

Run. A stock, or group of stocks which return to the same region of origin at similar times. Each salmon run shall be defined on an individual basis.

Run management period. A time interval during which a specific run is a target of a fishery in a particular harvest management area, e.g., 13A, 10B, 5.

Run size. The total number of salmon in a run (see Rule 3.1).

Stock. A population of salmon spawning in a particular lake or stream (or portion thereof), within a region of origin, at a particular season. A stock does not interbreed, to a substantial degree, with any stock spawning in a different place, or in the same locality at a different season.

Viable natural stocks. Stocks for which escapement goals have been set.

REQUISITES

1. Interceptions
 - a. Stock identification
 - b. Natural mortality rates
 - c. Hooking mortality
 - d. Canadian interceptions
2. Methods of run size estimation
 - a. long range
 - b. within season
3. Terminal area management methods
4. Determination of harvestable numbers
5. Escapement goals
 - a. to establish sole criteria by which escapement goals are defined for each terminal management area
 - b. to establish sole criteria by which in-season changes in hatchery escapement goals may be considered
 - c. investigate methods of quantifying escapement goals
 - d. investigate methods of estimating spawning escapement

RECOMMENDATIONS

1. The utility of regulations written prior to the management period or during the management period is divided into two areas:
 - a. Regulations written prior to the management period shall define the beginning and duration of the management period and the means for the determination of run strength of each of the salmon runs.
 - b. Regulations written during the management period shall define the duration and location of fishing to be conducted by each commercial gear type.
2. The definition of procedures for the orderly conduct of the regulatory process during the management period, both within and between parties, shall be developed with legal counsel and the definition shall become an integral part of the management plan.
3. If the tribes involved desire to consider an inter-tribal agreement regarding the allocation of the Indian share in area 10 and 11, the following special rules might provide a framework for such an agreement.

Special case:

- (4.5S) Parties shall agree to divide the allowable harvest in WDF catch reporting areas 10 and 11 into specified proportions between areas.
- (1.7S) The harvestable number of fish in WDF area 10 shall be divided equally between the two parties to the extent each party is entitled to harvest in area 10 under rules 1.1 - 1.5.

EXAMPLE OF ENFORCEMENT SYSTEM

PUGET SOUND INDIAN FISHERIES COMPACT

This is a compact and agreement for improving the enforcement of wholesome laws for the conservation and utilization of Puget Sound treaty fisheries, and shall be known and referred to as the Puget Sound Indian Fisheries Compact or PSIF-Pact.

ARTICLE I--MEMBERSHIP

Sec. 1. Any Indian tribe exploiting a fishery in the waters of Puget Sound and the Strait of Juan de Fuca may become a member of this compact.

Sec. 2. To become a member of this compact a tribe must submit to the Point-No-Point Treaty Council

(a) A copy of a duly enacted tribal ordinance or resolution adopting this compact without limitation or qualification;

(b) A copy of its tribal constitution showing that it has authority to enter into this compact and to regulate its off-reservation treaty fisheries;

(c) Documentary evidence of insurance against liability for the actions of its law enforcement officers in the amount of not less than \$25,000; and

(d) A list of the names of its current fisheries patrol officers.

Sec. 3. Within thirty days of receipt of an application for membership, the Point-No-Point Treaty Council shall pass on its conformity with

the requirements of Sections 1 and 2 of this Article and, if it is conformable in all respects,

(a) Advise the applicant in writing that it has become a member of the Puget Sound Indian Fisheries Compact, and

(b) Provide the applicant with PSIF-Pact identification cards for each of the officers named in its application for membership.

Sec. 4. If an application for membership is determined to be insufficient or not in conformity with this Article, the Point-No-Point Treaty Council shall advise the applicant in detail and in writing why its application was rejected and how it can remedy any insufficiency or inconsistency.

Sec. 5. It shall be the responsibility of each member tribe to notify the Point-No-Point Treaty Council of any changes in its fisheries patrol officers, and to destroy the PSIF-Pact identification cards of terminated officers. The Point-No-Point Treaty Council shall issue identification to new officers within ten days of receipt of written notice of their appointment.

Sec. 6. All member tribes of the Puget Sound Indian Fisheries Compact shall enter and remain upon an equal footing in all respects, and shall enjoy no individual advantages or privileges under it.

Sec. 7. Membership in this compact shall remain entirely voluntary. A member tribe may withdraw from this compact at any time by filing a written notice of intent to withdraw, in the form of a resolution or ordinance of its governing body, with the Point-No-Point Treaty Council and surrendering

all of its PSIF-Pact identification cards. Withdrawal shall become effective automatically thirty days after receipt of a tribe's notice and surrender of its identification cards.

ARTICLE II--CONDITIONS AND RESPONSIBILITIES

Sec. 1. PSIF-Pact identification authorizes a member tribe's officers to arrest and prosecute in its own courts, for violation of its own regulations within its usual and accustomed fishing areas, members of any other member tribe.

Sec. 2. Member tribes are entitled to request the assistance of one another's officers. Requests shall be processed as follows:

(a) Oral requests to the Point-No-Point Law Enforcement Coordinator shall be logged in writing and either approved or disapproved immediately.

(b) Requests for assistance in enforcing fisheries regulations shall be approved if the Coordinator determines that sufficient officers can be spared from other members' patrols for the time requested, taking into account each member tribe's current needs and force.

(c) Requests for assistance in enforcing other tribal laws shall not be approved unless the Coordinator determines that failure to assist will result in loss of life or bodily harm to officers or other persons.

(d) When coordinating multiple requests, the Coordinator shall seek to maximize the effectiveness of fisheries regulation throughout the area regulated by all of the members of this compact.

(e) Upon approving a request for assistance, the Coordinator shall immediately advise those member tribes he deems best able to lend assistance of the nature of the assistance requested and the time that assistance will be required. The Coordinator shall log in writing the response of each member tribe contacted for assistance.

Sec. 3. No assistance shall be deemed authorized by this compact unless requested and approved through the Point-No-Point Law Enforcement Coordinator as provided by Section 2 of this Article.

Sec. 4. Officers lending assistance in accordance with Section 2 of this Article shall have the same powers and authority in every respect as the officers of the member tribe requesting the assistance. The member tribe, or its officer, requesting the assistance shall remain in command of all assisting officers, and the member requesting assistance shall assume complete responsibility for the actions of all assisting officers.

Sec. 5. Each member tribe shall advise the Point-No-Point Law Enforcement Coordinator orally within twenty-four hours of the adoption of any fisheries regulation. Copies of all fisheries regulations shall be forwarded to the Coordinator within ten days of their adoption, and shall be provided by the Coordinator to any member tribe at its request.

ARTICLE III--RECIPROCITY

Sec. 1. It is expected that each member tribe will assist the others to the fullest of its abilities when requested through proper channels.

Sec. 2. If, notwithstanding approval of its request for assistance, a member tribe does not receive assistance, it may lodge a formal letter of

protest with the Point-No-Point Law Enforcement Coordinator against the tribe or tribes to whom the request for assistance was directed. The Coordinator shall send a copy of each letter received to the tribe protested against.

Sec. 3. If a member tribe accumulates five letters of protest within any one calendar year, its privileges under Section 1 of Article 2 shall automatically be suspended for a period of sixty days. The Law Enforcement Coordinator shall promptly advise each member tribe in writing of the suspension.

Sec. 4. During a period of suspension, the suspended tribe shall not presume to arrest or prosecute any member of any other member tribe. Upon receipt of documentary evidence of such an arrest or prosecution, to be in the form of official legal papers or court records of the suspended tribe or copies thereof, the Law Enforcement Coordinator shall declare the suspended tribe expelled, and promptly advise each member tribe in writing of the expulsion. Expulsion terminates all rights and privileges of the tribe in this compact, as well as all responsibilities.

Sec. 5. All letters of protest received by the Law Enforcement Coordinator shall remain in his custody and shall be open to inspection by the officers of any member tribe. Copies of letters of protest shall be furnished at cost upon demand.

Sec. 6. If a member tribe has cause to challenge the facts alleged in a letter of protest, it shall have the right to convene a Board of Inquiry. Suspension of a tribe does not impair this right.

(a) To convene a Board of Inquiry, the member tribe must file

a request in writing with the Council Executive of the Point-No-Point Treaty Council together with a copy of the challenged letter.

(b) The Board shall consist of one representative of each member of this compact, including the member requesting it. Each member tribe shall be represented by its Chairman or a person appointed by him in writing for this purpose.

(c) Within ten days of receipt of a request for a Board, the Council Executive shall set a date within twenty days for a hearing and advise each member tribe's Chairman thereof in writing.

(d) The Council Executive shall preside over the Board and rule on questions of procedure but shall have no vote in the disposition of the challenge.

(e) All relevant testimonial and real evidence shall be accepted by the Board. The member tribe that filed the challenged letter of protest shall bear the burden of proving its truth.

(f) The Board shall rule by a 2/3 majority vote. If the letter of protest is quashed, the Board may order that it count against the member tribe that filed it, if in its discretion it has cause to believe that the letter was not filed in good faith.

ARTICLE IV--STATE PARTICIPATION

The State of Washington may participate in this compact by adopting it in a regulation of the State Department of Fisheries, whereupon its privileges and responsibilities shall be and be limited to the following:

Sec. 1. Officers of the State Department of Fisheries may enforce

the fisheries regulations of members of this compact by arrest and prosecution in the courts of member tribes, assuming full responsibility for officers' actions.

Sec. 2. Member tribes may enforce their fisheries regulations within their respective usual and accustomed fishing areas against citizens of the State of Washington by arrest and prosecution in the courts of member tribes, assuming full responsibility for officers' actions.

Sec. 3. State officers responding to requests for assistance from individual member tribes shall have all of the power and authority of the officers of the tribes requesting assistance to enforce tribal fisheries regulations. Member tribes requesting State assistance shall command and be completely responsible for the actions of State officers lending assistance.

Sec. 4. Tribal officers responding to requests for assistance from the State shall have all of the power and authority of State officers to enforce State fisheries regulations. The State shall command and be completely responsible for the actions of tribal officers lending assistance.

ARTICLE V--ENTIRETY AND PERPETUITY

Sec. 1. This compact is an entirety and cannot be amended or modified by the agreement of any or all of the member tribes.

Sec. 2. The substance and effect of this compact are not affected by the admission of new members or withdrawal of members.

PROPOSALS REGARDING FISHING
EFFORT AND FISHING POWER

Introduction

Salmon fishing gear adjustment shall be accomplished to meet the requirements of the following goals;

- I. Adjustment of the absolute numbers of commercial fishing gear units operating in Washington State waters to levels consistent with the income producing potential of the salmon resource. Resource-gear parity to be achieved no later than 1987 under guidelines consistent with salmon production and the Boldt decision.
- II. Limitation of the efficiency of all marine salmon fishing gear, Indian and non-Indian.
- III. Licensing and substantial regulation of non-Indian sports salmon fishing activities.
- IV. Federally funded, tribally administered fishing gear loan program to achieve any necessary Treaty Indian gear increase which is consistent with goal I.

Discussion

- I. As indicated in the Henry Report (NMFS/NWAFRC, Seattle, Aug. 1977) and numerous other sources, the absolute amount of salmon fishing gear presently exceeds the amount necessary to harvest Puget Sound salmon runs. In order that all who depend upon the salmon resource for a living can make an acceptable income, the following plan is proposed.

Define a minimum acceptable income per fishing license (A permit establishes the owner's right to fish). Define a base gear type for the purpose of licensing all salmon fishing gear types (A license establishes the permit holder's entitlement and intention to operate a particular gear for the purpose of commercially harvesting salmon). All gear types are then rated in terms of the

base unit (1.5 x ; 0.8X; 15X). The ultimate number of permits may be greater than the number of licenses. The total number of licenses is fixed by the production capacity of the resource. Hopefully, as the resource is increased toward the average carrying capacity of the environment and the number of licenses is adjusted, each license will have an expected value equal to the minimum acceptable income. (Expected value of a permit is the total harvested value of salmon resource by commercial gear/total licenses.)

- II. Certain highly efficient gear types concentrate fishing revenue in the hands of a small number of individuals. In order to provide for the maximum employment at a living wage the following is proposed. Each permit owner is entitled to one license for the base gear type. Additional licenses or fractional licenses are provided according to availability as determined under part I. Owners of highly efficient gear (relative to the base gear type) must balance the gain expected against the risk of not being able to obtain enough licenses to operate the gear.
- III. As documented in the Henry report, the salmon sport fishery is presently large and growing rapidly. Due to the large number of individuals involved, the sports fishery is well on its way to becoming a political monster which is beyond the reach of the fisheries manager. The sports fishery must be controlled through enforcement of laws against the commercial sale of sports-caught salmon.
- IV. Whether or not a tribe will "gear up" or "gear down" should be determined by the tribe on the basis of resource availability and allocation as determined by the central management authority. The availability of a loan fund

to be administered by the tribe would allow for the orderly growth of the Indian fishery. Usurpation of Indian fishing rights did not occur over night. Similarly, the reassumption of salmon harvest prerogatives should proceed in an orderly fashion at the speed designated by each tribe with due consideration of the premises set out in part I.

POINT NO POINT TREATY COUNCIL
AREA SPECIFIC PROPOSALS

EXAMPLE FROM THE POINT NO POINT TREATY COUNCIL AREA

Gear and Effort Proposals

Each of the member tribes, Skokomish (SK), Port Gamble (PG), Lower Elwha Klallam (LE) has an approved enrollment of approximately 250 adults. Licensed fishermen and approximate gross fishing revenues for the most recent year of record (1976) allow the following table;

	<u>SK</u>	<u>PG</u>	<u>LE</u>
# fishermen:	143	86	88
revenue \$:	1,000,000	200,000	130,000
\$/fisherman:	6,993	2,325	1,477

Only general trends are available for 1977 since the fishing season is not complete. The northern tribes (PG, LE) will experience a gain in fishing revenue.. relative to 1976 while the Skokomish will experience the third consecutive annual decline in fishing revenue since 1974.

The nature of the fishing effort has changed very little since 1976 and the following table is constructed from 1977 data;

<u>gear type</u>	<u>SK/%</u>	<u>PG/%</u>	<u>LE/%</u>
marine gill net	85/59	6/7	3/3
river gill net	30/21	12/14	30/34
miscellaneous	28/20	68/79	55/63

Marine gill net gear varies from modern vessels fishing 300 fathoms of gear from a power drum (about 20 units, all tribes) to skiffs which set 100-200 fathoms of gear by hand (about 70 units, all tribes). River set nets are gill nets of variable length. Miscellaneous gear includes hook and line, dip nets, gaff or other hand held gear. (Purse seine is illegal among Point No Point tribes because it concentrates fishing income in the hands of a few people).

Although not all fish card holders are fisheries income dependent, it is fair to say that all fish card holders

would be fisheries income dependent if the tribes had a fair opportunity to harvest a healthy resource. An average living wage for our areas is about \$14,000.00 per year (1976 value of U.S. dollar).

Using round figures for a tribal limited entry program and the observed distribution of effort for the 1976 and 1977 seasons, the following table was constructed;

<u>Tribal effort</u>	<u>Hood Canal%</u>	<u>Strait%</u>	<u>#Licenses</u>	<u>Target rev. (\$)</u>
SK	100	0	150	2.1 million
PG	50	50	100	1.4 million
LE	25	75	100	1.4 million

Treaty Indian Target Revenue - Point No Point Regions
of Origin (millions of dollars)

	Hood Canal	Strait of Juan de Fuca
SK	2.1	0.0
PG	0.7	0.7
LE	0.35	1.05
Total	3.15	1.75

The target revenue for each region is that level of income necessary on an annual basis to provide an expected value to each license of \$14,000.00. Overhead, operation and maintenance costs will be absorbed by the fact that \$14,000 is an average value. It will also serve as an incentive to keep overhead to a minimum. Actual income per fisherman, as always, will depend upon the experience and dedication of the individual.

Gear Definitions and Restrictions

It is proposed to issue licenses equal to 150 standard units (su) for Skokomish and 100 su for PG and LE each. The standard unit is a vessel and nets which can produce a net income of \$14,000. annually for its owner. All other gear types will be issued fractional licenses according to efficiency by standards developed from fish ticket data. For example, a hand set drift skiff fishing 100 fathoms by 120 meshes would probably be required to purchase 0.5 of a license. When the maximum number of

licenses has been sold, no more licenses would be available for commercial fishing. Fish cards (permits) would still be issued for sports, and other subsistence fishing until the total in this category reaches five per cent of the total commercial harvest at which time a permit limitation program would be implemented.

Loans to fishermen

As the resource is returned toward its full potential production, improvements in the magnitude and quality of gear will be necessary. While private sources for gear loans will develop as the quality of the resource improves, an initial fund will need to be established for a period of five years to assist immediate improvements. Assuming a maximum addition of 30 units of gear at \$1,000/ft., a maximum of \$960,000 in loan funds will be needed. The thirty vessel maximum is based on existing under-utilized opportunity in the sockeye fishery. Expansion in the fisheries for other species will fall outside the five year frame.

TABLE IIA1

POINT NO POINT TREATY AREA

Summary of Catches for the 1976-77 Runs

	Sockeye	Pink	Chinook	Coho	Chum	Steelhead
LOWER ELWHA KLALLAM						
Number	173	--	331	12,835	3,009	1,097
Weight (lbs)	865	--	4,965	89,845	27,081	8,776
% Contribution	0.7	--	3.8	68.3	20.6	6.7
Value (\$)	1,168	--	8,690	89,845	18,957	10,970
% Contribution	0.9	--	6.7	69.3	14.6	8.5
PORT GAMBLE						
Number	938	1	1,241	9,804	14,729	1,046
Weight (lbs)	4,690	5	18,615	68,628	132,561	8,368
% Contribution	2.0	0.0	8.0	29.5	56.9	3.6
Value (\$)	6,332	4	32,577	68,628	92,793	10,460
% Contribution	2.8	0	14.2	29.9	40.4	4.6
SKOKOMISH						
Number	15	5	18,923	19,408	59,179	538
Weight (lbs)	75	5	283,845	135,856	532,611	4,304
% Contribution	0.0	0.0	29.7	14.2	55.7	0.4
Value (\$)	102	4	496,730	135,856	372,830	5,380
% Contribution	0.0	0.0	49.1	13.4	36.9	0.5
POINT NO POINT AREA						
Number	1,126	2	20,495	42,047	76,917	2,681
Weight (lbs)	5,630	10	307,425	294,329	692,253	21,448
% Contribution	0.4	0	23.3	22.3	52.4	1.6
Value (\$)	7600	8	537,995	294,329	484,577	26,810
% Contribution	0.6	0	39.8	21.8	35.9	2.0

TABLE II. A2

SUMMARY OF KLALLAM TRIBES SALMON CATCH

<u>1974-75 SEASON</u>						
	<u>SOCKEYE</u>	<u>PINK</u>	<u>CHINOOK</u>	<u>COHO</u>	<u>CHUM</u>	<u>STEELHEAD</u>
ON-RESERVATION	0	0	0	0	0	0
OFF-RESERVATION	0	0	139	2,120	2,185	0
NOT INDICATED						
TOTAL CATCHES	0	0	139	2,120	2,185	0
<u>1975-76 SEASON</u>						
	<u>SOCKEYE</u>	<u>PINK</u>	<u>CHINOOK</u>	<u>COHO</u>	<u>CHUM</u>	<u>STEELHEAD</u>
ON-RESERVATION	1	2	19	509	3	181
OFF-RESERVATION	127	1,023	286	27,447	1,621	508
NOT INDICATED			80	2		
TOTAL CATCHES	128	1,025	385	27,958	1,624	689
<u>1976-77 SEASON (PORT GAMBLE BAND)</u> <u>(LOWER ELWHA BAND)</u>						
	<u>SOCKEYE</u>	<u>PINK</u>	<u>CHINOOK</u>	<u>COHO</u>	<u>CHUM</u>	<u>STEELHEAD</u>
ON-RESERVATION	0	0	0	0	0	0
OFF-RESERVATION	938	1	1,241	9,804	14,729	1,046*
TOTAL CATCHES	1,111	1	1,572	22,639	17,738	2,143
<u>1977-78 SEASON (AS OF 10/26/77) (PORT GAMBLE BAND)</u> <u>(LOWER ELWHA BAND)</u>						
	<u>SOCKEYE</u>	<u>PINK</u>	<u>CHINOOK</u>	<u>COHO</u>	<u>CHUM</u>	<u>STEELHEAD</u>
ON-RESERVATION	0	1	1	83	2	0
OFF-RESERVATION	12,158	2,035	908	10,819	1,011	3
TOTAL CATCHES	13,641	2,460	1,736	18,137	1,136	55

NOTE TRIBAL CEREMONIAL AND SUBSISTANCE CATCHES ARE NOT INCLUDED IN ABOVE RUN DATA.

TABLE II. A3

VALUE OF KLALLAMTRIBE SALMON FISHERY * PORT GAMBLE BAND
** LOWER ELWHA BAND

<u>1975-76 Season</u> <u>SPECIES</u>	<u>CATCH</u>	<u>APPROX.</u> <u>AVG. WT.</u>	<u>APPROX.</u> <u>PRICE PER</u> <u>POUND</u>	<u>VALUE</u>
Sockeye	128	6	1.05	806
Chinook	385	17	1.15	7,527
Pink	1,025	5	.50	2,563
Coho	27,958	8	1.00	223,664
Chum	1,624	10	.75	12,180
Steelhead	689	10	.85	5,857
TOTAL				252,597
<u>1976-77 Season</u>				
<u>SPECIES</u>				
Sockeye	938	7	1.15	7,551*
	173	6	1.10	1,142**
Chinook	1,241	20	1.75	43,435*
	331	12	1.50	5,958**
Pink	1	4	.50	2*
	0	--	---	---**
Coho	9,804	10	1.05	102,942
	12,835	6	1.05	80,861
Chum	14,729	10	.90	132,561
	3,009	9	.80	21,665
Steelhead	1,046	11	1.50	17,259
	1,097	8	1.10	9,654
				303,750*
TOTAL				119,280**
				423,030
<u>1977-78 Season As of 10/26/77</u>				
<u>SPECIES</u>				
Sockeye	12,158	6	1.25	91,185
	1,483	6	1.30	11,567
Chinook	909	12	1.75	19,089
	827	17	1.67	23,197
Pink	2,036	5	.65	6,617
	424	5	.50	1,060
Coho	10,902	9	1.00	11,143
	7,235	9	1.20	78,138
Chum	1,013	11	1.00	11,143
	123	10	1.00	1,230
Steelhead	3	9	1.00	27
	52	10	1.00	520
				250,709*
				115,712**
				366,421

TABLE II. A4

VALUE OF KLALLAM TRIBES 1977-78 ON-RESERVATION FISHERY

	<u>CATCH</u>	<u>APPROX. AVG. WT.</u>	<u>APPROX. PRICE PER LB.</u>	<u>VALUE</u>
SOCKEYE	0	---	---	---
	0	---	---	---
CHINOOK	1	12--	1.75	21
	21	17	1.20	428
PINK	1	5--	.65	3
	0	---	---	---
COHO	83	9	1.25	934
	1,959	9	1.20	21,157
CHUM	2	11	1.00	22
	7	10	.80	56
STEELHEAD	0	---	---	---
	44	10	1.00	440
				980*
TOTAL				22,081**
				23,061

TABLE II. A5

ECONOMIC VALUE OF KLALLAM TRIBE WINTER STEELHEAD FISHERY

<u>SEASON</u>	<u>CATCH</u>	<u>AVG. WT. FISH</u>	<u>AVG. PRICE LB.</u>	<u>APPROX. VALUE TO TRIBAL FISHERMEN</u>
1974 - 75	0	---	---	---
1975 - 76	689	10	.85	5,857
1976 - 77	1,046	11	1.50	17,259
	1,097	8	1.10	9,654
1977 - 78	3	9	1.00	27
	52	10	1.00	520
	2,887			33,317

TABLE II. A6

SUMMARY OF SKOKOMISH TRIBES SALMON CATCH

	<u>1974-75 SEASON</u>					
	<u>SOCKEYE</u>	<u>PINK</u>	<u>CHINOOK</u>	<u>COHO</u>	<u>CHUM</u>	<u>STEELHEAD</u>
ON-RESERVATION	0	0	3,831	34,781	19,166	78
OFF-RESERVATION	0	0	3,161	2,670	1,857	16
NOT INDICATED						
TOTAL CATCHES	0	0	6,992	37,451	21,023	94
	<u>1975-76 SEASON</u>					
	<u>SOCKEYE</u>	<u>PINK</u>	<u>CHINOOK</u>	<u>COHO</u>	<u>CHUM</u>	<u>STEELHEAD</u>
ON-RESERVATION	0	55	4,299	22,912	5,858	451
OFF-RESERVATION	0	317	8,984	16,089	7,031	13
NOT INDICATED		4	178	76	22	
TOTAL CATCHES	0	376	13,461	39,077	12,911	464
	<u>1976-77 SEASON</u>					
	<u>SOCKEYE</u>	<u>PINK</u>	<u>CHINOOK</u>	<u>COHO</u>	<u>CHUM</u>	<u>STEELHEAD</u>
ON-RESERVATION	3	1	3,166	12,284	24,463	538
OFF-RESERVATION	12	0	15,757	7,124	34,716	0
TOTAL CATCHES	15	1	18,923	19,408	59,179	538
	<u>1977-78 SEASON (AS OF 10/26/77)</u>					
	<u>SOCKEYE</u>	<u>PINK</u>	<u>CHINOOK</u>	<u>COHO</u>	<u>CHUM</u>	<u>STEELHEAD</u>
ON-RESERVATION	0	0	169	835	91	2
OFF-RESERVATION	851	378	13,436	14,394	10,325	0
TOTAL CATCHES	851	378	13,605	15,229	10,416	2

NOTE TRIBAL CEREMONIAL AND SUBSISTANCE CATCHES ARE NOT INCLUDED IN ABOVE RUN DATA.

TABLE II. A7

VALUE OF SKOKOMISH TRIBE SALMON FISHERY

<u>1975-76 Season</u> <u>SPECIES</u>	<u>CATCH</u>	<u>APPROX.</u> <u>AVG. WT.</u>	<u>APPROX.</u> <u>PRICE PER</u> <u>POUND</u>	<u>VALUE</u>
Sockeye	0	—	—	0
Chinook	13,461	15	.81	163,551
Pink	376	4	.40	602
Coho	39,077	7	.82	224,302
Chum	12,911	11	.50	71,011
Steelhead	464	10	.86	<u>3,990</u>
TOTAL				463,456
<u>1976-77 Season</u> <u>SPECIES</u>				
Sockeye	15	7	1.15	121
Chinook	18,923	15	1.27	360,483
Pink	1	4	.50	2
Coho	19,408	6	.86	100,145
Chum	59,179	11	.58	377,562
Steelhead	538	10	1.60	8,608
TOTAL				<u>846,921</u>
<u>1977-78 Season</u> <u>SPECIES</u>				
Sockeye	851	6	1.25	6,383
Chinook	13,605	16	1.12	243,802
Pink	378	4	.60	902
Coho	15,229	7	1.08	115,131
Chum	10,415	12	.73	91,244
Steelhead	2	9	1.30	23
				<u>457,485</u>

TABLE II. A8

VALUE OF SKOKOMISH TRIBES 1977-78 ON-RESERVATION FISHERY

	<u>CATCH</u>	<u>APPROX. AVG. WT.</u>	<u>APPROX. PRICE PER LB.</u>	<u>VALUE</u>
SOCKEYE	0	—	—	—
CHINOOK	169	16	.95	2,568
PINK	0	—	—	—
COHO	835	7	.70	4,092
CHUM	91	12	.60	655
STEELHEAD	2	9	1.30	23
TOTAL				<u>7,338</u>

TABLE II. A9

ECONOMIC VALUE OESKOKOMISH TRIBE WINTER STEELHEAD FISHERY

<u>SEASON</u>	<u>CATCH</u>	<u>AVG. WT. FISH</u>	<u>AVG. PRICE LB.</u>	<u>APPROX. VALUE TO TRIBAL FISHERME</u>
1974 - 75	94	10	?	?
1975 - 76	464	10	.86	3990
1976 - 77	538	10	1.60	8608
1977 - 78	<u>2</u>	9	1.30	23
	1100			

CLASSIFICATION OF CATCHES UNDER THE BOLDT
DECISION - POSITION OF POINT NO POINT TREATY COUNCIL

Off - Reservation Fisheries
On - Reservation Fisheries
Subsistence Fisheries
Ceremonial Fisheries
Steelhead Fisheries

OFF-RESERVATION SALMON HARVEST ALLOCATION
POSITION STATEMENT

Introduction

Since the Point No Point Treaty Area Tribes are willing to make substantial concessions immediately in the area of steelhead harvest, on-reservation harvest and subsistence and ceremonial harvest in order to lessen the tensions surrounding implementation of the Boldt decision, further reductions in the Treaty share of the salmon harvest are not warranted. For example, while the Skokomish tribe has the largest gross annual fishing revenue of the three member tribes, the average income per fisherman is expected to be less than \$6500.00 for 1977, down from \$6900.00 in 1976. The average income per fisherman at the other two tribes will be substantially lower than the Skokomish average.

Individual Tribal Statements

The Port Gamble Klallam Tribe will settle for no less than fifty per cent of the harvestable numbers of each species for all salmon of Puget Sound origin.

The Lower Elwha Klallam position is the same as that of Port Gamble.

The Treaty Council Tribes will accept no less than fifty per cent of the total harvest of Treaty Council origin salmon provided however that the following formula may be used:

1 chum = 1 coho = 3.6 pink = 0.3 chinook = 0.9 sockeye

Less than fifty per cent is acceptable for pink and sockeye salmon of Canadian origin for a period not to exceed five years.

ON-RESERVATION FISHERIES POLICY

- I. The consensus of the Point No Point Treaty Area Tribes of Port Gamble and Lower Elwha Klallam is that on-reservation catches of salmon and steelhead can be included in the overall Treaty Share, provided that the separate and distinct existence of on-reservation fisheries continues to be recognized and further provided that the Tribally proposed fishery enhancement and restoration goals are realized.
- II. The position of the Skokomish Tribe is that its on-reservation harvest of salmonids cannot be included in the overall Treaty share as explained in the following position statement.

Skokomish Tribal Policy Regarding On-Reservation Catch

On reservation harvest requirements, as set by the Skokomish Tribe in 1976 were 5000 chinook, 20,000 coho and 14,000 chum salmon. The fish committee wishes to establish a general formula for the computation of on reservation catch which will serve to establish on reservation catch levels from year to year to year, and which could be agreed upon by all parties as a fair and equitable means to establish on-reservation catch levels. The formula must allow for a reasonable base level of catch for each species plus mitigation for destruction of the resource, if any, plus some fraction of expanded future production from the system. In mathematical terms, the management figure, R, for a given species for a given year would look like this,

$$R = B + aM + bE$$

where B stands for base level catch, M stands for mitigation funded production, a is the proportion of the mitigation funded production claimed as on reservation catch (0.20 for twenty per cent for example), E stands for expanded production and b is the proportion of the expanded production marked for on reservation catch (0.05 for five per cent, for example).

The base level figure requires further explanation. In any given year, B is a fixed number, 14,000 for example. Management agencies would set harvest levels to allow a harvestable surplus of 14,000 to reach on reservation waters. Whenever more than the target number (14,000 in this example) is caught on reservation, these fish will be counted against the Indian share of the harvest by mutual agreement between Tribal and State bodies. Also by mutual agreement, whenever less than the target number is available for on reservation harvest, the absolute value of the difference between the target figure and the actual figure will be added into the base figure for the year of shortage to yield a new base figure for the coming year's harvest. For example, if the actual catch in 1976 was 12,000 for a species for which the target figure was set at 14,000, the on reservation management figure for 1977 would be 16,000 ($14,000 + 2,000$). After a period of time equal to one reproductive cycle for the species in question (five years as an average) the base figure would be automatically returned to its original value at the start of the time period, provided that a good faith effort to provide on reservation fishing opportunity will have been made by the Harvest Management Division of WDF and provided that Skokomish fisheries management will have made a similar good faith effort not to inhibit on reservation fishing opportunity during the same time period.

TABLE IIB1

Table. Comparison of WDF and Skokomish positions for on reservation base catch levels
as of 3/4/77

	<u>Skokomish</u>			<u>WDF</u>			<u>Difference</u>		
	<u>chinook</u>	<u>coho</u>	<u>chum</u>	<u>chinook</u>	<u>coho</u>	<u>chum</u>	<u>chinook</u>	<u>coho</u>	<u>chum</u>
R	2500	10000	14000	325	5500	14000	2175	4500	0
B	2500	8250	14000	325	3750	14000	2175	4500	0
aM	0	1750	0	0	1750	0	0	0	0
bH	0	0	0	0	0	0	0	0	0

TABLE IIB2

Tribally Requested

Table 1a 1977 On-reservation harvest

	Sockeye	Chinook	Pink	Coho	Chum	Steelhead
Skokomish	—	2500	—	10,000	2,800	up to 450
Port Gamble	—	500	—	2,000	2,500	up to 280
Lower Elwha	—	—	—	11,350	—	up to 800

Table 1b On-reservation harvest as % of area's harvestable No's

Skokomish	—	11.75%	—	13.2%	4.6%	? Hood Canal
Port Gamble	—	2.30%	—	2.6%	4.1%	? Hood Canal
Lower Elwha	—	—	—	23.4%	—	? Straits

Table 1c On-reservation harvest as % of Puget Sound origin runs

Skokomish	—	1.3 %	—	1.14%	0.72%	?
Port Gamble	—	0.25%	—	0.20%	0.65%	?
Lower Elwha	—	—	—	1.30%	—	?

SUBSISTENCE AND CEREMONIAL FISHERIES POLICY

The concensus of Point No Point Treaty Area Tribes is that subsistence and ceremonial catch can be included in the overall Treaty share provided that the existence of the subsistence and ceremonial Fisheries continues to be recognized and provided that the Tribally proposed enhancement goals are realized.

STEELHEAD HARVEST MANAGEMENT POLICY

INTRODUCTION

The harvest management of steelhead (Salmo gairdneri Richardson) is distinct from the harvest management of salmon (Oncorhynchus spp.) in the Treaty Council Areas (Hood Canal, Admiralty, Strait of Juan de Fuca). The reason for the distinction resides in the low average annual abundances of steelhead runs relative to the average annual abundances of stocks of the salmon species. In view of the small average run sizes, certain types of traditional Indian river fishing gear (gill nets, traps) are not always appropriate in every steelhead management situation.

In order to accommodate the realities of steelhead harvest management with the interests of Treaty Indians and non-Indian sportsmen, the Treaty Council management staff proposed a hook and line commercial steelhead fishery for the great majority of streams in the 1976-77 season which was accepted by the member tribes (Skokomish, Port Gamble, Lower Elwha) and the Washington Department of Game (WDG). River net fisheries for steelhead were conducted in five rivers in which the harvestable run sizes were relatively large (Skokomish, Dungeness, Elwha, Lyre, Pysht).

The experience gained during 1976-77 season indicates that 1) the hook and line management policy is acceptable to the Treaty fishermen and 2) the hook and line management policy is effective in providing legal levels of fishing opportunity for both Treaty and non-Treaty fishermen. In fact, under the hook and line regulations, there is only one general substantial distinction between the Treaty and the non-Treaty fisherman; the Treaty fisherman may sell his catch, if he so desires, under applicable tribal regulations and ordinances.

METHODS

Harvestable run size predictions by stream, furnished by WDG, are acceptable as a starting point since data and methods have been freely provided to the Treaty Council staff

for review. The Treaty share is one half the harvestable size, regardless of the location of the river.

Daily and season bag limits are set as follows;
 Season bag limit = $\frac{1}{2}$ (harvestable run size)/expected number
Treaty fishermen
 daily bag limit = season bag limit/number of legal days fishing
 or the non-Indian daily bag limit which ever is greater.
 Enforcement is enabled by regulations which make it illegal for an individual to sell more than the daily bag limit for any given river within a twenty four hour period or more than the season bag limit for any single river within one season. Daily and seasonal bag limits can be adjusted by the actual numbers of fishermen participating as determined from the commercial steelhead tickets.

In practice, there is relatively little interest in commercial steelhead fishing within Treaty Council usual and accustomed waters, although the Treaty right to harvest steelhead is considered to be non-negotiable by the Treaty Council member tribes.

Additionally, in order to increase fishing opportunity for all parties concerned, the Lower Elwha Klallam Tribe has undertaken to rear and release steelhead smolts from its Tribal hatchery facilities.

GENERAL PRINCIPLES

- 1) Treaty Indian catch entitlement shall be one half the harvestable number of steelhead in any given season in any stream or river except as otherwise agreed between the Treaty Council and the Washington Department of Game.
- 2) Treaty Indian gear used in the harvest of steelhead for all purposes shall be comparable to the gear used by non-Treaty fishermen.*
- 3) Steelhead will not be a target species of any marine commercial fishery.
- 4) Data, statistical methods and harvest management rationales shall be freely exchanged between employees of the Department of Game and the tribes

and Treaty Council.

- 5) Any exclusion or inhibition of Treaty Indian opportunity to harvest salmon produced in Washington State hatcheries shall render the preceding principles null and void.
-

* Exceptions are the Elwha River, Pysht River and Lyre River where strictly controlled net fisheries will be necessary for an interim period wherein alternative sources of fishing income shall be developed.

POINT NO POINT TREATY COUNCIL LAW ENFORCEMENT
PROGRAM DESCRIPTION AND PROPOSALS

On July 1, 1976 a Law Enforcement Program was begun by the Point No Point Treaty Council for the purpose of enforcing the fisheries regulations of the three tribes who are represented in the Treaty Council.

The PNPTC Fisheries Enforcement Program comprises a team of six officers and one coordinator. The six officers are divided into teams of two, who are assigned to three locations; Lower Elwha, Port Gamble and Skokomish.

The officers assigned in each tribal jurisdiction are selected through the Tribal Councils and with the concurrence of the Law Enforcement Coordinator.

The responsibilities and duties of the coordinator are defined as follows:

The Law Enforcement Coordinator reports directly to the Point No Point Treaty Coordinator.

He is responsible for:

- Developing and maintaining an effective law and order program
- For the supervision of the Law Enforcement Patrolmen.
- The management and control of all boats and vehicles assigned to the enforcement personnel.
- The control of expenditures from the law enforcement budget.
- The acquisition of professional equipment as required.
- Maintaining cooperation with tribal governing bodies and law and order committees.
- Assisting in the development of an effective fishing and game program.
- Assist in drafting ordinances pertinent to these programs.

The following rules shall apply to the management of the Point No Point Treaty Council Law Enforcement Officers.

1. Patrolmen hired for the Point No Point Treaty Council report directly to the Law Enforcement Coordinator.
2. They shall not be subjected to conflicting duties without permission from the Law Enforcement Coordinator.
3. Patrol assignments and working hours will be coordinated through the Law Enforcement Coordinator.

4. Patrol boats and vehicles will be used by enforcement personnel only. Exceptions by prior permission of the Law Enforcement Coordinator.
5. Each Tribal Office will have the responsibility for assuring that each officer is performing properly.
6. Serious infractions or failure to perform to acceptable standards shall be reported to the Law Enforcement Coordinator immediately. A determination with the proper tribal authority will be ascertained as soon as possible.
7. All other personnel matters concerning individual effectiveness should be forwarded for discussion with the Law Enforcement Coordinator and those others involved.

As the fisheries of these tribes occur in both marine and fresh-water the Enforcement Division must operate both seaborne and land patrols. The area involved consists of approximately 300 miles of shoreline from the terminus of Hood Canal to the Hoko River and the land areas drained by all rivers emptying into Puget Sound and the Straits of Juan de Fuca between those points.

The law enforcement program patrols these areas using four trucks, two marine boats and two river boats with six uniformed officers. Marine patrols are maintained on the entire length of Hood Canal using boats stationed at the Port Gamble and Skokomish Reservations. All rivers in the area are patrolled either by boat or from shore.

Records of all incidents, citations and court proceedings are maintained by each team of officers. The Coordinators office is provided copies for a master file. Any requests or inquiries should be directed to the coordinator's office.

When patrolling or acting in an official capacity, all officers are required to wear appropriate uniforms which clearly identify them. Each officer is authorized to carry a side arm and maybe armed with other weapons as the need arises.

All vehicles, boats and trucks, are properly equipped for patrol and emergency functions. A vehicle use and mileage log is required of each officer.

In the event that the fisheries officers need assistance in apprehending violators or maintaining patrol functions, assistance may come from neighboring tribes who are cross-deputized or the Tribal Councils who have the authority to deputize additional officers.

The organization's early months were a trial and error operation simply because the fishing season was upon us before properly planning and organization could take place. However, through cooperative effort from all three tribes, procedures and methods have been implemented and we are progressing at a satisfactory level.

We are confronted with a number of problems yet to be resolved

- A reliable communication system between Tribal areas
- The attainment of higher personnel standards regarding qualifications. This problem is unique to each Tribe
- Additional funding so as to increase salaries in order to make job opportunities more attractive.
- The hiring of an additional patrolman in each Tribal area. It is physically impossible to properly patrol rivers, hatcheries and the marine waters at the same time.
- Cross deputization between all tribes the State of Washington and Federal authorities for more effective enforcement.
- The tribes need to improve upon their respective judicial systems. The Treaty Council has tackled this problem and made recommendations. (See attachment dated 3-29-77)

The first priority of this enforcement unit is the final achievement of complete solidarity and unity with the three tribes within the Treaty Council. Once this is achieved, we can then approach other tribes and Treaty Councils with a proven working model. In conjunction with this priority, is the development and hopefully the implementation of a Puget Sound Fisheries Compact. This would provide for a total cross-deputization of all Fisheries patrolmen.

JUDICIAL SYSTEMS

Introduction

In preparing to petition Judge Boldt for self-regulating status, the Point No Point tribes have realized that they need to develop ways to strengthen the judicial branch of their fishing regulation systems. On March 28 Treaty Council representatives and staff met with tribal judges and attorneys to discuss their courts.

The groups listed the following as problems which need to be addressed: 1) None of the tribes has an appeal process. 2) Tribal police officers have had to act as prosecutors as well as witnesses. 3) Judges often have to judge their close relatives because there is no one to step in for them. 4) Judges sometimes need assistance with questions of law. 5) Judges are sometimes attacked by angry tribal members.

People at the meeting discussed some ways that these problems could be addressed. Following are several alternatives which the Treaty Council has asked the tribal councils to consider and make some recommendations on.

Appellate Court

The reason for leaving an appellate court is to allow a defendant in the tribe another judicial forum. There is no legal right to an appeal but as a matter of practice, the better policy is to allow one level of appeal.

Federal courts leave by judicial decision read into the Indian Civil Rights Act as policy of exhaustion of tribal remedies. Therefore, if a tribe provided a forum of a higher level in which to appeal, a federal court will abstain from having a case brought under the ICRA, as long as, the tribe provided a 'meaningful' forum to appeal to. This would allow the tribe to remedy any constitutional substantive or due process errors at the tribal level and is in keeping with this "exhaustion" policy.

The procedure and appellate system which may be initiated are for each tribe to design. Possible solutions are a one judge or three judge panel with the judge whom sat at the lower court abstaining from the decision. People at the meeting seemed interested in one appeals court for the Point No Point Area. This could be made up of judges from other

Point No Point tribes.

Another consideration is whether or not the appeal shall be 'de novo'. (That is, a new trial.) If not, a record or transcript must be provided and the expense incurred should be dealt with. However, if a record is made, the appellate court can decide upon the record without their being a new trial in the appellate court.

Thus the decision wherein should be made after it is found that an appellate court is recommended is "How many judges should be involved?" and "Shall the appeal be de novo?" Of course, any other possible recommendations for such a system should be discussed.

Pro-Tempore Judges -

Should the tribe allow for leaving another judge sit in on a case whenever the tribal judge must withdraw for reason of prejudice or close family relationship? If so, how close a family relationship?

If a judge protem must be used, does the tribe feel that one of the other judges of the Point No Point Treaty Area will not be able to decide cases involving that particular tribe?

A Three-Judge Court

Tribal courts are not required to use just one judge at each trial the way Washington State courts do. People at the meeting discussed the possibility of having more than one judge--probably three--hear each case. The three would all be present throughout the trial. Then they would meet by themselves to decide what the verdict should be. One judge would probably come from your reservation, and the others would come from one or both of the other PNPTC tribes.

This set-up would have some advantages: 1) It would not matter as much as it does now if one judge was related to the defendant. 2) One judge at least would be from the reservation and would know the tribal members and tribal fishing grounds well. 3) One judge at least could be someone thoroughly trained in the law (such as Anthony Little). 4) Community resentment toward the local judge could be reduced a little, because defendants would know that outside judges agreed with the local judge. 5) Decisions might be fairer. 6) Judges could help each other learn skills and law.

Disadvantages of the three-judge trial system might be: 1) It could be three times as expensive; 2) It might take longer to get a trial date if three people's schedules had

to be coordinated; 3) Judges would have to travel a lot; 4) Defendants might feel completely overpowered facing three judges.

The two judges at a meeting liked the possibility of being joined by other judges. Many people at the meeting also favored this option. Do you? If so, do you have ideas about ways to finance this?

Need For Tribal Prosecutor

In many of the tribal courts the police officers have been acting as the prosecutor. Those at the meeting felt this presents several problems to the tribe.

First, since the officers are involved in making the arrest, tribal members feel that having the police officer act as prosecutor puts the defendant at a disadvantage. Also, because the police officers have an interest in upholding the arrest they made. It may be difficult for them to act without bias as a prosecutor. A police officer's role is to act as a witness about what happened, not to act as the defendant's adversary. But it is hard for the officer to rise above his own special interests in the trial. A separate prosecutor, on the other hand, could try to see that justice was done overall.

Several ideas for resolving the problem were discussed:

- 1) have a law student act as a prosecutor.
- 2) have one person act as an "advisor to the court," being neutral to each side, answering questions or pointing out problems for each side.
- 3) have a tribal staff member, P.R. committee member, or some other appropriate person act as a "spokesperson" for the tribe, presenting his case.

Bail Forfeiture

The idea was discussed of providing in the fishing ordinance for a system of bail forfeiture. This would allow a person who was given a citation to simply pay the bail (fine) without coming into court or without the necessity of contesting the case. This is what most people do when they get a traffic citation.

Several people expressed the feeling that most Indian fisherman, if caught or cited for a violation, knew they were guilty and just wanted to pay what they were supposed to and not try to get out of it through contesting it in court. This was in contrast to non-Indian fishermen who were always trying to "beat the rap." Several people felt the tribal system should allow for this type of resolution of the problem.

It could be up to each tribe to decide at what point a person could no longer forfeit bail but would have to appear in court (i.e. maybe after their second citation.)

PROPOSED SYSTEM OF ENHANCEMENT AND STOCK
RESTORATION FOR
THE POINT NO POINT TREATY AREA

INTRODUCTION

The proposal for the enhancement of the natural and hatchery production for the regions of origins, Strait of Juan de Fuca and Hood Canal, of Puget Sound is divisible into two major categories, New Programs and Existing Programs.

NEW PROGRAMS

INTRODUCTION

As outlined in the report of Kenneth A. Henry to the Regional Task Force, hatchery programs are not necessarily an improvement to the salmon resource. The exploratory work of the Washington Department of Fisheries in the area of salmon enhancement in Puget Sound has illuminated several critical concerns; 1) hatchery production can limit natural production thereby reducing the numbers of salmon available from all sources, 2) the location of sources of natural production should constrain the location of hatcheries and the management practices of hatcheries, 3) Radical alteration of the relative abundances of salmon species can depress the unit price of salmon in a terminal area fishery. The solutions to these concerns are not available at present in the Treaty Council area. No new programs can be reasonably evaluated within a region of origin until some short term, applied research programs are completed. Once the research is completed, the hatchery sites suggested by the research can be evaluated by the criteria already established by the Regional Task Team and the State of Washington.

The first stage is to determine the limits of natural production for each major stream and river within each region of origin from existing studies and, where necessary, from original observations. (See the Elwha River study, Washington Department of Fisheries). When the information on natural production is summarized for each region of origin, a sensitivity analysis system (computer simulation model) is constructed from data on current hatchery production, current

natural production, potential natural production and current harvest management strategies. New hatchery sites, new hatchery management strategies and new harvest management strategies can then be added to the bookkeeping structure to roughly assess the desirability of pursuing any given enhancement system. The evaluation of alternatives, such as enhancement of indigenous stocks through artificial propagation and/or stream rehabilitation, will also be possible within such a system.

Once a selected enhancement method has passed existing criteria for the production of food fish, then construction would be initiated. An outline of the proposed procedure is as follows:

I. Identify potential sources of enhancement fish from both natural and artificial sources, placing primary emphasis on indigenous stocks in each area of origin.

II. Select those artificial production sites which serve to maximize total production subject to the constraints of preservation and rehabilitation of natural stocks.

III. Conduct engineering studies for each site so selected.

IV. Submit site proposal to management authority for application of established criteria.

V. Construct approved hatcheries.

Specific research proposals follow, however the general time schedule would provide for the first eggs to reach the new facilities by the Fall of 1981.

The process described is necessarily lengthy, but not really very costly compared to the price of a major hatchery facility. If the mistakes of the past are to be prohibited from being revisited in the future, research and management concerns must be given full consideration.

ENHANCEMENT GOALS

While the specific site selection process is in the near future, the ultimate goals of the program can be specified in terms of the number of salmon of each species necessary to achieve an acceptable income for each licensed Treaty fisherman within the region of origin. The maximum level of

funding necessary to achieve the goals can also be specified in these terms by making use of the average cost of producing an adult of each species from a hatchery.

The figures following (Table II. C.1) show that in order to maintain the natural (aboriginal) species composition and abundance of stocks harvestable in the Point No Point Treaty Area a rather substantial expenditure (approximately 2.2 million dollars) may necessary on a continuing annual basis if hatchery production is to be the only method of enhancement utilized.

The proposed salmon stock enhancement and restoration study (page 66) would attempt to establish baseline figures for the potential carrying capacity of the natural systems for spawning and rearing of the various species of salmon in each watershed. These fish may require some artificial enhancement effort which would be identified as part of each enhancement strategy alternative produced by Task #3 of the study. Such enhancement effort shall undoubtedly include satellite hatcheries, spawning and rearing channels, stream habitat restoration work, stream-side incubation boxes etc. Existing hatcheries (Quilcene National fish hatchery, State hatcheries and Tribal hatcheries) will play a major role in this effort although some modifications and expansion of their activities will be necessary.

Since it may be impossible to achieve the target figures by the above methods alone, additional releases (on station's) may be necessary to reach the full production goals. In all cases however indigenous stocks shall always be utilized.

Although it is impossible to present at this point exact cost figures for these projects it is estimated that overall costs may range between 15 and 20 million dollars for all projects combined.

TABLE IIC1
 TARGET PRODUCTION FIGURES

Total Harvestable Numbers (000's)*

	Hood Canal	Straits
Chinook	146	112
Coho	292	113
Chum	220	38
Pink	74	112

* Indian target is $\frac{1}{2}$ of the above

Annual Cost to produce (est) thousands \$**

Chinook	530	453
Coho	752	243
Chum	190	46
Pink	14	21

** This cost assumes that all increased production will be done by hatcheries.

CURRENT HATCHERY OPERATIONS PROPOSALIntroduction

In the short time since U.S. vs. Washington, many tribes, including the three tribes in the Point No Point Treaty Council, have built or are planning to build their own salmon hatcheries. For the three Point No Point tribes, the purpose of these hatcheries goes beyond just producing more fish for fishermen. It is the intention of the tribes that these hatcheries become economically profitable, since they are expected to eventually provide revenues to support the broader activities of the Tribes' total fisheries programs.

Because of this necessity to become economically self supporting, the tribal hatcheries operate differently than state-owned hatcheries, which are supported by a large tax base. Tribal hatcheries will eventually have two sources of revenue: the sale of adult fish that return to the hatchery; and the fish taxes levied on the sale of fish caught by treaty commercial fishermen. As such, tribal hatcheries tend to produce species, like chum salmon, which are less costly to produce. More importantly, these fish are much less susceptible to harvest by sport and foreign (Canadian) fisheries, and are therefore more likely to be caught by treaty fishermen who are taxed by their Tribe.

All three of the present Point No Point tribal hatcheries, although presently operating, are only partially completed. Funding for the construction and operation has been sporadic and inadequate, resulting in the inability of the tribes to bring the hatcheries up to their optimum capability. Following is a more detailed description of the hatcheries, including a brief project history and anticipated production goals.

Skokomish Tribal HatcheryProject Description

Design and construction of the Skokomish Hatchery

began in late 1976. Located on Enetai Creek, near the south end of Hood Canal on the Skokomish Indian Reservation, the hatchery was designed specifically for the production of chum and pink salmon. With minor modifications, coho or chinook fry could also be accomodated.

As of this date (October, 1977) the facility is approximately two-thirds complete. A water supply dam, pipeline, incubation boxes, and rearing pools for three million salmon fry have been constructed. The facility released close to two million fry in the spring of 1977.

Port Gamble Klallam Tribal Hatchery

Project Description

The hatchery project on the Port Gamble Reservation began in the summer of 1975 with the installation of two 28 foot diameter swimming pools near the mouth of Little Boston Creek. A total of 39,000 chinook salmon fingerlings, supplied by Washington Department of Fisheries, were placed in the pools and fed for a few weeks before they were released into Port Gamble Bay. Later that summer, 20,000 coho salmon were placed in the pools, fed for two weeks, and then released.

In 1976, four Netarts - type gravel incubation boxes were built and stocked with approximately 300,000 chum salmon eggs. After hatching, the fry were placed in the pools and reared for three weeks. In May of 1976, 205,000 of the fry were released into Port Gamble Bay, and approximately 35,000 were released from the Suquamish Indian Reservation as part of a cooperative project with that tribe.

The success of the 1976 chum program led to expansion and improvement of the hatchery. The crude water supply diversion box was replaced with a permanent intake box, and a small dam was built across the creek to create a settling pond to remove some of the silt. The swimming pool rearing ponds and plywood incubators were replaced with six 40 foot long concrete raceways. In 1977 approximately 1.6 million chum fry were released.

Recently, circular rearing pools and marine rearing pens have been added to the facility to increase its production

capacity for next year.

Lower Elwha Tribal Hatchery

Project Description

Largest of the Point No Point hatcheries is the Lower Elwha hatchery. Design and construction this hatchery began in the early summer of 1976. By February of 1977, the major components of the facility were complete, including the water supply pipeline to the Elwha River, three earthen rearing ponds totaling four acres, and a modern hatchery building. In 1977, several smaller rearing pools and additional incubation capacity were added. Improvements in the water supply system have been or are being made.

In December of 1976, a total of approximately three million chum eggs were placed in temporary incubators in the hatchery. These eggs came from the Quilcene National Fish Hatchery on Hood Canal. The eggs were hatched and the fry released in May, 1977.

Several improvements are necessary to maximize the production capability of this hatchery which should be approximately 150,000lb. annually. These improvements include surfacing of the earthen ponds and construction of a spawner collection facility.

Existing Hatchery Completion and Operation

The three Point No Point tribes currently operate salmon hatcheries on their respective reservations. These hatcheries are geared to produce fish that will directly contribute to their existing fisheries. Funding for these hatcheries has been somewhat sporadic, so included in this proposal are: a) cost estimates for completion of the hatcheries (one-time costs) b) operation and maintenance costs for 5 years, based upon presently projected production levels. Excluded from these are any capital improvements and/or operation and maintenance costs which may be determined as necessary to implement any activities defined by the Productivity, Enhancement and stock restoration study.

TABLE IIC2
Summary of Existing Tribal Hatchery Needs

<u>Hatchery</u>	<u>Species Produced</u>	<u>One-Time Completion Costs</u>	<u>Annual Operation Cost in 1977 Dollars</u>	<u># Adult Salmor Contributed To Fishery Annually</u>
Skokomish	chum, pinks	\$60,000	\$60,000	30,000 chums 15,000 pinks*
Port Gamble	chum, pinks	60,000	61,000	24,000 chums 15,000 pinks*
Lower Elwha	chum, coho steelhead	<u>270,000</u>	<u>200,000</u>	22,500 coho 100,000 chum 5,000 stlhd.
	TOTAL	390,000	321,000	

hatchery completion cost (year 1) = 390,000

hatchery operation cost (5 yrs. x 321,000/year) = 1,605,000

grand total, hatchery costs = \$1,995,000

SALMON STOCK ENHANCEMENT AND RESTORATION STUDY

Introduction

The present conflict over the allocation of the salmon harvest in the State of Washington, has brought forth, with increased emphasis, the need for rehabilitation and enhancement of the resource.

The salmon resource has been dealt a number of devastating blows from forest management practices, road construction, public utilities, mining, residential and industrial development, and quite often, questionable harvest management practices.

At this point, greatly diminished levels of production, added to allocation and harvest management problems have led to increased demands for large numbers of artificially produced fish stocks. However, proper development of salmon and steelhead resources must intergrate artificial and natural production into a single unified effort. Increased hatchery production however is not a panacea to the present array of problems. Increased emphasis and reliance on hatchery - produced fish without equivalent emphasis in natural production has a great number of drawbacks:

Biological Ecological Side Effects

1. Hatchery production disregards the unique adaptation of salmon stocks to individual sets of life experiences involving spawning time, homing ability, spawning behavior, and fry migration patterns.
2. Transplanted stocks suffer some loss of homing ability with subsequent scatter of spawners and haphazard interbreeding with wild stocks.
3. Genetic pollution, in many cases, results in unfit genetic patterns with highly diminished environmental adaptive qualities.
4. The loss of adaptability found in a number of artificially supported stocks results in less healthy and smaller populations whose viability is totally dependent upon ever increasing human effort and cost.
5. Further diminution of genetic diversity results from hatchery practices involving selective processes.

6. Enhanced fry survival and elimination of natural selection, rapidly results in "hatchery type" stocks.
7. Massive hatchery production of individual stocks of selected species results in chaotic harvest management problems in mixed-stock area fisheries in which many valuable natural stocks of lower individual abundance are obliterated in the name of "maximum stock yield" which eliminates the only available "gene bank"
8. The entry of massive hatchery runs in individual fisheries in even narrower peaks of abundance, creates a large number of problems for the harvesters. Such problems include, but are not limited to: a shorter fishing season, an ever decreasing number of terminal area fisheries, overcapitalization in vessels and gear in an attempt to capture a larger share of a very narrow peak, potential market glut with attendant lower prices to fishermen, and a species composition of market products dictated by hatchery planners.
9. Availability - There is strong indication that "hatchery type" fish command a relatively low value/lb. when compared to larger naturally selected and reared fish.
10. Production - Costs and the relatively lower rate of foreign interception have resulted in the present single species targeted enhancement system upon which the State of Washington has embarked.
11. Increased reliance on hatchery produced fish tends to have a snowball effect since it induces a false sense of security concerning the resource and lessens regard for the natural fish producing environment.
12. Last but not least costs-per-pound of fish produced in hatcheries keep growing to the end that a lesser resource is produced at a rather substantial cost. (Table I

At present, neither the State of Washington, nor the Indian Tribes affected are able to reverse the trend of events in spite of the fact that it is widely recognized that

increased natural stream production is both biologically and economically more efficient than hatchery production. Natural stream production, beyond countering all of the negative points raised above, offers a number of further positive items:

- 1) Because of the large number of stocks involved, there is a dampening effect on many overall fluctuations in abundance.
- 2) Enhanced stream production from a large number of streams serves to protect itself since in any mixed stock area fisheries, a large mix of stocks of roughly similar orders of magnitude are present and overharvesting of particular stocks is less common.

In the Point No Point Treaty Area there is a large number of salmon producing streams which have long been neglected. At present, almost none of these streams are producing salmon to their full capacity. To correct this situation we must assess the status of the physical and biological conditions in these areas and then determine restoration measures needed to attain full utilization of natural spawning and rearing areas.

The following proposal has been developed in cooperation with U.S. Fish and Wildlife Service. In presenting this proposal the Tribes and the USFWS pledge themselves to seek the cooperation and assistance of the Washington Department of Fisheries and Game as well as the academic community of the State of Washington. However, it is understood that additional activities or study requirements proposed by them may entail minor changes in the proposed budget.

Study Components

Task 1: Physical Evaluation

The ability of any river or stream to produce fish is strongly related to the condition of the habitat. An ample and continuing supply of good quality water is the first and most important prerequisite. Providing this basic need is met fish also require food, shelter and ability to successfully reproduce. To manage, protect and/or restore these factors it is essential that these components be inventoried and evaluated. In spite of the obvious importance, habitat conditions of most Treaty Council area rivers and streams remains unknown except for general details.

This lack of knowledge is partly because of the difficulty in determining what element of the habitat is limiting and partly due to the expense of collecting habitat information and keeping it updated in the presence of the rapidly expanding population growth in the areas. However to provide for optimum development of fisheries, environment integrity must be maintained and the habitat utilized to its fullest capacity.

General study design would follow Herrington and Dunham (1967) Platts (1976) and FWS programs (Bailey and Ringo (1976) and Ringo (1974)).

Task 2. Biological Evaluation

In addition to the physical, the current biological status of the systems needs evaluation. The biological evaluation study would include the following definition of the limits of penetration in each watershed by each species of indigenous salmonids, identification of the relative extent of habitat utilization by each species, quantification of growth, rearing potentials and relative biomass of standing stock.

This portion of the study when correlated with existing information, production formulas currently utilized, and empirically derived habitat information would provide a solid basis of knowledge regarding the proper species composition and abundance of salmonids capable of being reared in each watershed.

The above tasks would be accomplished via a cooperative effort approach between the Point No Point Treaty Tribes and the USFWS.

Task 3. Study Synthesis and Enhancement Strategy Development

The ultimate objective of these studies is to obtain carrying capacity levels for wild stocks on all Treaty reservation streams. Native stock restoration is considered vital in view of the fact that existing wild gene pools would exhibit greater disease resistance and overall survival than imported hatchery races. The results of the habitat and biological components of this study would be utilized to set target figures for natural production and hatchery needs.

In order to accomplish this, data from these components of the study would be used to construct a simulation model and a high speed bookkeeping system in an optimization task which would evaluate the feasibility, costs and impact (both bio-ecological and economic) of a series of enhancement and stock restoration strategy alternatives. This task would be pursued under a number of constraints such as keeping the species composition as close to natural as possible, maximize the natural production and stock diversity component to aboriginal levels (Table I.), provide an extended fishing season for maximum employment, provide an extended harvest area to minimize undesirable harvest and marketing effects etc. .

ANTICIPATED ENHANCEMENT ACTIVITY

Following the development of alternative systems of stock restoration and enhancement, a series of activities and construction projects shall be proposed in order to implement the optimum recommendations and thus achieve the goals for salmon production.

It is anticipated that the increased production representing an annual income addition of 10 to 12 million (1977) dollars to the local fishery shall require an initial capital expenditure of approximately 20 million dollars. We are therefore requesting that such an amount be set aside and become available in FY 1981.

These funds, shall be used for the construction of approval facilities. These facilities will entail the construction of a major multispecies hatchery near the middle of Hood Canal, and a second hatchery (or major expansion of an existing hatchery) along the Straits of Juan de Fuca on sites yet to be selected. Additional projects, it is anticipated, shall include a minimum of two spawning-rearing channels to be located on Hood Canal and the Straits of Juan de Fuca. It is further anticipated that additional work in the various watersheds (stream clearance, passage facilities, spawning ground restoration, and installation of instream incubators) shall be done in close cooperation with the Washington Departments of Fisheries and Game as well as the U.S. Fish and Wildlife Service.

TABLE I. TARGET TOTAL PRODUCTION FIGURES OF SALMON IN THE POINT NO POINT TREATY AREA

	Total Harvestable Numbers (000's)		Annual production costs (10 ³) by hatcheries		Costs per harvestable fish (\$)
	Hood Canal	Straits	Hood Canal	Straits	
Chinook	146	112	530	453	4.08
Coho	292	113	752	243	3.20
Chum	220	38	190	46	1.20
Pink	74	112	14	21	0.18

STUDY BUDGET

Fiscal Year 1.

Personnel	<u>185,000</u>	
Transportation, survey vehicles	<u>12,000</u>	
Equipment & Supplies	<u>23,000</u>	
Subtotal		<u>220,000</u>
Overhead (15%)		<u>33,000</u>
Total		<u>253,000</u>

Fiscal Year 2.

Personnel (1st yr. + 6% + Task 3)	<u>205,000</u>	
Transportation, survey vehicles	<u>12,500</u>	
Equipment	<u>4,000</u>	
Computer Services	<u>5,000</u>	
Subtotal		<u>226,500</u>
Overhead (15%)		<u>33,975</u>
Total		<u>260,475</u>

STUDY TOTAL		<u>513,475</u>
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CRITICAL MANAGEMENT INFORMATION PROPOSAL

The Treaty Council fisheries program staff has been charged with the development of a comprehensive salmon management and enhancement program to meet the needs of Treaty Council member tribes which arose in the practice of treaty fishing rights under the provisions of the Treaty of Point No Point as confirmed by the U.S. District Court, Tacoma, Washington (Civil 9213). The intention is to establish a fisheries management and enhancement system which can be integrated into state and federal management bodies to form a unified management front for Puget Sound salmon fisheries. The fisheries management and enhancement shall be capable of contributing to the realization of the following three broad goals;

- 1) Optimum use of the salmon fisheries by commercial and recreational interests which is consistent with conservation of the salmon resource;
- 2) Commercial fishing opportunity sufficient to provide a living wage and sports fishing opportunity which is consistent with contemporary standards, and
- 3) Treaty fishing opportunity which is consistent with recognized Treaty fishing rights.

Toward the attainment of the three goals, the Treaty Council engaged a staff of three professional fisheries biologists in 1976 to direct and assist tribal biologists and hatchery technicians who are located with the member tribes. During the first year of operation, the Treaty Council biological staff obtained sufficient experience with the fisheries and tribes to permit the objective design of the salmon management system developed below.

Critical Management Information

Introduction

Since the Treaty Council management system is intended to function as an integral part of the larger federal and state agencies, there is no need for the Treaty Council to invest heavily in the equipment and personnel necessary to conduct basic fisheries management research on a large scale. The purpose here is to describe the types of information which are most critical to management and the short term research areas where the Treaty Council biological staff can augment existing federal and state management research programs to the betterment of the Puget Sound salmon resource.

Run Timing

The time period during which a salmon stock is vulnerable to harvest in a given area is reflected by the area-specific run timing for the stock. The detailed understanding of the run timing of a salmon stock in a harvest area is second in importance only to a detailed knowledge of the abundance of the stock for a fisheries manager.

The re-assertion of Treaty fishing rights has established fisheries in areas which have been dormant for many years under state management (e.g. the Strait of Juan de Fuca). Consequently, specific run timing information is lacking for these areas.

Using temporary and permanent employees, a series of transects will be established in Hood Canal first, then in the Strait of Juan de Fuca, to assess the relative abundance of salmon through time at the transect locale. The monitoring program will use standard hydroacoustic techniques and material in the determination of run timing.

Escapement monitoring

The body of a salmon run which escapes capture to reach the spawning grounds to successfully spawn is termed the escapement. When considered in conjunction with physical parameters such as stream flow, escapement provides a valuable indicator of the future abundance of a salmon stock. In fact, most salmon fisheries are managed to deliver a certain level of escapement to each spawning area to insure the continued existence of the stock. Hence, the escapement is a critical item of management information.

In the Puget Sound area, escapement is usually measured by visually observing spawning grounds during the course of the run, either on foot or from an airborne vantage point. Such observations are termed spawning grounds surveys.

Due to the high levels of personnel necessary to cover a river drainage thoroughly, usually only a small, supposedly representative, survey is made in each major drainage. In rivers of low visibility, e.g. Nooksack River, escapement is estimated by inference from adjacent drainages where visibility is better.

The Treaty Council area, as a whole, receives very sparse attention from state spawning ground crews because very few of the rivers are considered components of major drainage systems. The ability to make spawning ground surveys in Treaty Council rivers would be a valuable supplement to the activities of the state's spawning ground crews.

Using two temporary employees for each tribe and with a vehicle for each two person crew, adequate spawning ground surveys could be conducted in Treaty Council rivers. It is assumed, for budgetary purposes, that the state would be willing to give each temporary person a short training course with an experienced spawning ground crew.

Catch sampling

Catch sampling is an information gathering activity whereby a biologist or biological aide will examine randomly selected groups of the catch in order to determine age frequency, sex ratio, presence of tags or marks and other basic stock parameters necessary to rational management.

During the past year, the state requested that the Treaty Council assist in the catch sampling of chinook salmon in the Port Angeles, Washington area. Fortunately, the catch of this species was very small during the time period of the request. This was fortunate because the local tribal fisheries staff was needed to maintain the tribal hatchery during the same time period.

Having the ability to hire one technician for each tribe for short term catch sampling would enable each tribe to effectively supplement the state's activities when necessary, without endangering existing fisheries programs.

Budget for Critical Management Information
Supplementary Activities

FIRST YEAR

1. Run Timing	
a. Echo sounder, analog. digital converter, transducer: Applied Physics Laboratory, University of Washington	<u>30,000.00</u>
b. Equipment and supplies	<u>36,370.00</u>
c. Salaries	
i. temporary @ 12000/yr., 6 mo.	<u>6,000.00</u>
ii. permanent @ 18000/yr., 3 mo.	<u>4,500.00</u>
iii. hydroacoustician, 24000/yr., 1 mo.	<u>2,000.00</u>
iv. overhead @ 20%	<u>2,500.00</u>
d. insurance; liability	<u>900.00</u>
2. Escapement Monitoring	
a. vehicle short term lease @ 150/mo. 4 mo/tribe = 12 mo.	<u>1,800.00</u>
b. gas, oil, maint., insurance (liability, collision) 12 mo.	<u>1,875.00</u>
c. Salaries	
i. temporary 8 mo. @ 12000	<u>8,000.00</u>
ii. supervisory 2 mo. @ 22000	<u>3,666.00</u>
iii. overhead @ 20%	<u>2,333.20</u>
3. Catch Sampling	
a. salaries	
i. temporary 6 mo. @ 12000/yr	<u>6,000.00</u>
ii. supervisory 1 mo. @ 18000/yr	<u>1,500.00</u>
iii. overhead @ 20%	<u>1,500.00</u>
b. use existing vehicles	<u>NC</u>
c. insurance liability 6 mo.	<u>700.00</u>
TOTAL COST	<u>109,644.20</u>
total/tribe = 36,548.07	

SECOND YEAR AND ANNUAL

1. Run Timing	
a. Equipment maintenance	<u>2,400.00</u>
b. insurance, liability	<u>900.00</u>
c. salaries	
i. total	<u>12,500.00</u>
ii. overhead	<u>2,500.00</u>
2. Escapement Monitoring	
a. same as first year	<u>1,800.00</u>
b. same as first year	<u>1,875.00</u>
c. same as first year	<u>13,999.00</u>

3. Catch Sampling	
a. same as first year	<u>9,000.00</u>
b. same as first year	<u>NC</u>
c. same as first year	<u>700.00</u>
4. Inflation factor = 6% of subtotal	<u>2,740.44</u>
 TOTAL COST	 <u>48,414.44</u>
cost/tribe = 16,138.15	

TRIBAL REPORT
TO THE
PRESIDENTIAL TASK FORCE ON
TREATY FISHING RIGHTS IN THE NORTHWEST

Volume VI

Presented by
The Medicine Creek Treaty Area
(Puyallup, Nisqually and Squaxin Island Indian Tribes)

November 14, 1977

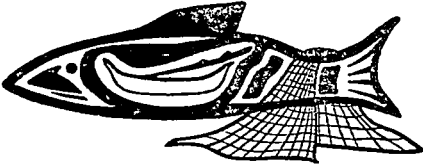
Volume VI

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REPORT OF THE NISQUALLY INDIAN TRIBE

November 14, 1977



Nisqually Indian Tribe

P. O. Box 579
 Yelm, Washington 98597
 Phone: 458-7788

November 7, 1977

The Hon. Leo Krulitz, Chairman,
 PRESIDENTIAL TASK FORCE ON
 TREATY FISHING RIGHTS IN THE NORTHWEST
 Office of the Solicitor,
 U.S. Department of the Interior
 Washington, D. C. 20240

The Hon. John Merkel, Regional Chairman,
 TASK FORCE ON TREATY FISHING RIGHTS
 Office of the United States Attorney,
 United States Courthouse - 10th Floor
 Seattle, Washington 98104

SUBJECT: Nisqually Tribe Assistance Needs (Enhancement & Training)

Dear Members of the Task Forces:

The Nisqually Indian Community respectfully submits several documents, additional to those already in your possession and referenced herein, which explain various viewpoints, objectives, and action positions of the Nisqually Indian people relating to fish resources and our treaty rights.

Documents included by reference are the 1974 Salmonid Hatchery Feasibility Study; South Puget Sound Area, as issued by the U.S. Fish & Wildlife Service (Region 1; R. Kahler Martinson, Regional Director); and the Engineering Report of the 1977 Drought Assistance Impact Project which has been undertaken on the Nisqually Reservation under a \$775,000 budget.

Primary documents submitted here are (1) A Nisqually River Management Plan, as submitted to Washington Department of Fisheries on September 23, 1977; (2) Billy Frank's March 1977 Memorandum On Plans for the Future of Nisqually Indian Tribal Fisheries; and (3) actionable tribal resolutions adopted on June 21, 1977, (Resolution Nos. 45-1977, 46-1977, 47A-1977 and 47B-1977) requesting funding for permanent hatchery facilities; authorizing actions to secure potential hatchery and rearing sites on the areas of Fort Lewis originally within Nisqually tribal boundaries; and appropriate actions relating to the dams, diversions and industrial activities on the Nisqually River for restoring fish production potential in the river system. Project summaries of WDF enhancement projects at McAllister Springs and Schorno Springs, on or in immediate vicinity of the Nisqually River, are also included; as, also, are a range of correspondence relating to these various concerns. These latter documents illustrate a record of continuing actions on the part of the Nisqually Tribe to resolve problems, and to work cooperatively with all other parties having positive interest in advancing the welfare of the natural resources involved.

Federal Fishing Task Force
November 7, 1977

SUMMARY OF ESTIMATES FOR FINANCIAL NEEDS:

1. Hatchery and Enhancement Facilities and Work Activities - \$12,500,000
 - This estimate is based upon the highest project cost included in the 1974 Hatchery Feasibility Study for facilities on the Nisqually River system and potential water sources sites. It is not contemplated that future project designs would be of the same nature as contained in that Feasibility Study, but that a combination of projects could be funded under that level of financial assistance. Of particular interest to the Tribe would be facilities in the area of current tribal incubation and rearing projects (Collard Woods); potential sites utilizing spring and stream water sources on Clear Creek-Hill Creek (now within Fort Lewis); on Muck Creek; and for satellite freshwater and saltwater projects or activities. Cooperative projects with State agencies and citizen organizations, as well as other Tribes, to maximize utilization and benefit of independent facilities or any network of projects would be addressed in planning. As much as possible, the range of multi-tribal purposes included under the original determination of this cost estimate figure would still be considered in plans.
2. Annual Operation and Maintenance Costs (All Tribal Projects) - \$350,000
 - This figure would be subject to various revisions, but would represent some displacement of current Boldt Implementation Funds, and some pick-up of costs by tribal fishery and tax incomes accompanying increased adult returns to this area. It is but a rough estimate. Ultimately, the projects should be self-sustaining.
3. Fisheries Management and Technical Training Center - \$5,000,000
 - The 1974 tribal and federal agency correspondence indicates a general plan that an educational and training center would be an appropriate adjunct to development of Indian hatchery and fishery enhancement projects on the Nisqually River system. No institutional or facility plan has been developed, but discussions have favored a combination high school and junior college level of educational study and training. Operation costs would be needed.
4. Other general assistance needs have been identified by the joint tribal report submitted to the Task Force, with a variety of contingencies or options dependent upon the decisions governing the overall management and utilization of salmon and steelhead resources in the region.

Federal Fishing Task Force
November 7, 1977

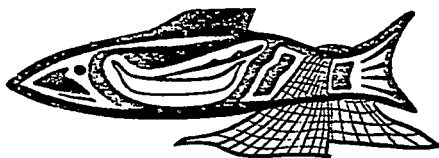
As a general statement, the Nisqually Indian Community does not believe that any congressional action -- other than the authorization for expenditures and appropriation of federal funds for various Indian and State purposes -- is needed to resolve the problems relating to salmon and steelhead management and shared utilization. The primary need is for the introduction of conscientious rationality and integrity within the executive, legislative, and judicial processes of Washington State government sufficiently, at least, to allow affirmative recognition and relationships with the Indian tribes of this region. The Task Force has at minimum a moral obligation to assure by federal executive or presidential commitment that the corruption of these provincial processes shall not be rewarded by being carried to ultimate extremes through unjust and uninformed congressional action.

Respectfully submitted,


Georgiana Kautz, Chairwoman
Nisqually Indian Community


Bill Frank, Jr., Fisheries Manager
Nisqually Indian Community

cc: Volume II - NNIFC
Medicine Creek Treaty Council



Nisqually Indian Tribe

P. O. Box 579
 Yelm, Washington 98597
 Phone: 458-7788

Resolution No. 46-1977

WHEREAS, the Community Council is the governing body of the Nisqually Indian Community, and the Business Committee its duly elected executive officers, by authority of the Constitution and Bylaws approved September 9, 1974; and

WHEREAS, the Nisqually Indian Community has perpetually retained and maintained its tribal identity, its governing body, and certain sovereign powers, since entering with the United States into the Treaty of Medicine Creek of 1854 (10 Stat. 1132), by which the tribe reserved and secured essential rights to waters in the Nisqually River drainage and tributary system, together with various management and utilization rights to anadromous fish resources within the customary fishing domain or usage areas coming under the Tribe's governmental responsibilities and authorities; and

WHEREAS, by Article 2 of the Medicine Creek Treaty, the tribe reserved exclusive use and ownership rights to water and fish resources within the boundaries of the Nisqually Indian Reservation as established by the Executive Order of January 20, 1857, which rights within the Reservation have never been relinquished by the Nisqually Tribe nor otherwise reduced by any federal executive measures or congressional acts; and

WHEREAS, the Nisqually Indian Community and its members have continued to the present day, as from time immemorial, to rely upon the salmon and steelhead resources as primary means of subsistence, community economic well-being and advancement, and family incomes; and

WHEREAS, the Nisqually Indian Community has initiated plans for restoring, revitalizing, and enhancing the anadromous fish productivity of the Nisqually River system to achieve full potential or optimum production levels in the Nisqually River system for satisfying tribal needs and serving the interests of both Indian and non-Indian populations of the Puget Sound region; and

WHEREAS, in response to requests from the Nisqually, Puyallup, Squaxin Island, Muckleshoot, and Skokomish, Indian Tribes earlier in the decade, the U.S. Fish and Wildlife Service in 1974 completed a feasibility study which affirmed the feasibility of establishing hatchery facilities for salmon and steelhead, and related fish rearing complexes and possible satellite stations, within the Nisqually Indian Reservation on the Nisqually River, and identified the Nisqually Reservation sites as the probable best placement for hatchery facilities for servicing the production plans and goals of all the tribes located in Southern Puget Sound (not including Hood's Canal); and

WHEREAS, the benefits of the hatchery plans considered in the 1974 Hatchery Feasibility Study and Report of the Fish & Wildlife Service, as well as the needs for such facilities, have greatly increased in the period of time intervening since completion of that study and report, but the U.S. Fish and Wildlife Service has declined to request funding for the hatchery on the grounds that it is the obligation of the Bureau of Indian Affairs to secure or seek such funding from the Congress for Indian fish hatcheries or rearing facilities; Now, therefore:

Resolution No. 46-1977

BE IT RESOLVED, That the Community Council and Business Committee of the Nisqually Indian Community, by this resolution, hereby requests that the Bureau of Indian Affairs and U.S. Department of the Interior take the following actions directed toward achieving establishment of appropriate hatchery and fish production projects and facilities on the Nisqually River system, consistent with tribal plans and objectives:

1. That the Bureau of Indian Affairs and Department of the Interior include an agency and departmental budget request for funding hatchery and fish production facilities on the Nisqually Indian Reservation at a level not less than the amounts estimated in the 1974 USF&WS "Salmonid Hatchery Feasibility Study: South Puget Sound Area" for the "Nisqually Site; 90% Re-Use System; 350,000 Pound Production", which in that cost estimate totalled \$12,546,200, in any informations or requests to Congress relating to funding needs for salmon and steelhead production in Puget Sound. That this budget request be made through the Task-Force on Fishing Problems in the Pacific Northwest; as response to any congressional inquiries on estimated costs and production needs; in any supplemental budget requests from the Interior Department in 1977 or 1978; and for single-phase construction no later than in the departmental and agency budget requests for Fiscal Year 1979. The amount stated above should be used as a planning figure, but sought as a minimum funding level which would provide for establishment of Nisqually site facilities at probable lower costs, but also provide in any remainder for other fish production and enhancement projects of other Medicine Creek Treaty Tribes (Puyallup; Squaxin Island; Steilacoom; and Muckleshoot) independent of or coordinated with the priority hatchery plans.
2. That the U.S. Fish and Wildlife Service begin immediately to work with the Nisqually Indian Community in the identification of the best potential hatchery production sites; aid in the development of a master plan, including facilities designs; and assist in other activities preparatory to the development and construction of hatchery facilities and related fish production operations.

BE IT FURTHER RESOLVED, that the Business Committee, Chairman, and Fisheries Management Division of the Nisqually Indian Community are authorized and directed to undertake appropriate actions to secure the objectives stated in this resolution, including the development of alternative financing proposals for consideration by Federal Agencies or the Congress for securing the established facilities under the ownership of the Nisqually Indian Community by itself, or jointly with other treaty tribes.

CERTIFICATE

I certify that the above resolution was adopted at a special Business Committee meeting of the Nisqually Indian Community, Nisqually Reservation, held on the 21st Day of June, 1977, at Yelm, Washington, at which a quorum was present and approving the resolution by a vote of 4 FOR and 0 AGAINST.

ATTEST:

Georgiana Kautz, Chairman

Rena Wells, Secretary

October 6, 1977

RECEIVED
OCT 7 1977

Mr. Dave McLucas
EDA Drought Relief Program
Room 2362 Federal Building
915 Second Avenue
Seattle, Washington 98174

Dear Mr. McLucas:

I understand that the Nisqually Indian Community has submitted a proposal to your agency to construct a facility which will compensate for probable fish losses during the recent drought. Technical staff from the Department of Fisheries has had the opportunity to review the proposal. It is our opinion that the project would be consistent with our goals, and would be a good supplement to the programs we are planning.

It is our recommendation that funding from the EDA Drought Relief Program be granted to the Nisqually Indian Community. We are looking forward to a continuation of the excellent cooperative relationship which has been building between the Department and the Nisqually Tribe.

We appreciate the opportunity to offer our comments on the proposal.

Sincerely,

Gordon Sandison
Director

RR:gjc

cc: Bill Frank - Nisqually Tribe

STATE OF
WASHINGTONDoy Lee Ray
Governor

DEPARTMENT OF FISHERIES

115 General Administration Building, Olympia, Washington 98504 206/753-6600

October 19, 1977

RECEIVED
OCT 21 1977

Ms. Georgiana Kautz, Chairwoman
Nisqually Indian Community
Mr. Bill Frank, Jr., Fisheries Manager
Nisqually Indian Tribe
P.O. Box 579
Yelm, Washington 98597

Dear Georgiana and Bill:

This is to acknowledge receipt of your "Nisqually River Drainage Management Plan". I have distributed copies among my staff for their approval.

Your plan contains a great deal of detail that will take us some time to examine. When we complete this we will get back to you to discuss how we coordinate our mutual goals.

I wish to make it clear that we strongly agree with the idea of overall anadromous fish plans by drainage system, and we look forward to similar efforts both in other drainages and coordinating Puget Sound as a whole. I'll look forward to discussing this with you soon.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gordon Sandison".
Gordon Sandison
Director



Nisqually Indian Tribe

P. O. Box 579
Yelm, Washington 98597
Phone: 458-7788

September 23, 1977

Mr. Gordon Sandison,
Director
Washington Department of Fisheries
General Administration Building
Olympia, Washington 98507

Dear Director Sandison:

We are submitting a general outline of preliminary tribal viewpoints regarding various of the fisheries management options and questions which we believe should be considered and discussed in the process of developing a workable "Nisqually River Drainage Management Plan".

Earlier we had intended to communicate a broader range of tribal interests which are central to understanding the Tribes positions and philosophies regarding plans for the future. However, we have decided that it may be better to address some very basic issues relating to the fish resources and production options or potentials, prior to introducing complexities which might get in the way of reaching accords in understanding on the immediate concerns.

We have only had brief access to the various criteria for management options and new production planning that is being proposed, at least tentatively, by the Federal Task Force on Fisheries. We are aware that the Legislature has imposed certain criteria and considerations as contingencies upon the funding of various WDF enhancement projects. We have criteria and considerations which we must accommodate in our actions. Hopefully the paper we are transmitting now will aid in developing a working framework for satisfying the varied interest of the separate communities and governmental agencies, as well as the overriding interests of the fish resources at issue.

We look forward to discussing these matters with you and WDF, and appreciate your every consideration in this matter.

Respectfully yours,

Georgiana Kautz

Georgiana Kautz, Chairman
Nisqually Indian Community

Bill Frank Jr.

Bill Frank Jr., Fisheries

NISQUALLY RIVER DRAINAGE MANAGEMENT PLAN

The essential goal of the Nisqually fisheries program is "to achieve the optimum production level and to provide equitable fishing incomes or livelihood to at least 100 tribal fishermen in coming years." (Memorandum on Plans for the Future of Nisqually Indian Tribal Fisheries, March 1977).

To assure the high harvests and stock diversity in the Nisqually River which is necessary to attain the aforementioned goal, it is necessary to examine the inter-relationships of all commercially important anadromous salmonids which may be produced in the drainage, either by artificial or natural means.

There are basically three criteria to be considered when developing an enhancement program:

1. Feasibility of attaining the production goals which are deemed necessary to justify the program;
2. When and where the propagated fish will be harvested; and,
3. The attendant impact upon other species of salmonids, whether a result of rearing conflict or harvest conflict.

The historical pattern of enhancement programs would indicate that only the first condition is commonly regarded to have significance. The attached Tribal Perspective is an alternative to the traditional management designs. It must be noted that the suggestions outlined therein do not constitute the only workable management model. This plan should be regarded instead as a method of minimizing inter-species conflicts resulting from concentrating on the propagation of only one or two stocks.

NISQUALLY RIVER DRAINAGE MANAGEMENT PLAN
(HARVEST AND PRODUCTION FROM A TRIBAL PERSPECTIVE)

The Nisqually drainage management plan is based upon the following premises: 1) The river fishery as historically exercised by the Nisqually Tribe is a viable fishery and must be considered in the regulation of marine harvests and implementation of enhancement programs; 2) There should be diversified production at high levels from the Nisqually drainage. Marine fisheries which harvest mixed stocks (or stocks from more than one drainage) attach less importance to diversified production from a single drainage. However, river fisheries must have high production from more than a single stock if the desired harvest levels and duration of the season is to be maintained; 3) The necessity for Tribal involvement in enhancement activities:

- a) Traditional, cultural and practical interests in the Nisqually resource.
- b) Dependence upon the perpetuation of this resource as the basis for economic stability.
- c) Educational benefits which may be derived from Tribal operation of enhancement facilities.

In this management plan, five stocks (species or races of a single species) of salmon and three stocks of steelhead have been considered for production and/or release from the Nisqually river. For each stock, six factors have been examined which might affect production. These factors are:

1. Return time to river - This reflects potential harvest times in the river fishery, as well as spawning periods.
2. Proposed harvest rate (for the river fishery) - Artificial designates stocks which will have no escapement goals established other than for hatchery broodstock needs. Harvest rates will therefore be extremely high. Natural designates a harvest rate that will allow escapement levels which produce maximum outmigration of biomass.

3. Potential harvest conflicts - This category identifies the weak stocks which may require protection during the harvest of a stronger run.
4. Existing Production - The means by which stocks are currently maintained in the Nisqually River.
5. Proposed production - The methods which would minimize potential stock conflicts while providing increased returns to the river fishery. The Puget Sound network referred to for various stocks is a system whereby stocks may be shifted among hatchery facilities (State, Federal, or Tribal) to account for a deficit or surplus of eggs. However, guarantees of minimum harvests levels must be provided.
6. Potential rearing conflicts - This category identifies the stocks which may be affected by release of large numbers propagated smolts.

Fall Chinook

1. Return time to river - Mid August to mid October.
2. Proposed harvest rate - Artificial. Due to intensive interception fisheries and a marginal to poor environment for natural production, this stock will not provide a significant harvest in the Nisqually river without heavy hatchery propagation.
3. Potential harvest conflicts - In the river fishery, this stock will conflict with the pink salmon, if the pink stock is designated a natural stock. If the pink stock is designated as artificial no conflicts should occur.
4. Existing production - Low level natural production, low level off-station plants; Schorno rearing pond smolt releases.
5. Proposed production - Low level natural production; off-station fry and smolt plants to tributary streams; smolt releases from Schorno ponds. Production and release of chinook stock to be tied into Puget Sound network.
6. Potential rearing conflicts - Smolt releases may impact production of unfed pink and chum fry.

Pink

1. Return to river - Mid August to late October.
2. Proposed harvest rate - Natural; if the run can be completely re-established in the river through off station plants. If this proves unfeasible, the stock should be designated as artificial with accompanying high harvest.

3. Potential harvest conflicts - If designated natural, the pink stock will be the weak stock needing protection during the chinook run. If artificial, there will be no conflict in the river fishery.
4. Existing production - Low level plant of unfed fry in 1975 from Nisqually Reservation.
5. Proposed production - Natural production; off-station releases of fed fry; release of fed fry from Nisqually Reservation. Not tied into Puget Sound network until the run is at a level to support a river fishery.
6. Potential rearing conflicts - Unfed fry (natural production) may be impacted by chinook, coho and steelhead smolt releases.

Coho

1. Return to river - Late September to mid November.
2. Proposed harvest rate - Artificial. As with chinook, the Nisqually River cannot produce significant numbers of harvestable fish only through maintenance of the desired escapement levels. The contribution of natural production is inconsequential in comparison to the total production levels required for ensuring harvestable returns to the river. Additionally, the hatchery harvest rates on marine mixed stock coho fisheries will severely limit the development of the natural coho stocks in the Nisqually drainage.
3. Potential harvest conflicts - Coho harvests may conflict with the protection of the natural spawning pink run. No conflict will occur if the pink run is designated artificial.
4. Existing production - Low level natural production; low level off-station plants.
5. Proposed production - Low level natural production; off-station fry and smolt releases to tributary streams; release of smolts from rearing ponds. Production and release of coho stock to be tied into Puget Sound network.
6. Potential rearing conflicts - Smolt releases may impact unfed pink and chum fry.

Early or Normal Chum

1. Return to river - Mid September to early December.

2. Proposed harvest rate - Artificial. Complete harvest with possible exception of hatchery broodstock needs.
3. Potential harvest conflict - Possible conflict with maintaining maximum escapement for natural pink stock; no conflict if pink stock is artificial.
4. Existing production - None
5. Proposed production - Release of fed fry from single station (allowing 100% harvest at rack). No natural production until the behavior of the stock is examined. To be tied into the Puget Sound network.
6. Potential rearing conflicts - None apparent.

Native Chum (late)

1. Return to river - Mid December to late February.
2. Proposed harvest rate - Natural. This stock is currently maintaining annual production levels as high as 50-60,000 fish, with additional spawning areas now inaccessible. Maximum utilization of the available spawning areas should be sought.
3. Potential harvest conflicts - The late chum stock should not conflict with the early steelhead run which coincides in timing, if the early steelhead is designated artificial (see - early winter steelhead).
4. Existing production - High level natural production; low level plants from Nisqually reservation in 1975 (unfed fry) and 1976 (fed fry).
5. Proposed production - High level natural production; increased available spawning area; intensive off-station plants of eyed eggs or unfed fry. Release of fed fry from Nisqually reservation. This stock should not be shift out of the drainage as part of the Puget Sound network until such time as current harvests are at least doubled.
6. Potential rearing conflicts - Possible intra-specific competition at juvenile marine rearing stages.

Early Winter Steelhead (EWS)

1. Return to river - Mid November to late February.
2. Proposed harvest rate - Artificial. This stock would be harvested through the late chum run at whatever rate could be allowed according to the strength of the chum run. Natural EWS production would not contribute sufficiently to avoid harvest conflicts with chum.

3. Potential harvest conflict - None as artificial
4. Existing production - Low level natural production; low level off-station plants of smolts.
5. Proposed production - Low level natural production; extensive off-station plants from rearing ponds on Nisqually Reservation; part of Puget Sound network.
6. Potential rearing conflicts - Possible impact on unfed pink and chum fry from smolt release.

Late Winter Steelhead (LWS)

1. Return to river - Early February to late March.
2. Potential harvest rate - Natural. This stock may include the remaining native strain of steelhead.
3. Potential harvest conflict - No commercial harvest if EWS harvests are sufficiently high.
4. Existing production - Natural; low level off-station plants.
5. Proposed production - Natural.
6. Potential rearing conflicts - None

Summer Steelhead

1. Return to river - Late April to early August
2. Proposed harvest rate - Artificial.
3. Potential harvest conflict - No commercial harvest (see LWS #3).
4. Existing production - Low level natural production; low level off-station plants.
5. Proposed production - Low level natural; off-station smolt plants.
6. Potential rearing conflicts - None

If the enactment of this plan were feasible, the Nisqually drainage could end up on a few years with the following type of production program:

- 1) A main central facility for chinook and coho production at Hill/Clear Creek with releases in the tributary streams to spread out returns.

Releases of coho and chinook could also be made from the facility. Schorno springs ponds could be used as a satellite rearing pond for either or both species.

- 2) The Nisqually Reservation would contain a central facility for rearing and release of pinks, native chum, and steelhead. Late chum eggs would be incubated at this site for distribution to tributaries as eyed egg plants.
- 3) The Muck Creek rearing pond could be used as a single release site rearing pond for early chum salmon, to keep spawners from the mainstem until more is known about potential conflicts. Stocks could be provided from McAllister springs.
- 4) Schorno - which as indicated could be used for rearing coho and chinook.

Of the propagated species, coho, chinook, early chum, and steelhead would be tied into the Puget Sound network of shifting eggs when and where necessary (with limitations).

DEPARTMENT OF FISHERIES

Salmon Enhancement Capital Budget Proposal -- Project Summary

Title McAllister Springs Date of first Release 1979

Project Costs	
Capital	<u>2,000,000</u>
Annual O&M	<u>160,480</u>
Site Acquisition	<u> </u>

	Annual Washington Harvest (x-1000)				Value
	Total	Net	Troll	Sport	
Chinook	20,000	12,000	0	8,000	
Chum	264,000	264,000			
Pink					
Coho					
Sockeye					
TOTAL	284,000	276,000	0	8,000	

B/C

Fall chinook - 200,000 @ 8/lb = 25,000 lbs.
 Chum - 18,750,000 @ 300/lb = 62,500 lbs.

Project Description and Justification

McAllister Springs is owned by the City of Olympia; however, during the winter and spring, tremendous unused quantities of water are available to be used for fish culture. Waters from McAllister Creek enter Puget Sound just south of the Nisqually River. A major incubation and rearing area would be constructed and operated under the management of the Capitol Lake Fish Culture Program.

Thrust

DEPARTMENT OF FISHERIES

Salmon Enhancement Capital Budget Proposal -- Project Summary

Title Schorro Springs Pond (10 cfs) Date of first Release 1980

Project Costs	
Capital	<u>928,000</u>
Annual O&M	<u>115,465</u>
Site Acquisition	<u>450,000</u>

B/C _____

	Annual Washington Harvest (*1000)				Value
	Total	Net	Troll	Sport	
Chinook	30,000	18,000	0	12,000	
Chum	161,000	161,000	0	0	
Pink					
Coho					
Sockeye					
TOTAL	191,000	179,000	0	12,000	

Chinook 304,000 @ 8/lb = 38,000 lbs.
Chum 11,400,000 @ 300/lb = 38,000 lbs.

Project Description and Justification

Two medium size springs exist near the town of McKenna on the Nisqually River. Both are of extremely ideal temperatures and quality. On the upper site a pond is now present. It will require little construction and modification. The lower site will be used for incubation facilities and rearing channels. It will be operated as a satellite from either McAllister or Capitol Lake.

Thurston



Nisqually Indian Tribe

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MEMORANDUM ON PLANS FOR THE FUTURE OF NISQUALLY INDIAN TRIBAL FISHERIES

Bill Frank Jr., Nisqually Fisheries Manager

March -- 1977

1. **Introduction:** The Nisqually River and its tributary system has long been an excellent producer of salmon resources. While allowable harvests for several species have remained low in recent decades, increased production potential for chum, coho, chinook, and pink salmon, plus steelhead, could be realized in the future. Numbers of Indian fishermen relying upon present levels of Nisqually fish resources has ranged in recent years from 40 to 75 different persons. Although some tribal fishermen may fish upon other customary treaty fishing resources, the Nisqually River itself will continue as the most important fishery of the tribe and be given its greatest priorities as a vital and valued resource.

2. **Primary Objectives:** Tribal management activities will undertake to assure adequate spawning escapement levels of each fish species for perpetuating runs in the Nisqually River, while attempting to achieve the optimum production levels within its overall system and to provide equitable fishing incomes or a livelihood to at least 100 tribal fishermen in coming years. Some harvests in other Southern Puget Sound areas will be utilized to lessen or balance impacts on Nisqually resources and to help satisfy the income earning objectives. Establishment of a permanent resources management job structure, and development of income and profit producing secondary industries based upon economic utilization of fish resources, are essentially also tribal goals of primary importance.

3. **Major Problems:** Nisqually Indians possess first human rights to the natural produce of the Nisqually River; yet recent generations of Nisquallies have been placed in position of being the last beneficiaries of its fish production -- and often of being sole benefactors to its resources. Harvest impacts upon salmon resources of Nisqually origin by non-Indian sportsfishermen and commercial trollers, purse seiners and gillnetters -- as well as Canadian and other treaty Indian fisheries -- can continue to present the most critical problems for, or obstacles to, tribal management objectives. Recurrent excessive harvest impacts by these combined user groups in the past have contributed to a reduced productivity in the Nisqually River drainage of chinook, coho, and pink salmon strains and species, and have recurred without particular regard for spawning escape needs of this system. In making the only accommodation to that essential need, Nisqually Indians have severely limited and often eliminated their own harvest opportunities. Additionally, environmental factors within the river system itself have also led to some losses in productivity or present production capacity.

These several problems must be addressed and effectively diminished in their adverse affects, if the Nisqually River salmon resources are not to be robbed of the benefits of tribal conservation measures, including resource enhancement and rehabilitation efforts, undertaken in the future. Effective measures must be invoked to guarantee adequate volume returns of adult fish to the Nisqually River and past the controllable interception impacts of other user groups and governmental interests.

The lack of tribal money reserves or tribal income -- as well as the absence of tribal property ownership adjacent to the river and stream areas -- has seriously handicapped fish production plans of the tribe, and still constitutes a major problem which must be overcome in implementation.

4. Status of Resources: By volume, or numbers in recent decades, the salmon resources of the Nisqually River have had the following ranking in commercial or economic importance:

- | | |
|---------------------|------------------------------|
| 1st: chum salmon | (December through February) |
| 2nd: coho salmon | (September through November) |
| 3rd: steelhead | (December through March) |
| 4th: chinook salmon | (August through September) |
| 5th: pink salmon | (August through September) |

Chum salmon and steelhead have been the most stable of the Nisqually resources and the productivity of chinook and coho has been reduced to but a fraction of their highest former levels. The steelhead actually may rank 2nd in continuing importance over coho on basis of stability.

The following list shows the 15-year average annual harvest level for each species during the period between 1957 and 1971:

Chum salmon:	15,600
Coho salmon:	4,000
Steelhead:	2,700
Chinook salmon:	1,400
Pink salmon:	1,600 (Only taken in odd-numbered years)

The next listing shows the highest single year's harvest level for each species in the 20-year period between 1957 and 1976:

Chum salmon:	27,400 (1975)	(25,218 in 1958)
Coho salmon:	23,395 (1973)	(11,553 in 1962)
Steelhead:	3,782 (1975)	(3,714 in 1958)
Chinook salmon:	3,400 (1961)	(2,055 in 1971)
Pink salmon:	8,100 (1973)	(4,265 in 1971)

There are actually no harvest increases attributable to the Boldt decision.

5. Harvest Goals: Tribal objectives for providing an equitable livelihood and fishing income to 100 tribal fishermen could be achieved by increasing production and harvest levels to the point of producing a combined total fish catch having an annual value of at least \$1,500,000.00 to fishermen. A direct tribal income, or revenues, derived from the fish resources is also required for financing tribal management programs and production operations. This tribal income should not be less than 10% of the direct value of fish harvests to the fishermen.

The annual average fishing income of \$15,000.00 per fisherman would be secured in a total range of from 75 to 100 fishing days per year. A basic pattern would develop from allowing approximately 35 fishing days in the period from mid-August to mid-November, and another 40 fishing days in the period from mid-December to mid-February. Even when extending to other calendar periods, at some point it may be necessary to allot specific numbers of fishing days to individual fishermen from among the total available in similar manner as has been applied in limiting fishermen to specific units of fishing gear.

The preceding tribal harvest goals would require a total annual catch of 165,000 salmon and steelhead -- as calculated by assigning the arbitrary value of \$10.00 on average to each fish caught for sale. From the preceding statement on the status of resources returning to the Nisqually River for past harvests, these goals do not appear within easy reach -- and they are not. In the totalling of the listed 15-year average annual harvest levels, a total yearly catch of only 25,300 fish of all species is represented -- being less than one-sixth of the stated future harvest goals. If all these resources were stabilized at their highest harvest levels for any single year within the shown 20-year period, the total combined harvest return level would only be 66,000 fish -- leaving a need for some 99,000 more fish by increased production.

6. Species Enhancement Outline: Twenty years ago the Washington Fisheries Department reported that: "The watershed of the Nisqually River reflects one of the most striking examples of the encroachment of civilization on a river basin and the resultant depletion of river runs of food fish." Indeed, only the chum salmon and steelhead species, or their native runs in the Nisqually, have been spared from near total extinction in the river system. Native stocks of chinook, coho, and pink salmon presently have become virtually indistinguishable, for management purposes, from other members of the same species introduced under long term stocking programs in the river. Ultimately the tribe plans to involve itself in the rehabilitation, production or enhancement of all five of these fish species, under a related design of restoring spawning escapement and return productivity to as much of the Nisqually watershed as may be possible. Several enhancement methods will be utilized.

(A) Chum salmon: Highest priority presently will be given to increasing production and adult returns of Nisqually chum (dog) salmon. Chum production has the highest success, lowest risk potentials on immediate basis for the several reasons that the chum salmon have had the highest survival and stability rates of all species in the Nisqually system. Their rapid outward migration from the river, after a relatively brief rearing period in the streams following emergence from the gravel, makes the chum least vulnerable to seasonal low waters and drying conditions in the Nisqually River and tributaries. Also, their late return schedule to the river in the past has allowed them to avoid interception impacts of other commercial fisheries harvesting on earlier returning adult chum resources of other Puget Sound streams. However, Nisqually chum in the mainstem river have suffered the hazards of rapid fluctuations in river flow levels caused by the power projects and diversion upstream, with stranding of egg nests out of water being one problem among other negative affects upon salmon spawn and fingerlings. Major declines in river harvests of chums occurred immediately after completion of the LaGrande and Alder Dam complex in 1946, under a construction schedule which began in 1942, dropping from a high catch level of 58,341 chums in the preceding period (1940). Recent stream surveys of chum spawning areas in the mainstem Nisqually have shown a high concentration of spawning activity or density of redds in the lower river areas below the City of Centralia's power plant, and a rapid fall-off of used spawning areas progressing upstream in the area of diversion and above the diversion dam itself. There are unutilized spawning gravel areas in the mainstem Nisqually and some of its tributaries.

Tribal enhancement and production projects will seek, first, to substantially increase and stabilize the harvestable levels of the late-timed Nisqually chum salmon runs in the river from December through February. Respecting these runs, the tribe will attempt to maintain its position as the primary or sole harvester upon these resources with minimal impacts by any other commercial interceptions. Secondly, the tribe will favorably consider working with other agencies of the State,

Federal, and Indian tribal governments to establish viable runs of harvestable normal-timed chum salmon in the Nisqually River for returning primarily in the period of latter October and November to the river. The tribe will object to and oppose any efforts to introduce or establish any early-timed chum runs into the Nisqually for return prior to that period, inasmuch such runs would conflict with tribal plans for controlled rehabilitation and enhancement of chinook, coho, and pink salmon species in the Nisqually River and for stable tribal fisheries on these resources.

(B) Steelhead: Increasing steelhead production and returns in the Nisqually River is coupled with the high priority assigned to increasing tribal chum harvest levels. The predominant tribal steelhead harvests have occurred concurrently with the river's chum runs: in December, peaking in January, and continuing through February. Lower volume harvests of steelhead have occurred during March and April in some years. While the steelhead have ranked almost second in sustained economic importance to tribal fisheries, the steelhead will have increased commercial and economic importance to the tribe in the future deriving from increased production.

The tribe plans to attempt increasing all portions of steelhead runs in the Nisqually River, from latter November through April. As in the past, tribal steelhead harvests and catch increases will occur mainly when steelhead are the subdominant species in the presence of the Nisqually chum runs. Although the river generally experiences conditions which limits its qualities for sportsfishing on steelhead during major portions of the runs, success in tribal efforts will significantly improve steelheading or sportsfishing opportunities on the Nisqually River, both in the winter months and particularly when the steelhead becomes the primary species in the river after mid-February and through April. Dramatic decreases in steelhead harvests occurred following completion of the LaGrande-Alder Dam complex.

Enhancement efforts will rely most heavily on native steelhead stocks of the Nisqually River. This may include seeking some incubation and rearing of such stocks at the hatcheries of other agencies, although there will be an attempt to diminish use or reliance on plantings of the smaller-sized Chambers Creek hatchery steelhead stocks. Non-Indian steelheaders interests will be invited to cooperate in enhancement planning and projects implementation.

(C) Chinook, Coho, and Pink salmon: Production increases and adult returns to the river of chinook (king), coho (silver), and pink (humpies) salmon will be attempted in tandem with one another, similarly as efforts will be made to cause increases in resource levels of chum and steelhead to coincide with one another, roughly or overall. Enhancement projects will commence as soon as possible for each species.

Prospects for pink salmon production projects should be the most immediate, inasmuch as the pinks exhibit some of the same advantages as chum salmon. Their time in the river is brief. Also, their being on a strict two-year parent-progeny return cycle, with the surviving generation or entire resource returning to the river every odd-numbered year, allows for the most rapid results. However, they do suffer vulnerability to harvest interceptions, and a greater jeopardy of being devastated in a single generation or time period from a variety of possible causes, events or conditions.

While a greater priority will be assigned to increasing resource levels of fall chinook runs in the Nisqually, the tribe is determined to try re-establishing viable spring chinook runs at the earliest possible time.

A high priority will also be assigned to increasing Nisqually silver salmon or coho by methods similar to those to be used for chinook and steelhead enhancement, or by the same or same-type facilities.

Both coho and chinook resources in the Nisqually River suffered serious declines as result of environmental degradation and changes early in this century. The most pronounced adverse impacts hit the silver salmon first; or, at least major parts of the chinook resources remained in secure abundance until after World War II. Correction of controllable problems and rehabilitation of habitats will be undertaken or sought in various upstream areas and tributaries of the Nisqually River system.

7. Enhancement Facilities and Patterns: The tribe presently has a mini-hatchery in operation where 2.2 million chum eggs are being incubated for hatching and release, with a permanent spring being the water source for both the incubation system and the screened release ponds. While the incubation capacity of the mini-hatchery can be increased (tripled), the facility does not have capacity for holding adult salmon on return, and does not provide the long-term rearing capacity needed for the chinook, coho, and steelhead production plans. Several possibilities for using the same facilities for both pink and chum salmon in 1977-1978, such as double-cropping the incubation boxes, are being considered in context with all controlling factors.

The tribe will seek all necessary resources for establishing one or two central site hatchery incubation and rearing ponds facilities within the boundaries of the Nisqually Indian Reservation on either one or both sides of the Nisqually River. However, there will be heavy reliance upon satellite rearing areas and release sites both on and off the reservation for all species to serve purposes of seeding and stocking all segments of the Nisqually watershed and stream systems, of restoring certain runs to the system, and increasing the returns of salmon and steelhead stocks to the upriver tributaries and creeks. Small station satellite egg incubation sites, spawning channels, and extended rearing ponds, among other enhancement methods, will be employed in the overall production operations.

Cost estimates for hatchery options (single pass water system for production of up to 35,000 pounds of salmonid production; and a 90% re-use water system for producing 350,000 pounds) considered by the U.S. Fish and Wildlife System for a Nisqually River site in a 1974 feasibility study are attached for informational purposes. Hatchery designs for the contemplated tribal facilities would likely differ substantially from those considered by USF&WS when affirming hatchery feasibility earlier, but the estimates include cost items which will have to be addressed with most development options. To the maximum extent possible, the tribe would want to utilize natural habitats or altered near-natural sites in its fish rearing and production programs. A number of relatively-low cost projects are possible, independent of hatchery construction. Prior to establishment of hatchery facilities incubation and rearing of Nisqually River fish stocks at hatchery facilities of other agencies may be sought on an intermediate basis in tribal program developments.

(A) Fish Traps: The USF&WS has been requested to aid the tribe in the design, construction, and operation of collapsible or removable fish traps for use in the Nisqually River by summer and fall of 1977. These would be used with the pink and chinook salmon, and possibly coho for some period, to monitor run size and timing as well as species composition. A lower river and an on reservation or upriver siting of two traps are contemplated. If proven useful in the experimental research stage, the traps would be made operational on a continuous schedule or in patterns required for resource management needs. In some stages, a trap may be used in egg-taking processes. Their possible use for effecting selective harvests and escapements of different salmon would also be considered.

(B) Egg Taking Processes: The tribe has prohibited by ordinance the taking of salmon and steelhead eggs for reproduction and rearing purposes by all tribal members and other persons under its jurisdiction throughout the treaty waters of the tribe, except as undertaken by the tribe itself or regulated by permits to others. The disposition of any such eggs taken will be closely monitored and regulated by systems of consent or agreements when affecting other agencies or resource systems and the Nisqually Tribe's own management and enhancement programs. There is evidence that prior unregulated commerce in chum eggs between tribal members and the State contributed to an excessive harvest impact upon certain spawning areas, or encouraged the possible robbing of at least one major creek of its ripe adult spawners. Such losses to the production system will be guarded against in the future. The tribe will be involved in egg-taking processes for production and enhancement purposes, and will consider possible sales or trades of surplus eggs to other agencies or parties for acceptable program purposes.

(C) Cooperative Enhancement Programs: While the tribe's foremost priorities are directed toward establishing its own fish production and enhancement facilities on the Nisqually Indian Reservation and the stream system of the Nisqually River, the tribe will consider plans for working with State and Federal agencies and other Indian Tribes in cooperative

or joint enhancement programs relating to other treaty waters of southern Puget Sound. The first effort in this regard will be in the continued participation in coordinated harvest plans directed toward achieving the various management, conservation and enhancement objectives of the separate interests and governmental entities. Prior plans for hatcheries in this area were oriented toward joint use and service to several tribes in the region, and the Nisqually Tribe will consider joint financing and joint service programs with other tribes in the future. Although marine waters will be used to serve certain purposes of the Nisqually enhancement and production program, projects away from the Nisqually River drainage and delta will be given lesser priority, and will be undertaken only when consistent with the immediate and long-range management plans of the tribe, other tribes, and State agencies. The merits of objections to any plans or projects of the tribe will be given full consideration before any of the various endeavors proceed, similarly as a wide range of advice and expertise shall be regarded to achieve their success or the desired results when undertaken.

8. Related Tribal Economic Enterprises: The Tribe owns a marine gillnetter boat and is in process of constructing a net-hanging facility and possible net manufacturing plant. The tribe is considering possibilities of establishing a fish food production plant as a food supply source for its own fish rearing activities and for possible sales to others' rearing projects. The feasibility of constructing a fish processing unit is being considered, along with alternative prospects of utilizing tribal harvests as a stable supply source for existing fish processing plants of other tribes in the area. Also, prospects for tribal members engaging in goosander harvests are being explored. Other plans for increasing incomes to the tribe will be developed.

9. General Benefits to Others: The prior federal hatchery feasibility study indicated that non-Indian sport and commercial fisheries would each be equal beneficiaries, if not the primary beneficiaries, of tribal fish enhancement and production efforts. At minimum, the ratio of harvest increase to each of the three separate fisheries would be no less than 1:1:1 -- or two fish to non-Indian fisheries for each increase of one fish to tribal catches. An evaluation by the Washington Fisheries Department twenty-five years ago shows how conservative these figures are. Using a five year average, the WDF study of the non-Indian to Indian catch ratios of harvestable or harvested salmon from the Nisqually River to be: chinook, 20:1 in favor of the non-Indian harvesters; coho, 25:1 in favor of the non-Indians; and chum, 3:1 in favor of the non-Indian. In the same period, spawning escapement for the respective species was also favored over the Nisqually Indian catch totals by ratios of 4:1, 5:1, and 2:1. The growth of the non-Indian sports and commercial fisheries in the past quarter century have increased the non-Indian benefit ratios for both chinook and coho,

frequently at the expense of both tribal fishing opportunities and spawning escapement requirements. Although there is need for greater guarantees of fish returns to the Nisqually River, it seems almost certain that people other than the Nisqually Indians will continue to be the primary beneficiaries of the fish production of the Nisqually River, and even of increased production through enhancement efforts.

Regarding steelhead, tribal harvests on the Nisqually River generally have exceeded those of the non-Indian sportfishery since World War II. This has been true whether or not there has been a net fishery operating in the first four miles of the river below the Nisqually Indian Reservation, and where non-Indian steelheaders have generally had unrestricted opportunity to catch steelhead before they have reached the net fishery in most of that period. The impact of river net fisheries on steelhead often has been exaggerated, in any case. A good example is the Puyallup River where, in an eleven year period prior to the 1963 commencement of the Department of Game of Washington vs. Puyallup Tribe, 89% of the steelhead were caught by non-Indian steelheaders -- primarily upstream from where the fish escaped through the Indian net fishery which took only 11% of steelhead harvested. The same pattern remained true as recently as the 1974-75 season on the Puyallup in the first year of the Boldt Decision and the last year before the Brown Decision. The Puyallups projected six months in advance of the season that their regulated harvests would take approximately 35% of the total harvests on the river, which was the result. The spawning escapement and 65% of the harvested steelhead passed beyond the net fishery.

The Nisqually Tribe believes it can cause the Nisqually River to be a better sportfishery for steelhead -- as well as for net harvests -- through its planned efforts. The Fish Commission is considering the conditions to be met for re-opening the Nisqually Reservation to sports fishermen.

10. Current Proceedings & Prospective Lawsuits: The Nisqually Tribe may well have to assume the major burden and obligations of responsibilities of protecting the fish resources of the Nisqually River; and, indeed, of saving the Nisqually River itself from the destructive injuries that other interests have inflicted upon it since the beginning of the twentieth Century. To do this, the Tribe must act aggressively to protect its own interests and legal rights. Lawsuits are currently pending against the City of Tacoma and its Alder Dam and LaGrand Dam power projects complex, as well as against the City of Centralia and its Nisqually River Diversion and power plant operations. Tribal officials and members have undertaken an accelerated effort to aid Art Knodel, our attorney, in the development of documentary evidence and testimony for use at an April 5, 1977, hearing before the Federal Power Commission on the Alder Dam license to the City of Tacoma and the need for changes in operations. Preparation of lawsuits regarding Nisqually Indians' rights within the Fort Lewis portion of the Nisqually Indian Reservation, and dealing with the problems of excessive harvest interceptions upon adult salmon returning to the Nisqually River through various American and Canadian fisheries, will be finalized and ready for filing within the next 90 days. A brief summary of these follows:

(A) LaGrand and Alder Dams: These projects virtually extinguished the last vestiges of the spring and summer chinook runs in the Nisqually, and an 80% reduction in steelhead harvests immediately followed construction completion in the mid-1940s. Operations modifications are needed to minimize the adverse affects of rapid and extreme flow fluctuations in parts of the year and low flow conditions during others, reservoir flushing and turbidity or sediment releases and siltation, and of uncoordinated usage of the river, upon salmon and steelhead habitats and survival during all stages of their life in the Nisqually River. Restoration of certain fish resources and enhancement efforts also require these changes.

(B) Centralia Diversion & Powerhouse: This 13.5-mile diversion of water from the mainstem Nisqually River channel has had disastrous impacts upon the salmon and steelhead resources both below and above the diversion dam located at 26.2 river miles from the mouth. Low flow problems have been aggravated by the diversion, and the area between the dam and the powerhouse water re-entry point has been greatly diminished in its respective transport, spawning, and rearing capacities for both adult and juvenile salmon. Conditional factors at the power plant have often influenced delays in adult upstream migrations or created an effective migration block. Poor design features in the dam's fish passage and attraction flow have also caused prolonged delays and migration blockages, further restricting the productivity of upstream areas. No major efforts have been made to restore the productivity levels in the river and tributaries upstream from the diversion dam comparable to highest prior levels for salmon and steelhead. This may require project redesigns and construction alterations. It does require more carefully coordinated river flow control involving the separate projects of the Cities of Tacoma and Centralia. The Centralia project may have to divert less water at low flows and surrender more water for fish habitats and survival in the main channel; or, perhaps, satisfy its water appropriation by taking its electricity at times from the Tacoma generating facility. In any case, both projects may have to participate with other interests in low flow augmentation projects to enhance anadromous fish production in the Nisqually River and its tributary streams.

(C) Nisqually Properties at Fort Lewis: A lawsuit challenging the condemnation of Nisqually Allotments by the Superior Court of Pierce County in 1918 is being prepared for filing before July 1, 1977. The tribal property and ownership rights to fish resources, waters, and certain territory has never been subject to loss by congressional action or any other form of legal proceedings. The original Nisqually Indian Reservation's external boundaries have never been altered nor diminished by any competent governmental act. The lawsuit will attempt to protect the tribe in its immediate resumption of control over tribal resources, properties and rights, within the Nisqually Reservation on the Fort Lewis side of the Nisqually River; and will seek to have the original allotments revert and restored to the rightful Nisqually Indian owners and heirs at the earliest possible moment.

(D) **Interceptions of Misqually Salmon by Other Fisheries:** Prominent Washington, D.C., attorney, Cathleen Douglas, noted for her interests in human rights and environmental protection issues, has been working for the Nisqually Tribe since the first of the year -- and for Nisqually members prior to that -- exploring legal remedies available for reducing or controlling the impacts upon salmon resources originating in the Nisqually River and southern Puget Sound by other American and Canadian fisheries under federal and international jurisdictions. Because the ocean and coastal migration routes of Nisqually chinook, coho, and pink salmon are heavily impacted by Canadian fisheries, the Tribe will act to assert its interests and protect its rights in the course of negotiations for the planned Pacific Salmon Fisheries Treaty between the United States and Canada, and during the development of proposed implementing legislation in the Congress. Also, the applications of the new 200-mile territorial fisheries and economic zone laws are being monitored for similar purpose. It has yet to be demonstrated that federal officials and agencies are committed to responsible management of these salmon resources, or to policies which will no longer sacrifice the fish resources of entire river systems such as the Nisqually, through these new fisheries measures now taking form. Of more immediate concern to the Nisqually Tribe than Canadian fishery impacts, however, are the interception impacts which may occur from commercial salmon harvests by the approximate 7,000 fishermen licensed by Washington State and other Indian Tribes, not to mention the fastly growing sportsfisheries.

11. **Critical Issues of Rights Protection:** The Nisqually Tribe is compelled to act for the protection of its basic rights reserved in and secured by the Treaty of Medicine Creek. The Tribe will not ignore the realities of the situations it confronts, nor deny the difficulties attendant to some of its general plans. The Tribe will act realistically and take realistic actions. The Nisqually Tribe's history and life has flowed from its relationship with the Nisqually River and its living resources, as well as its spiritual and aesthetic dimensions. Now it is necessary for the Nisqually Tribe to maintain its sovereign rights and prerogatives; it is essential in order to preserve that sovereignty which also rightfully belongs to the Nisqually River and its fish life. The treaty rights, the water rights, the tribal rights, which each may be placed at issue in our planned endeavors, represent a right to life for the Nisqually Tribe and the Nisqually River -- a right for the river and its bounty to survive and a right for the Nisqually Indian people to live in dignity. As the past of the Nisqually River has been interwoven with the Nisqually Indian people since time immemorial, so also do we share a common future. That future cannot be denied, and it is to that future for the people and the river and its resources that we are committed.

Bill Frank, Jr.

 BILL FRANK, JR.
 NISQUALLY FISHERIES MANAGER
 NISQUALLY INDIAN COMMUNITY

COST ESTIMATE

Nisqually Site
Single Pass System
35,000 Pound Production

Land and Buildings:

<u>Description</u>	
1. Land acquisition: 50 acres @ \$2,000	\$ 100,000
2. Land development including clearing, grubbing, earthwork, storm and sanitary sewer, domestic and fire protection water, electrical and paving	350,000
3. Hatchery Building with floor space for Hatchery area, food storage area, standby electrical area, administration area, visitor area, equipment and vehicle storage and shop, paint and oil storage, spawning area, and laboratory area	250,000
4. Residences:	
Buildings: 2 @ \$29,000	58,000
Sidewalks outdoor lighting, landscaping, etc.	25,000
5. Rolling equipment including fish trucks, sedans, pickups, lawn equipment, etc.	40,000
6. Access road and utilities to site	<u>200,000</u>
	Total Land & Building \$1,023,000

Fish Production:

1. Water supply intake structure with pumps, screen chamber	300,000
2. Incubators - 16 tray units 12 @ \$1,450/tray unit	17,400
3. Start tanks (5' dia. x 30" deep) 4 @ \$1,700	6,800
4. Raceways (8' x 80') (includes piping, valves, feeders, standpipes and electrical) 8 @ \$20,000	160,000
5. Fish ladder	140,000
6. Holding ponds with sorting equipment 3 @ \$25,000	75,000

7. Effluent treatments, Lamella Separators	
\$50.00/gpm	
50 x 4,276 gpm	\$ 213,800
8. Stand-by Generators	<u>80,000</u>
	Total Fish Production \$ 993,000
	Total Land & Buildings <u>\$1,023,000</u>
	TOTAL <u>\$2,016,000</u>

COST ESTIMATE

Nisqually Site
90% Re-Use System
350,000 Pound Production

Land and Buildings:

<u>Description</u>	
1. Land acquisition: 100 acres @ \$2,000	\$ 200,000
2. Land development including clearing, grubbing, earthwork, storm and sanitary sewer, domestic and fire protection water, electrical and paving	795,000
3. Hatchery Building with floor space for Hatchery area, mechanical equipment area, food storage area, standby electrical area, administration area, visitor area, equipment and vehicle storage and shop, paint and oil storage, spawning area, and laboratory area	2,800,000
4. Residences.	
Buildings: 4 @ \$29,000	116,000
Sidewalks, outdoor lighting, landscaping, etc.	53,000
5. Rolling equipment including fish trucks, sedans, pickups, lawn equipment, etc.	200,000
6. Access road and utilities to site	<u>500,000</u>
	Total Land & Buildings \$4,664,000

Fish Production:

1. Water supply intake structure with pumps, screen chamber	\$ 300,000
2. Make-up water treatment including heaters, chillers, and ultra-violet sterilization	2,040,000
3. Incubators - 16 tray units 140 @ \$1,450/tray unit	203,000

Fish Production (continued)

4. Start tanks (5' dia x 30" deep) 36 @ \$1,700	\$ 61,200
5. Raceways (includes piping, valves, feeders, standpipes and electrical) 95 @ \$20,000	1,900,000
6. Fish ladder	140,000
7. Holding ponds with sorting equipment 6 @ \$30,000	180,000
8. Water reconditioning system Biological fillers \$60.00/gpm - 60 x 44,000 gpm	2,640,000
9. Effluent treatments Lamella Separators \$45.00/gpm - 45 x 4,400 gpm	198,000
10. Standby Generators	<u>220,000</u>
Total Fish Production	\$ 7,882,200
Total Land & Buildings	\$ 4,664,000
TOTAL	<u>\$12,546,200</u>



DEPARTMENT OF FISHERIES
ROOM 115, GENERAL ADMINISTRATION BLDG.
OLYMPIA, WASHINGTON 98504
Phone: 753-8600

RECEIVED
MAY 31 1977

DUY LEE RAY
GOVERNOR

May 25, 1977

RECEIVED
MAY 31 1977

FRANK HAW
ACTING DIRECTOR

Ms. Georgiana Kautz
P. O. Box 574
Yelm, Washington 98597

Dear Ms. Kautz:

Staff members of the Department of Fisheries have fully reviewed the Nisqually Tribe's Memorandum on fishery plans. Even though we would take issue with some of the comments made and issues raised, we are of the opinion that our problems and goals are more likely to be the same or similar rather than polarized. It would appear that we have several alternatives as we seek to respond to your memorandum. We could reply formally, but I feel another more productive avenue is open to us.

I would like to propose that 2 or 3 individuals from the department meet in the next 30 days with 2 or 3 tribal representatives. My suggestion is that the discussion for the first session focus on (1) trapping of coho returning to Sequelitchew Creek as a tribal enterprise, (2) future coho plants in the Nisqually drainage to equalize with other South Sound releases, (3) mutually acceptable harvest sharing formulas for coho released in the Nisqually system.

If this suggestion meets with your approval, or if you have additional items which could be discussed, call Ralph Rideout (753-3077). Hopefully, this will provide us with a beginning step, so that we can more adequately respond to the goals and objectives of the Nisqually Tribe. Perhaps we will discover that the goals of the department can be meshed with those of the Tribe.

Sincerely,

Frank Haw
Acting Director

cc: Ralph C. Rideout



United States Department of the Interior

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

May 25, 1977

In reply refer to:

Mrs. Georgiana Kautz
 Chairman, Nisqually Tribe
 P.O. Box 579
 Yelm, Washington 98597

Dear Mrs. Kautz:

I thank you for sending me a copy of your tribe's proposal for a comprehensive Plan for the Future of the Nisqually Indian Tribal Fisheries. I don't claim to be an expert on fisheries enhancement and management plans, but this plan appears to be a thoughtful and constructive proposal to rehabilitate a river system and increase its fisheries capability for the benefit not only of the Nisqually Tribe, but other users as well.

I note that you have sent the plan to the state and federal fisheries agencies and invited their comment and cooperation in developing a jointly administered plan to realize the optimum potential of the Nisqually River fisheries. I hope they will respond favorably to your invitation.

I would like to see all of the parties that have interests in the Nisqually River establish a Nisqually River Fisheries Enhancement Committee to study your proposal, make recommendations for any improvements they feel could be made in it, and then take necessary steps to implement an agreed upon plan.

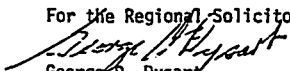
I would hope that we could take this specific instance--on which your tribe has taken the initiative in developing a comprehensive proposal--and make of it an example of what can be done when all parties work together to rebuild or enhance a fishery resource. The problems facing Washington's over-exploited and under-developed fisheries will never be solved until we demonstrate our ability to work together to solve specific problems. Your tribe has taken the initiative to put forth a specific proposal for a specific area. It remains now for the rest of us to respond to that, and then for all of us to prove that it can be done. A successful breakthrough on the Nisqually can be the prelude



to success in other areas. But somebody has to start the process. My thanks to the Nisqually Tribe for having done so. I will urge the federal people to try to help carry forward that initiative.

Sincerely,

For the Regional Solicitor


George D. Dysarz
Assistant Regional Solicitor

cc:

~~Bill Frank, Jr.~~
Robert Azevedo, FWS
Joe Warner, BIA
John Hough, Dir., Western
Field Office, USDI
James Waldo, Asst.U.S.Atty.
Ralph Rideout, WDF



United States Department of the Interior

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

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May 25, 1977

MAY 26 1977

In reply refer to:

Mr. Bill Frank, Jr.
 Nisqually Tribe
 P.O. Box 579
 Yelm, Washington 98597

Dear Bill:

Herewith is a copy of my letter to Georgiana Kautz. Let's not let this opportunity pass. I think you've done a great job and I'd like to be of help in moving this along. I've previously talked to Bob Azevedo and also to representatives of both the Washington Department of Fisheries and Department of Game on this and they seem receptive to further discussions. But somebody has to kick somebody in the (lower middle rear-- also found in cigarettes). What do you suggest as the best way to move this forward? I'd be happy to talk with you on this--preferably with someone from Fish and Wildlife and perhaps Department of Fisheries.

Very truly yours,

George O. Dysart
 Assistant Regional Solicitor

Since I haven't had a chance to see you personally since then, I extend my congratulations on your election as Chairman of the Fish Commission.





Northwest Indian Fisheries Commission

April 19, 1977

Bill Frank, Jr.
Nisqually Tribe
P. O. Box 579
Yelm, Washington 98597

Dear Billy:

I have reviewed your March memorandum on plans for the future of Nisqually Indian Tribal Fisheries. It is a comprehensive plan and a good example for use by other U.S. v Wash. Case Area Tribes as well as the State of Washington.

It is noteworthy that goals were realistically established in the plan to meet the future fisheries needs of the Tribe. Further, many of the development proposals for commercial and recreational fisheries will benefit other Tribes and non-Indian fisheries.

Your memorandum plan should receive Federal and State support to permit the Tribe to fully exploit the excellent water supplies and other resources available in the Nisqually system for the development of the proposed projects.

With best wishes for realization of a successful program.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jim", written over a horizontal line.

James L. Heckman
Biological Programs Director

JLH:cc



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
 Western Washington Agency
 3006 Colby Avenue, Federal Building
 Everett, Washington 98201

IN REPLY REFER TO:

Natural Resource
 280.2
 Nisqually FY-77

March 24, 1977

Ms. Georgiana Kautz, Chairperson
 Nisqually Indian Tribe
 P.O. Box 579
 Yelm, Washington 98597

RECEIVED
 MAR 25 1977

Attention: Bill Frank, Jr., Fisheries Manager

Dear Ms. Kautz: *

I have received your "Memorandum on Plans for the Future of Nisqually Tribal Fisheries." This is an excellent document and will be very helpful in our assisting the tribe in their fisheries management program. I am taking the liberty of sending a copy to our staff in Portland and circulating a copy to appropriate Agency branches.

Sincerely yours,

Marshall M. Cuteforth
 Contracting Officers Representative





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 19 1977

RECEIVED

MAY 26 1977

THE ADMINISTRATOR

Dear Ms. Kautz:

Thank you for your April 1, 1977 letter concerning diversion dams and power projects on the Nisqually River and their impacts on water and fish resources of the Nisqually Indian Tribe. The Environmental Protection Agency shares your concern over the reduction in salmon and steelhead resources in the Nisqually River and I believe the following best describes the circumstances in which EPA would be able to assist in supporting the restoration of these resources.

As you requested, I asked my staff to review the Federal Power Commission files titled City of Tacoma, Washington, Docket No. P-1862 and City of Centralia, Washington, Docket No. E-6454. Together with the memorandum of tribal plans and interests on the Nisqually River enclosed in your letter, the FPC files provide EPA with an understanding of both the substantive (fishery biology) and procedural issues now under consideration by the FPC. At issue, substantively, is the motion to the FPC by your tribe to secure modifications to existing hydroelectric and water diversion projects on the Nisqually River for the purpose of enhancing fisheries resources in that river. Procedures applicable to your tribe's motion have been established by the FPC according to the Federal Power Act.

As a matter of background, I understand that provisions for protection of fisheries and wildlife were not included by the FPC in its licensing of the Alder Project (on the Nisqually River) in 1944. I also understand that the Centralia Diversion Dam constructed in 1926 (and modified

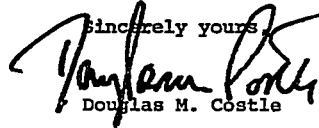
in 1952) may, by itself, alter the Nisqually River flow regime and impact fishery resources. Your tribe now seeks an FPC ruling which would cause modifications to be performed on the constructed Alder, LaGrande and Centralia projects to the benefit of fishery resources in the Nisqually River.

The current FPC hearing process may well result in a recommendation by the FPC that project modifications be made in response to your motion. Should this occur, the modifications would require amendments to existing licenses for the constructed projects. Such amendments will be considered by the FPC for their environmental impacts and there may be a determination by the FPC to prepare an environmental assessment or environmental impact statement (EIS) according to provisions of the National Environmental Policy Act (NEPA) of 1969.

At the time of any proposed amendment, environmental assessment or EIS for the projects discussed above, EPA will be able to review the proposed actions for their environmental (including fisheries) impacts and provide comments on such impacts to the FPC. EPA's role in the review of such matters is generally triggered by specific applications to the FPC for a particular action or by a recommendation for action from the FPC itself. By copy of this letter I am requesting the Chairman of the Federal Power Commission to include EPA in the distribution for review and comment of all proposed modification plans or other actions related to improved fishery resources at or near existing Nisqually River dam and diversion projects. In addition, I am asking our Seattle Regional Office to review your fisheries memorandum of March 1977 and to provide to your tribe suggestions and comments as necessary.

I hope I have been able to outline the opportunities available to EPA for reviewing fishery issues associated with your tribe's motion to the FPC. EPA supports the goal of enhanced fishery resource development and we look forward to the formal review of any management plan for modified Nisqually River project works received or developed by the FPC and made available for public comment.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Douglas M. Costle", written over the typed name below.

Douglas M. Costle

Ms. Georgiana Kautz
Chairwoman
Nisqually Indian Tribe
P.O. Box 579
Yelm, Washington 98597

UNIVERSITY OF WASHINGTON
SEATTLE, WASHINGTON 98195

College of Fisheries
Washington Cooperative Fishery Research Unit

April 25, 1977

Mr. George Cvitanich
Coalition of Sport Fishermen
3816 N. 37th
Tacoma, WA 98407

Dear George:

Enclosed is a copy of a letter to Bill Franks regarding a possible meeting with sport fishermen to talk about the list of concerns we discussed.

Could you suggest a date for a meeting during the third week of May? I will reserve a room somewhere, say the Doric Hotel in Tacoma, or some other. What is your suggestion?

Sincerely,

Richard R. Whitney

RRW/t
cc: Bill Franks

Richard R. Whitney
College of Fisheries WH-10
University of Washington
Seattle, WA 98195

April 25, 1977

Mr. Bill Franks, Jr.
Nisqually Tribal Council
P.O. Box 579
Yelm, WA 98597

Dear Bill:

From our meeting with the Medicine Creek treaty area tribal people on April 20, I developed the following list of their concerns. I am also enclosing a copy of the list of concerns expressed by the sport fishing group at the meeting I had with them.


You suggested a meeting with the sport fishermen sometime during the third week of May. I will be in touch with you and them to pin down a specific date. They prefer to meet in the evening, if at all possible. Perhaps after comparing the two lists you could pick a few subjects that would probably be most fruitful to discuss.

I have organized these subjects somewhat according to their relationships, but generally in the order in which they were expressed.

1. Interceptions of South Sound fish by other fisheries. Need more fish in South Sound.
2. Environmental effects on fish runs
 - a. Logging
 - b. Gravel removal
 - c. Floods
 - d. Slag dump in Commencement Bay
 - e. Dredging of the mouth of Hylebos
 - f. Runoff of pollutants into Swan Creek
 - g. Nisqually River diversion project
 - h. Fort Lewis - tanks running over spawning grounds
3. Need better enforcement of fishing regulations by Department of Fisheries. Illegal commercial fishing, poaching in rivers on spawning grounds, sportsmen selling fish, etc.
4. Need to provide opportunities for Indian river fishermen to catch some fish.
5. Tribal people see from 200 to 1000 sport boats fishing blackmouth sometimes. Some of these fish are sold by so-called sportsmen who take more than their limit (18-20 fish per day). Indian fishermen ask if they can fish blackmouth.
6. Concerns about future fish runs
 - a. Want to preserve the resource in the face of developments, dry streams, silt, etc.
 - b. Preserve natural chum stocks.

- c. Support tagging studies for information on South Sound stocks to be carried out jointly by tribes and state.
7. Concern about impacts of enhancement projects
 - a. Need to plan these projects so the fisheries will be compatible
 - b. Need to plan to minimize effects on wild stocks and other people's stocks. Chambers Creek hatchery for steelhead affects wild chum.
 8. Too much fishing gear in Puget Sound
 - a. Need to bring non-Indian commercial fishery under control, perhaps eliminate it in South Sound.
 - b. Eliminate purse seining in Puget Sound.
 9. Need for education and better public relations and information
 - a. Public needs to know what has to be done to hang on to our valuable fisheries resources and take advantage of them.
 - b. Public needs to know more about what the tribes are doing. Tribes are willing to open dialogue with sport fishermen.
 - c. Tribal people would like to attend public meetings and speak without being subjected to verbal abuse and name calling.
 10. Need to be careful in dealing with Weyerhaeuser and other big companies.
 11. Tribes are interested in continuing steelhead fisheries and do not want to trade for salmon. There needs to be a tribe by tribe decision.

Sincerely yours,



Richard R. Whitney

RRW/t
Enc.

TOPICS DISCUSSED

1. Concerned about sports share of chinook enhancement program.
May be nothing left for South Sound fishermen.
What is allocation formula
More chinook for South Sound.
2. Size limits
3. Canadian interceptions.
4. Commercial interceptions.

Nets in Nisqually River when the fisheries above have been closed.
5. Puyallup-Nisqually sportmen have upper size limit and lower age limit.
But during that you have full time net fishery by the Indians.
6. More fish to South Sound.
7. Indian enhancement projects.
8. Minter Creek - large Indian fishery. Maybe weekend closures.
Improve feeling. Open to sport fishing in that area. Indians may stay there around clock to protect their spot.
9. On-reservation share.
10. Pollution
Logging
Gravel Removal
Environmental influence
11. Enforcement
12. Extended chum season
13. Trade of salmon for steelhead (problems with timing of chum run).

LIST OF NAMES AND ADDRESSES:

Ron Sobie
2908 E. 104th St.
Tacoma, WA 98445 (Send criteria for tribal membership, also
list of subjects; i.e. copy of letter to
Cvitanich)

Margaret Ach
4812 No. 18th (send information. Copy of Cvitanich letter)
Tacoma, WA 98406

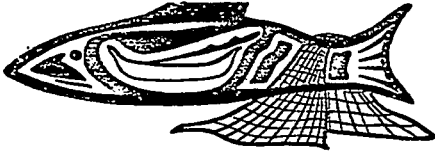
Earl Engman
Washington State Sportsmen's Council
8017 Custer Rd. SW
Tacoma, WA 98499

Bill Bissenas	-	Tacoma Poggie Club
Donald L. Goings		" " "
Earl E. Engman		Tacoma Poggie Club
Bud Walrath		Col. Sport Fisherman
Fred James		Col. Sport Fisherman
Wm. W. Mattson		Izaak Walton League
Marge Ach		Col. Sport Fisherman

Bryan R. Marvin
Ron Sobie
Bob Hennsey - Tacoma Sportsman Club, Fishing Committee

George Cvitanich - Coalition of Sportsfishermen

Richard Whitney - U.S. District Court



Nisqually Indian Tribe

P. O. Box 579
Yelm, Washington 98597
Phone: 458-7788

Resolution No. 45-1977

WHEREAS, the Community Council is the governing body of the Nisqually Indian Community, and the Business Committee its duly elected executive officers, by authority of the Constitution and Bylaws approved September 9, 1974; and

WHEREAS, the Nisqually Indian Community has perpetually retained and maintained its tribal identity, its governing body, and certain sovereign powers, since entering with the United States in the Treaty of Medicine Creek of 1854 (10 Stat. 1132), by which the tribe reserved and secured essential rights to waters in the Nisqually River drainage and tributary system, together with various management and utilization rights to anadromous fish resources within the customary fishing domain or usage areas coming under the Tribe's governmental responsibilities and authorities; and

WHEREAS, by Article 2 of the Medicine Creek Treaty, the tribe reserved exclusive use and ownership rights to water and fish resources within the boundaries of the Nisqually Indian Reservation as established by the Executive Order of January 20, 1857, which rights within the Reservation have never been relinquished by the Nisqually Tribe nor otherwise reduced by any federal executive or congressional acts; and

WHEREAS, the Nisqually Indian Community and its members have continued to the present day, as from time immemorial, to rely upon the salmon and steelhead resources for subsistence, community economic well-being and base, and family incomes; and

WHEREAS, the Nisqually Indian Community has initiated plans for restoring, revitalizing, and enhancing the anadromous fish productivity of the Nisqually River system to its potential or optimum productive levels by all available means and methods; and

WHEREAS, useable water sources, stream areas and springs, suitable for various anadromous fish enhancement projects are located in that portion of the Nisqually Indian Reservation, as originally established, adjoining the Nisqually River in the area of individual allotments taken by the U.S. Army as part of the Fort Lewis Military Reservation (1918), but which could yet be used by the Nisqually Indian Community in high-level fish production programs without interfering with the military activities and training programs conducted in other parts of the former Indian allotted area; and

WHEREAS, the Department of the Army and the Chief of Engineers, U.S. Army Corps of Engineers, upon proper determinations, may transfer real property under Army control, or otherwise grant permits for temporary or permanent use on revocable or irrevocable basis, to other Federal Agencies, such as the Bureau of Indian Affairs, or similarly may grant permit or lease to such entities as the Nisqually Indian Community for the use of such properties, and particularly for fish rearing or fish production activities; Now, therefore,

Resolution No. 45-1977

BE IT RESOLVED, that the Community Council and Business Committee of the Nisqually Indian Community, by this resolution, hereby requests that the Secretary of the Interior act through the Office of the Secretary and the Central Office of the Bureau of Indian Affairs in Washington, D.C., to negotiate with the Department of the Army and the Chief of the U.S. Army Corps of Engineers and to undertake related actions directed toward:

1. Securing immediate transfer to the Bureau of Indian Affairs, for the benefit of the Nisqually Indian Community and for the operation of programs contracted to it, the real properties adjacent to the Nisqually River -- particularly at the mouth of Muck Creek and including the spring and water areas known as Clear Creek at the base of the bluffs near Carter Woods -- for fish rearing or salmon and steelhead production purposes, from the U.S. Army and the Fort Lewis Military Installation; and
2. Arranging for the U.S. Fish & Wildlife Service's Northwest Fisheries Program at Olympia, Washington, and Fort Lewis command and resources management personnel, to identify the particular water areas and land tracts in the area of Muck Creek and Clear Creek which could be transferred from Army control to either the Bureau of Indian Affairs or the Nisqually Indian Community for fisheries programs without detracting from or interfering with any necessary functions of the Army at Fort Lewis; or
3. Alternatively, arranging direct transfer, control, or lease to the Nisqually Indian Community for the fisheries management and production purposes of the acreages containing these useable water areas at Muck Creek and Clear Creek, at the earliest possible date.

BE IT FURTHER RESOLVED, that the Business Committee and the Fisheries Management Division of the Tribe are authorized and directed to take all appropriate actions to secure the objectives stated in this resolution.

CERTIFICATE

I certify that the above resolution was adopted at a special Business Committee meeting, after being scheduled for action at a Community Council meeting, of the Nisqually Indian Community of the Nisqually Indian Reservation held on the 21st Day of June, 1977, at Yelm, Washington, at which Business Committee meeting a quorum was present and voting 4 FOR and 0 AGAINST.

ATTEST:

Georgiana Kautz, Chairman,
Nisqually Indian Community

Rena Wells, Secretary
Nisqually Indian Community



STATE OF
WASHINGTON

Day Lee Ray
Governor

DEPARTMENT OF FISHERIES

115 General Administration Building, Olympia, Washington 98504 206-753-6600

August 4, 1977

Colonel Harvey C. Mayse
Deputy Installation Commander
9th Infantry Division
Fort Lewis, Washington 98433

Dear Sir:

Recently, the Nisqually Indian Tribe placed a request through the Secretary of the Army to reclaim a portion of the Fort Lewis Reservation. On July 11, 1977, a meeting was held at Fort Lewis to discuss this subject. As the Director of the Department of Fisheries, I would like to take this opportunity to re-emphasize the position expressed by my representative at that meeting and make this position a matter of record.

Conceptually, the Department of Fisheries is in agreement with the Nisqually Tribe's desires to place salmon production stations on the two creeks for purposes of enhancing the Nisqually River salmon stocks. The Department entered into a lease agreement two years ago with the Department of the Army on the Muck Creek property, in order to begin construction of a production station. Our plans have been delayed, however, through opposition on the part of the Nisqually Tribe.

I would like to make it clear that the Department is not in favor of the Nisqually Tribe's proposal to reclaim these properties. We have spent a great deal of time and effort investigating alternatives to the Muck Creek site. As a result, the Department is in the initial stages of expanding the rearing capabilities of the facilities at Schorno Springs (near McKenna) and constructing a new salmon hatchery on McAllister Springs, near the City of Olympia's water plant. In addition, we have monitored several streams in the Nisqually watershed for potential application for sustaining a production station. Muck Creek, Clear Creek, and Hill Creek have shown the best potentials.


In light of the Tribe's concern for the Muck Creek property, the Department would endorse turning the lease of Muck Creek site over to the Nisqually Tribe, allowing us to expend our

Colonel Harvey C. Mayse
August 4, 1977

our energies on the Clear Creek or Hill Creek sites. Whether the requested properties should be reinstated as part of the Nisqually Reservation is, of course, your decision. But, for your consideration, I would suggest that the land be jointly leased to both the State and the Nisqually Tribe. This would allow the Department to continue its efforts to enhance the Nisqually watershed, but in a cooperative vein with the Tribe, which we are fully prepared to do.

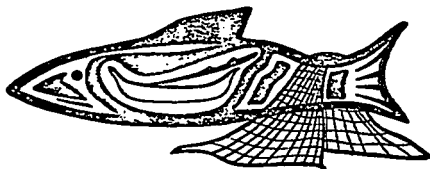
I sympathize with the predicament that the U.S. Army has been placed in, and hope that this matter can be quickly resolved.

Sincerely,


Gordon Sandison
Director

GS:dm

cc: Billy Frank, Jr., Nisqually Indian Tribe
Garry Garrison - Wash. Dept. of Game
Jim Mullen, U.S. Fish & Wildlife Service



Nisqually Indian Tribe

P. O. Box 579
 Yelm, Washington 98597
 Phone: 458-7788

April 6, 1977

The Hon. Clifford L. Alexander,
 Secretary of the Army,
 U.S. Department of the Army
 3-E 718 Pentagon
 Washington, D. C. 20310

SUBJECT: Transfer of control, or grant of use, of land tracts at Fort Lewis, Washington, for fish rearing or hatchery purposes adjacent to the Nisqually River.

Dear Secretary Alexander:

The Nisqually Indian Tribe is undertaking a comprehensive plan to rehabilitate and enhance the potential of the Nisqually River system as a producer of salmon and steelhead fish resources. (Memorandum of preliminary plans outline attached.) Promising sites and water sources for fish rearing and possible hatchery facility production have been identified on the lower portions of Clear Creek and the lower part of Muck Creek. Both sites are within the Fort Lewis U.S. Army military installation where it borders the Nisqually River, and both are within the original boundaries of the Nisqually Indian Reservation, being a small portion of the 3,300 acres taken from us in 1918 for transfer to the War Department for addition to Fort Lewis.

The Tribe is extremely interested in securing an immediate grant of use of the potential fish rearing sites under available administrative authorities of the Army, or possibly by a transfer of control of the areas from the Army to the Bureau of Indian Affairs or Department of the Interior for fish production programs of the Nisqually Indian Tribe. Both areas are outside the perimeters of artillery impact areas at Fort Lewis. The Muck Creek site has been surveyed and identified by specific description for a prior lease transaction involving the Washington Department of Fisheries. The Clear Creek site (noted on attached maps) would require survey and a clear description of actual land and water areas needed. Both areas were sites of former Nisqually Indian villages in preceding centuries, and thus any plans would have to account for historic values and archaeological considerations.

We are hopeful that discussions might be initiated immediately between our representatives and your Department regarding a use acquisition of these stream and land areas by our Tribe. Action this year could alleviate in part the adverse impacts of current drought conditions on the fish resources in the Nisqually River system, and aid considerably in efforts to restore the entire drainage to its former high levels of productivity. Site preparations could also best be accomplished before next fall's rainy seasons.

Secondly, we are interested in eliminating certain problems which have recurred in the past between the Nisqually Tribe and authorities and personnel at Fort Lewis. We believe a recent meeting with Commanding General Volney H. Warner helped serve that purpose. However, some difficulties remain.

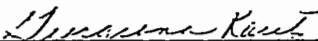
Hon. Clifford L. Alexander,
Secretary of the Army

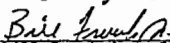
In way of background, we are enclosing a letter copy addressed last year to your predecessor from former Commissioner of Indian Affairs Morris Thompson regarding these problems. Also, we are including a copy of a letter opinion from the office of the Solicitor for the Department of the Interior outlining the rights and authorities of the Nisqually Tribe within the Indian Reservation and on the Nisqually River. We would note that we presently have a new Administration in tribal government, elected in January 1977, and that we view some of these matters in a different manner than our predecessors and with, perhaps, even less alarm than the former Commissioner respecting some of the casual military activities.

Our review of Army and other records indicate that Major General Warner has acted with conscientious regard toward fish resources in impact areas and with an attentive responsiveness to expressions of concern on the possibilities of damages or other problems. We would not want to experience again the problems which existed with several previous commands at the Fort. One aspect of this has been the use of "Cooperative Plans and Agreements" with the Washington Departments of Fisheries and of Game to effect outright violations of the Treaty of Medicine Creek of 1854 -- by which our tribal rights are secured and ostensibly protected -- and otherwise to totally disregard the rights and authorities of the Tribe respecting fish resources on the Nisqually River. These plans and agreements are drawn under authority of Title 10, U.S. Code, Section 2671, which, by specific reference to treaty rights of Indians, intended that affirmative recognition and observance of tribal rights to fish and water resources should prevail against the operation of any such agreements. Under former Fort Lewis commanders, the Army has fronted for State attacks and encroachments upon the treaty tribal rights -- and purposely provided false information on the nature of military involvement with State authorities in response to congressional inquiries. Internal records of the State agencies demonstrate that fact, show illegal uses of military personnel in certain activities, and evidence motives of a most ugly racist character. We believe that a formal resources management cooperative agreement between the Tribe and Fort Lewis would best guard against repetition of such incidents in the future and best serve common interests in fish resources of the Nisqually River.

We shall sincerely appreciate considerations which you may give these matters, and look forward to an early response regarding a schedule for additional discussion of them.

Respectfully yours,

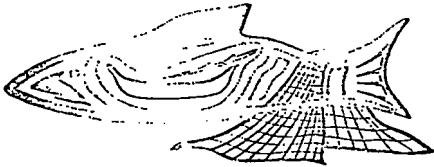

Georgiana Kautz, Chairwoman


Bill Frank Jr., Fisheries Manager

GK/BF/hla/s

Enclosures:

cc: List attached.



Nisqually Indian Tribe

P. O. Box 579
 Yelm, Washington 98597
 Phone: 458-7788

March 17, 1977

Major General Volney H. Warner,
 Operating General,
 U.S. Army Training Center & Fort Lewis
 Fort Lewis, Washington 98433

Dear General Warner:

We sincerely appreciated your meeting with members of the tribal Business Committee and our associates this past Monday morning.

We are providing you with a general statement of policies and plans of the Nisqually Tribe for addressing its basic responsibilities for resource management on the Nisqually River. We trust it will enhance your understanding of our viewpoints and interests, and assure you further of our willingness to act cooperatively in resolving any problems which may arise involving the respective Reservations or jurisdictions.

The Tribe is in process of revising its fisheries management code, including its fishing regulations, and will provide your installation with copies of its proposed and adopted provisions at appropriate times. We do believe that a formal cooperative agreement between the Nisqually Tribe and Fort Lewis would serve useful purposes in management processes, in effecting any emergent conservation measures requiring either mutual actions or joint restraints, in preventing any unnecessary problems, and in the development of systematic communications and working relationships between tribal and military personnel currently dealing with resources management. Please write us regarding any obstacles which your agency and jurisdiction perceives, or has formerly perceived, which might preclude entry into such an agreement.

The paragraph on tribal plans does refer briefly to the proposed lawsuit relating to rights within the Fort Lewis portion of the original Nisqually Indian Reservation. Of course, we do not contemplate the Army's violation of that area within the foreseeable future; and certainly there are questions of whether the artillery impact area could readily be made habitable again without monumental expenditures. The scope of the lawsuit will be more fully defined when it may appear in the summary in the near future.


We also appreciated your response to our suggestions that your resource management program might be used from time to time to allocate resources, wherever independently they may occur, relating to protection of riparian life and spawning of salmon from disturbances by personnel unfamiliar with the resource's vulnerability.

- Copying General Warner

We would welcome any comments or suggestions your command or resource management personnel may have to offer respecting the content of the memorandum.

We look forward to improved relationships between the Fort Belknap military and Misqually Indian communities in the future. Thank you for your consideration of our interests and concerns.

Respectfully yours,

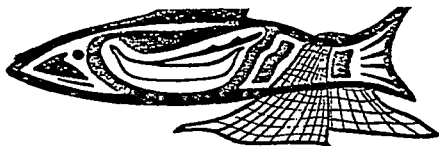


GEORGIANA KAUTZ, Chairman



BILL FRANK JR., Fisheries Manager

cc: MEF Director Frank Haw
ICG Director Ralph Larson
USFWS
Dr. Richard Whitney
Mr. Marshal Outforth, BIA
Mr. Jim Galdo, Asst. U.S. Attorney



Nisqually Indian Tribe

P. O. Box 579
 Yelm, Washington 98597
 Phone: 458-7788

Resolution No. 47A-1977

WHEREAS, the Community Council is the governing body and the Business Committee the elected administrative officers for the Nisqually Indian Community by provision of the Constitution and Bylaws of the Nisqually Indian Community as approved September 9, 1946, by the Secretary of the Interior; and

WHEREAS, the Nisqually Indian Community is party to the Treaty of Medicine Creek of 1854 (10 Stat. 1132) by which the Nisqually Indian Reservation was caused to be established under the Executive Order of January 20, 1857, for the exclusive use of Nisqually Indians, and otherwise to be held by individuals and families of Nisqually Indians, except for property and ownership rights remaining within the domain of the Nisqually Tribe, all under the protections, regulations, and restrictions provided for in the Treaty of Medicine Creek or otherwise retained by the Nisqually Tribe in its sovereign capacity; and

WHEREAS, in 1918, contrary to provisions of the Medicine Creek Treaty, officials and courts of Pierce County, State of Washington, acted, without lawfully vested jurisdiction or authority, and without notice or service to the Nisqually Tribe or individual Nisqually allottees or landowners, to condemn and effect the taking of individual allotments, and to effect a continuous trespass upon the properties and rights of the Nisqually Tribe or Nisqually Indian Community within the boundaries of Pierce County; said actions all being in violation of the Medicine Creek Treaty and federal statutes then in force; and

WHEREAS, Pierce County acted to transfer the lands and territory taken from the Nisqually Tribe and Nisqually Indians to the United States Army, except for a claim of reversionary rights to Pierce County, for permanent use as the Army training base, known as Fort Lewis Army Base or the Fort Lewis Military Installation, and which U.S. Army training center still remains at Fort Lewis and still includes the territories taken unlawfully by Pierce County from Nisqually Indians and the Nisqually Indian Tribe in 1918; and

WHEREAS, 28 U.S. 2415 imposes a statute of limitations on all trespass and many other claims brought by the United States on behalf of Indians for money damages, which would forever bar all claims accruing prior to July 18, 1966, unless litigation is filed on or before July 18, 1977, and which could serve to deny Nisqually Indians and the Nisqually Indian Community of their rights to claims, relief, recoveries and repossessions of territory or rights, unless suit is immediately brought in federal court; Now, therefore,

Resolution No. 47A-1977

BE IT RESOLVED, that the Nisqually Indian Community hereby requests the United States, acting through the Department of the Interior and the Department of Justice, to file litigation in behalf of the Nisqually Indian Community and in behalf of allotted Nisqually Indians, their families and heirs, who have been denied possession of lands or the use of tribal and territorial rights as a result of the 1918 taking of lands by Pierce County, State of Washington, and its subsequent conditioned transfer to the U.S. Army for forming part of the Fort Lewis Military Installation, and seek all appropriate forms of relief, including:

- (1) Declaration of the illegalities by which the 1918 "condemnation" purportedly and effectually was accomplished; and
- (2) Extinguishment of all title and reversionary rights claimed by Pierce County of these Nisqually Indian lands, reservation and allotments; and
- (3) Recovery of lands and title thereto, or money damages as appropriate, in behalf of individual allottees, families and heirs; and
- (4) Protection to the Nisqually Indian Community in all its lawful tribal and territorial rights within the Nisqually Indian Reservation as established by the Executive Order of January 20, 1857, including the territorial portion considered part of Fort Lewis, and including, but not limited to, water rights, natural resources management rights and authorities, and possessory rights; and
- (5) The return to Nisqually Indians and the Nisqually Indian Community of all territory, lands and property, including waters, not needed nor absolutely essential by or for Fort Lewis and the U.S. Army functions therein, particularly adjacent to or adjoining the Nisqually River or tributary thereto, on its Pierce County side; and a declaration of all reversionary rights to the entirety of the lands taken being vested in Nisqually Indians, to the exclusion of all other parties, when any of these lands shall no longer be needed or used by the U.S. Army.

BE IT FURTHER RESOLVED, That the Business Committee is authorized and directed to bring lawsuit in behalf of the Nisqually Indian Community and the class of Nisqually Indians affected by the 1918 condemnation proceedings to secure the objectives stated in the preceding resolve, and is authorized to employ any attorneys presently available to the Nisqually Indian Community for such purposes; provided that any new contract or new commitment of monies in payment for such services shall be presented to the Nisqually Indian Community for approval in accordance with the Constitution and Bylaws of the Nisqually Indian Community, unless effected by a delegation of authority and otherwise meeting the Constitution's provisions for attorney contracts approval.

Resolution No. 47A-1977

CERTIFICATE

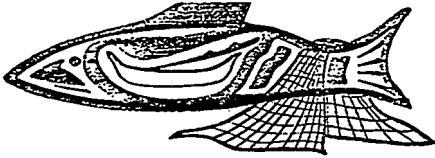
I certify that the foregoing resolution was adopted under the provisions of the Nisqually Constitution and Bylaws providing for delegations of authority from the Community Council to the Business Committee, having been duly noticed and scheduled for agenda action at a Community Council meeting called for June 14, 1977, which failed to secure a quorum after notices were mailed to all tribal voters on date of June 2, 1977; and further

I certify that the above Resolution was adopted at a special meeting of the Business Committee of the Nisqually Indian Community of the Nisqually Reservation held on the 21st Day of June, 1977, at Yelm, Washington, a quorum being present and adopting the Resolution by a vote of 4 FOR and 0 AGAINST.

ATTEST:

Georgiana Kautz, Chairman,
Nisqually Indian Community

Rena Wells, Secretary
Nisqually Indian Community



Nisqually Indian Tribe

P. O. Box 579
 Yelm, Washington 98597
 Phone: 458-7788

Resolution No. 47B-1977

WHEREAS, the Community Council is the governing body and the Business Committee the elected administrative officers for the Nisqually Indian Community by provision of the Constitution and Bylaws of the Nisqually Indian Community as approved by the U.S. Secretary of the Interior, September 9, 1946; and

WHEREAS, the Nisqually Indian Community is party to the Treaty of Medicine Creek of 1854 (10 Stat. 1132) by which the Nisqually Indian Reservation was caused to be established under the Executive Order of January 20, 1857, for the exclusive use of Nisqually Indians, and by which immemorial title and rights to certain water and fish resources were retained, secured, and reserved against any cessions by the Nisqually Tribe within its customary fishing domain and usage areas, including the Nisqually River and its tributary streams from the headwaters of the Nisqually River to its estuary in Puget's Sound; and

WHEREAS, certain individuals, companies and corporations, groups, organizations and municipalities, including the City of Tacoma and the City of Centralia, have from time to time or continuously wrongfully appropriated to themselves the water and water rights within the Nisqually River system, tributaries and channels, and otherwise trespassed against water flows and water rights, belonging to the Nisqually Indian Community, Tribe and Indians, or necessary to the survival and satisfaction of Nisqually Indian rights, including the very survival of fish resources, salmon and steelhead stocks and species, dependent upon sustained water flows within the treaty secured fishing domain and usage areas of the Nisqually Indian Tribe and for which the Tribe claims a necessary appropriation and water right; Now, therefore,

BE IT RESOLVED, that the Nisqually Indian Community hereby requests the United States, acting through the Department of the Interior and the Department of Justice, to initiate and enter lawsuits and related legal proceedings, prior to the effective date and statute of limitations barring prosecution of various claims imposed by 28 United States Code 2415, against the City of Tacoma (City Light) and the City of Centralia, respectively, for trespasses and damages against the water rights of the Nisqually Indian Community within the Nisqually River and the Tribe's customary fishing domain and usage areas, both within and exterior to the Nisqually Indian Reservation, and particularly for securing and maintaining necessary water flow levels from available Nisqually River waters within its main channel and free flow fish migration areas sufficient to satisfy the survival needs of anadromous fish species at all life stages and, equivalently, to satisfy the secured tribal treaty rights of the Nisqually Indian Community and its members; and,

Resolution No. 47B-1977

BE IT FURTHER RESOLVED, that the Nisqually Indian Community requests that the Department of the Interior and the Bureau of Indian Affairs act to intervene, or otherwise to support the positions of the Nisqually Indian Community and its claims of rights, in proceedings presently before the Federal Power Commission (Docket Files titled City of Tacoma, Washington, Docket No. P-1862 and City of Centralia, Washington, Docket No. E-6454) and in seeking all available administrative remedies, including inter-party negotiations, for effecting modifications and changes in operations of the power projects, dams and diversion, upon the Nisqually River for assuring satisfaction of the water rights of the Nisqually Indian Community, including preservation and protection of anadromous fish resources dependent upon the delivery of available water flows to specific locations within the Tribe's customary fishing domain and usage areas, including free flow fish migration routes in the main channel of the Nisqually River; and

BE IT FURTHER RESOLVED, that the Business Committee is authorized and directed to preserve the Tribe's claims of rights in these matters by the filing of appropriate lawsuits for achieving the objectives sought in requesting action by the United States, and is authorized to employ any attorneys presently available to the Nisqually Indian Community for such purposes; provided that any new contracts or commitments for additional monies in payment for such services will be presented for approval under relevant sections of the tribal Constitution and Bylaws.

CERTIFICATION

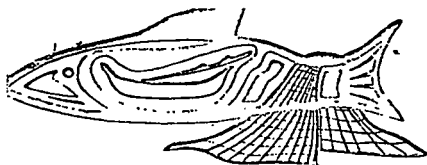
I certify that the foregoing resolution was adopted under the delegations of authority provisions of the Nisqually Constitution and Bylaws, having been duly noticed and scheduled for agenda action at a Community Council meeting called for June 14, 1977, which failed to secure a quorum after notices were mailed to all tribal voters on date of June 2, 1977; and further

I certify that the above Resolution was adopted at a special meeting of the Business Committee of the Nisqually Indian Community of the Nisqually Reservation held on the 21st Day of June, 1977, at Yelm, Washington, a quorum being present and adopting the Resolution by a vote of 4 FOR and 0 AGAINST.

ATTEST:

Georgiana Kautz, Chairman,
Nisqually Indian Community

Rena Wells, Secretary,
Nisqually Indian Community



Nisqually Indian Tribe ^{JH}
 P. O. Box 579 ^{WA}
 Yelm, Washington 98597
 Phone: 458-7788

April 4, 1974

Federal Hatchery Plan For The South Puget Sound *fill*

Bureau of Sport Fish & Wildlife
 Northwest Fisheries Program

In late 1972, the Nisqually, Muckleshoot, Skokomish, Puyallup and Squaxin Indian tribes entered into an agreement whereby the Bureau of Sports fish and Wildlife, Northwest Fisheries Program, would conduct a feasibility study of the five tribal areas for the purpose of determining whether or not a Federal hatchery could and should be constructed in the south Puget Sound region. In October of 1973, we were informed that the study would be completed and the documentation prepared by December of that year. We have been further assured of its availability on several occasions since then. However, it has not been published and we are concerned that additional delay will invalidate the findings.

With the ever increasing demands for fish and fish products both in this country and in others, the critical need for enhancing and supplementing natural runs is evidenced. Because of the access available to waterways within Indian reservations, the opportunities for employment which would be created, the natural skill of the Indian in this occupational area and the cultural relationship between him and the fish creature, to locate such a facility within a reservation is most desirable.

Component and satellite operations such as training facilities, rearing ponds and fish processing operations could further add to the value of a composite project. Particular emphasis is placed upon the critical need in the south Puget Sound area for a fisheries training program relating directly to Indian tribes and Indian fisheries. It is essential to the tribes that their members be provided an easily accessible, centrally located training facility offering management, technical and biological learning opportunities in close proximity to a hatchery facility.

The U. S. v. Washington decision which upholds the treaty right of Indians to fish in their usual and accustomed places additionally requires that the tribes demonstrate management capabilities; technical and biological abilities. To meet these challenging conditions is certainly not impossible provided we are granted the opportunity to do so. This necessitates that a Federal hatchery, satellite operations and the training component be a reality.

Nisqually Tribal Office
Post Office Box 579
Yelm, Washington 98597

April 4, 1974

We urge you to determine why the feasibility study has been withheld and why the Master Plan appropriation cannot be prepared for early submission. We further urge you to lend your support to the passage of the Master Plan appropriation upon its presentation.


Zelma McCloud, Chairman

HENRY M. JACKSON, WASH., CHAIRMAN
 ALAN BUBLE, NEV.
 FRANK CHURCH, IDAHO
 LEE METCALF, MONT.
 J. EDGEMOTT JOHNSON, JR., LA.
 JAMES A. HANCOCK, S. DAK.
 FLOYD K. HARKELL, COLO.
 GAYLORD NELSON, WIS.
 HOWARD M. METZENBAUM, OHIO
 JERRY T. VERLIER, STAFF DIRECTOR

PAUL J. FARMER, ARIZ.
 CLIFFORD P. HANSEN, WYO.
 MAUR O. HATFIELD, OREG.
 JAMES A. SCHELETY, N.Y.
 JAMES A. MCCLELLIN, IDAHO
 DEWEY F. BANTLETT, OKLA.

United States Senate

COMMITTEE ON
 INTERIOR AND INSULAR AFFAIRS
 WASHINGTON, D.C. 20510

April 15, 1974

Mr. Billy Frank, Jr.
 Chairman
 Nisqually Indian Community
 Fish Committee
 Route 12, Box 467-A
 Olympia, Washington

Dear Mr. Frank:

I have taken the liberty of forwarding your recent telegram to the Secretary of the Interior with a request to provide me with a status report on the feasibility study of the Federal Hatchery Plan for the South Puget Sound. I have also asked the Secretary to respond to the concerns raised in your telegram.

I expect to hear from the Secretary in the near future and will be in touch with you immediately.

Sincerely yours,



Henry M. Jackson
 Chairman

HMJ/ernh

HENRY M. JACKSON, WASH., CHAIRMAN
 ALAN BIRLE, IND.
 FRANK CHURCH, IDAHO
 LEE METCALF, MONT.
 J. EDHURST JOHNSON, JR., LA.
 JAMES ABURNECK, S. DAK.
 FLOYD M. HASKELL, COLO.
 GATLINO NELSON, WIS.
 HOWARD M. METZGERMAN, OHIO

JERRY T. VENGLER, STAFF DIRECTOR

PAUL J. FARRER, ARIZ.
 CLIFFORD P. HANSEN, WYO.
 MARK O. MATFIELD, OREG.
 JAMES L. BRADLEY, N.Y.
 JAMES A. MCCLURE, IDAHO
 DEWEY F. BANTLEY, OKLA.

United States Senate

COMMITTEE ON
 INTERIOR AND INSULAR AFFAIRS
 WASHINGTON, D.C. 20510

April 15, 1974

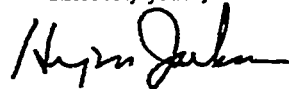
Ms. Ramona Bennett
 Chairwoman
 Puyallup Tribal Council
 2232 East 28th Street, #B
 Tacoma, Washington 98404

Dear Ms. Bennett:

I have taken the liberty of forwarding your recent telegram to the Secretary of the Interior with a request to provide me with a status report on the feasibility study of the Federal Hatchery Plan for the South Puget Sound. I have also asked the Secretary to respond to the concerns raised in your telegram.

I expect to hear from the Secretary in the near future and will be in touch with you immediately.

Sincerely yours,



Henry M. Jackson
 Chairman

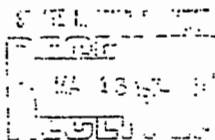
HMJ/emh



UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
BUREAU OF SPORT FISHERIES AND WILDLIFE
WASHINGTON, D.C. 20240

ADDRESS ONLY THE DIRECTOR
BUREAU OF SPORT FISHERIES
AND WILDLIFE

In Reply Refer To:
FSF/FS
SS - 15498



Dear Mr. Chairman:

This responds to your letter on behalf of members of several Indian tribes concerning the status of the fish hatchery feasibility study in the southern Puget Sound area.

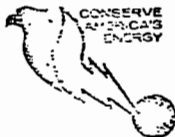
As you may be aware, your constituents also contacted Secretary Morton concerning this matter. We are enclosing a copy of Assistant Secretary Bohlen's April 26 response to them and hope that the information it contains is helpful. If we can be of further assistance to you, please call on us.

Sincerely yours,

Lynn A. Greenwalt
Director

Honorable Henry M. Jackson
Chairman, Committee on Interior
and Insular Affairs
United States Senate
Washington, D.C. 20510

Enclosure



Save Energy and You Serve America!



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240In Reply Refer To:
FSF/FS
SS - 14263

APR 26 1974

Dear Mr. Adams:

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

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

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

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

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

Sincerely yours,

(sgd) Curtis Bohlen

Deputy Assistant Secretary for Fish
and Wildlife and Parks

Mr. Frank Adams
Fisheries Management Coordinator
Puyallup Indian Tribe
2222 East 26th Street
Tacoma, Washington 98404

HENRY M. JACKSON, WASH., CHAIRMAN
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 DEWEY F. BARTLETT, OHIO

JERRY T. VERBLEN, STAFF DIRECTOR

United States Senate

COMMITTEE ON
 INTERIOR AND INSULAR AFFAIRS
 WASHINGTON, D.C. 20510

September 4, 1974

Ms. Lucile Anderson
 Business Manager
 Nisqually Tribal Office
 P.O. Box 579
 Yelm, Washington 98597

Dear Ms. Anderson:

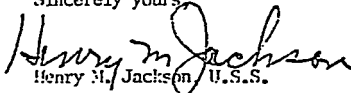
This is in response to your letter of August 16 regarding your concern about the need to complete the hatchery feasibility study for the south Puget Sound area.

I am well aware of your concern about this matter, and in an effort to be of assistance, I personally met with Mr. Lynn Greenwalt, Acting Director of the Bureau of Sport Fisheries and Wildlife. I asked Mr. Greenwalt to look into this and do what he can to be of assistance and see that this study is completed.

On a related subject, you will be interested to know that Senator Magnuson and I were successful in adding in excess of one million dollars to the budget of the Bureau of Sport Fisheries and Wildlife to increase hatchery production of salmon and steelhead in the State of Washington. There are few better investments that the Federal government can make than increasing salmon, as the benefit-cost ratio usually works out in the neighborhood of 10 to 1. It is clear that the salmon and steelhead resources of our State can and should be increased as soon as possible.

With best regards,

Sincerely yours


 Henry M. Jackson U.S.S.

IRJ:dml

Memorandum

TO : Regional Director (TA)
Portland, Oregon

FROM : Program Manager
Northwest Fisheries Program - Tumwater

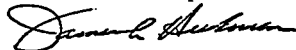
SUBJECT: South Puget Sound Hatchery Feasibility Report

DATE: June 21, 1974

Attached is suggested narrative for the subject report covering fish runs and their general importance. It would perhaps be advisable to make some additional comparisons in the report between the Skokomish and Nisqually sites and recommend one or the other or both as a complex. The consensus of the Indian Tribes is that the Nisqually site would be preferred. From their standpoint, it is more nearly the center of the total service area and distribution of the Tribal reservations. The bulk of the hatchery production would be stocked in the Southern Puget Sound area where most of the watersheds are located and the greatest number of Indian Tribes would benefit. The Nisqually location permits each of the Tribes a greater opportunity to claim association with the project. In addition, they have from the onset expressed a serious interest in development of a training center in association with this project and here again, most seemed to prefer the central location of the Nisqually site.

We have considered the following additional factors which we believe are important. As you will note in our narrative draft, all of the drainages but the Nisqually have artificial propagation facilities operated by the State. The location of a principal facility to which major brood runs would need to be developed could prove to be a serious problem on the Skokomish River where the stocks would be mixed. Potential exchange of fish diseases in the system could prove to be another serious problem. Supplemental rearing in both the Hood Canal and Puget Sound area is justified. We believe the exchange of stocks between the major Puget Sound areas should be minimized.

We favor the location of the principal facility incorporating water re-use on the Nisqually site and a single pass satellite facility on the Skokomish. The draft report section on site investigations was incomplete. To define more the thoroughness of our study, we believe it important to list the other areas examined. These have been penciled in the attached page copies of the draft report.



JAMES L. HECKMAN

JLH:cs

Attachment

FEASIBILITY STUDY
for
A FISH HATCHERY IN THE SOUTH PUGET SOUND AREA, WASHINGTON

INTRODUCTION

In 1972, the Muckleshoot, Nisqually, Skokomish and Squaxin Indian Tribes requested that the Fish and Wildlife Service conduct a feasibility study for locating a salmon and steelhead hatchery in the South Puget Sound area. This report has been prepared as a result of that request. The study included the collection and evaluation of biological, geological, hydrological, and engineering data and was completed in April, 1974.

Salmon and steelhead are native and historically were abundant in all of the major drainages and in most of the smaller independent systems of Southern Puget Sound and Hood Canal. Fall and spring chinook, coho, pink and chum salmon and steelhead trout utilized all of the major drainages. A small run of sockeye to Sherwood Creek was harvested by the Indians located in the southernmost portion of the Sound. Most of the smaller drainages such as Duckabush and Dosewallip Rivers on Hood Canal and Mill and Goldsboro Creek on Southern Puget Sound are particularly suited to production of coho and chum salmon and steelhead. The following table describes the current pattern of significant use, by species, of each of the major river drainages.

<u>River</u>	<u>Fall Chinook</u>	<u>Spring Chinook</u>	<u>Coho</u>	<u>Sockeye</u>	<u>Chum</u>	<u>Steelhead</u>	<u>Pink</u>
Green	X	X	X		X	X	
Nisqually	X		X		X	X	X
Puyallup	X	X	X		X	X	X
Skokomish	X		X		X	X	

Today, Indian Tribes of Southern Puget Sound continue to rely upon runs of salmon and steelhead as an important source of their livelihood. During the past fifty years, numbers of fish returning to the usual and accustomed fishing areas have been diminished because of severe reductions in the productivity of the freshwater habitat resulting from pollution, logging, flood control and other developments on the watersheds. An additional reduction has occurred because the major commercial and sport fisheries harvesting a large portion of the salmon runs destined for these areas moved to the outer marine areas where the stocks were mixed.

In general, the Tribes named above have confined the area of their fishing activities to the reservations or to the bordering waters to avoid conflict with State fishing regulations and confrontation with non-Indian fishing groups. The recent ruling by the U.S. District Court in the case of United States v. Washington will permit these Tribes to pursue their fishing activities in a greater area generally known to be their usual and accustomed fishing grounds. It is expected that with this decision the Tribes will invest more freely in the appropriate gear to pursue their occupation as fishermen. Many will find that although some non-Indian fisheries are restricted to allow a greater percentage return to the Indian fishing grounds, the runs of salmon and steelhead will not match those of the past because of the deteriorated conditions in the freshwater areas. Some runs of fish have been supplemented by State-operated hatcheries on the Green, Puyallup, Deschutes, and Skokomish drainages. The Tribes have jointly requested additional supplementation of the natural runs by a Federal hatchery or complex of rearing facilities to service the Southern Puget Sound area. In

consideration of the reduced productivity of these drainages, the Indians' request definitely appears justified.

Benefits from the hatchery production would accrue to other Tribes as the adult fish returning to the hatchery migrate through their usual and accustomed fishing areas located in the ocean and outer marine areas. These include Puyallup, Tulalip, Suquamish, Duwamish, Swinomish, Squaxin, Skokomish, Port Madison, Port Gamble, Nisqually, Muckleshoot, Makah, Kiliallus, and Steilacoom Tribes. Equal benefits would accrue to the non-Indian sport and commercial fisheries of the ocean, Straits of Juan de Fuca, Puget Sound, and hatchery service area rivers.

Operations

(A paragraph should cover staffing patterns.)

The objectives of the hatchery would be to produce the numbers of salmon and steelhead and other miscellaneous species required to fulfill fishery management programs for the hatchery's distribution area. Distribution of hatchery production to Puget Sound streams supporting Indian fisheries has been far below the needs expressed by the many Tribes. Only Quilcene National Fish Hatchery has been available for distribution of fish to Puget Sound waters. It is a relatively small facility with most of its production going to trout programs and coho salmon for coastal areas. A limited distribution of coho has been made to the Lummi and Muckleshoot Reservations and there currently exists an exchange program with the Washington Department of Fisheries. The Department stocks 250,000 coho annually into White River on the Muckleshoot Reservation and an equal number is released from Quilcene to waters selected by the State.

Primarily, the new facilities would be geared to the Indian fisheries of the Southern Puget Sound and Hood Canal areas. The non-Indian sport and commercial fisheries in the marine and freshwater areas would benefit as well. Most of the production at the hatchery would be salmon and steelhead, however, some small amount of trout rearing to service Indian, military, and park programs may be included.

The following table describes the production distribution which under existing conditions appears to provide the greatest benefit to the fisheries involved. It is based upon a consideration of tentative harvest patterns which will be governed under the United States v. Washington court decision and on consideration of compatibility with existing management programs of the Washington Departments of Fisheries and Game. Indian Tribes with marine fisheries in the northerly portions of Southern Puget Sound will be in a position to intercept a portion of each of the individual stocks migrating southward, e.g., the hatchery production distributed to the streams supporting the fisheries for the Squaxin and Nisqually Tribes will be cropped by the Muckleshoot and Puyallup fishermen. In consideration of this, the distribution pattern reflects a larger portion of the production to be stocked in the more southerly watersheds.

Proposed Production Distribution

<u>Drainage</u>	<u>Spring Chinook</u>	<u>Steelhead</u>	<u>Chum (Hood)</u>	<u>Chum (Puget Sound)</u>	<u>Fall Chinook</u>	<u>Coho</u>
Puyallup	426,600	150,000	-	3,000,000	1,000,000	500,000
Nisqually	426,600	150,000	-	3,100,000	1,000,000	500,000
Green	426,000	100,000	-	2,000,000	-	-
Skokomish (Hood Canal)	426,000	200,000	2,000,000	-	-	-
Misc. So. Puget Sound Streams & Squaxin		100,000	-	3,500,000	-	500,000



U.S. DEPARTMENT OF COMMERCE
 National Oceanic and Atmospheric Administration
 NATIONAL MARINE FISHERIES SERVICE
 Columbia Fisheries Program Office
 P.O. Box 4332, Portland, Oregon 97208

Date June 20, 1974

Reply to Attn. of: FFW5

To Regional Director, BSWF, Portland

From *Fred Cleaver*
 Fred Cleaver, Program Director, Columbia
 Fisheries Program Office, Portland

Subject: Fish Hatchery Sites in South Puget Sound Area

We have reviewed your draft copy of a feasibility study you have made for fish hatchery sites in the south Puget Sound area. The report is well prepared and we have no comment.

Thank you for the opportunity of looking at this manuscript.



Director: Carl N. Lunde
 Deputy Director: Ralph W. Larson
 Ronald N. Aldrich

Game Commission

Arthur N. Colby, Yakima, Chairman
 Lewis K. Allen, La. 9000
 Elmer G. Carlson, Quincy
 Claude H. Finn, Seattle
 Glenn Galbraith, Wellpinit
 Frank L. Cassidy, Jr., Vancouver

DEPARTMENT OF GAME

600 North Capitol Way, Olympia, Washington 98504

June 24, 1974

Dr. L. Edward Perry
 Acting Regional Director
 Fish and Wildlife Service
 P. O. Box 3737
 Portland, Oregon 97208

Dear Ted:

I appreciate receiving your draft copy of a feasibility study of fish hatchery sites in South Puget Sound. Due to the short time span we are unable to study this in depth, however I would like to take this opportunity to comment on it. Our comments will pertain only to steelhead trout as that is this Department's responsibility as it pertains to anadromous fish.

It has always been the position of this Department that anadromous fish were the responsibility of the state and steelhead of the Department of Game. We have consistently taken the position that we were opposed to any federal fish hatcheries in this state for the rearing of steelhead and if any hatcheries were proposed for whatever reason that the money be allocated to the state for construction and operation. This also includes other species of fish that come under Game Department jurisdiction.

It is my strong feeling that management of the anadromous fish resource by several different agencies can only end up in damage to the resource which would be detrimental to its use and enjoyment by citizens of this country. Evidence is mounting that the natural production of anadromous fish is very sensitive to hatchery programs and if this is true an uncoordinated, unregulated program could be damaging to the resource. Dr. Loyd Royal clearly describes this concern in his report on the anadromous trout program of the Washington Department of Game.

Your report does not detail the proposed fish rearing programs nor any proposed planting allotments. Since construction would be accomplished with the use of public funds, what will be the public benefits?

Dr. L. Edward Perry
June 24, 1974
Page Two

If construction of any additional steelhead hatcheries are planned in this state, I would strongly recommend that if federal funds are involved, the planting and management be done through this Department in order that maximum benefits from such hatcheries can be derived.

I do feel that before consideration is given to any additional steelhead hatcheries in the state that an assessment as to the need and desirability of such hatcheries and the economic feasibility of them in view of the present steelhead program be made in cooperation with the Department of Game.

I sincerely hope that the Department will have the opportunity to review and comment on any hatchery construction proposal that may be offered for your agency consideration or Congressional action.

Very truly yours,

THE DEPARTMENT OF GAME



Carl N. Crouse, Director

CNC:mmm



Game Commission

Arthur S. Coffin, Yakima, Chairman
 James R. Allen, Lakemoss
 Elmer G. Gordon, Quincy
 Claude H. Lee, Seattle
 Glenn Galbraith, Wellpinit
 Frank L. Cassidy, Jr., Vancouver

DEPARTMENT OF GAME

600 North Capitol Wa., Olympia, Washington 98504

June 28, 1974

Dr. L. Edward Perry
 Acting Regional Director
 Fish and Wildlife Service
 P. O. Box 3737
 Portland, Oregon 97208

Dear Ted:

After reviewing our letter to you of June 24, 1974 relative to fish hatchery sites in South Puget Sound, we feel that some additional clarification is necessary.

It is our feeling at the present time that the Department of Game does possess adequate facilities for rearing of steelhead smolts to take care of any steelhead planting needs in the State of Washington. We presently are not operating at full capacity due to funding limitations resulting from increased costs of production and, therefore, could rear additional smolts, if funding were available. As a result of this analysis, it is our feeling that no additional hatcheries are necessary in South Puget Sound at this time to fulfill the planting needs of streams in Western Washington.

Very truly yours,

THE DEPARTMENT OF GAME

Carl N. Crouse, Director

CNC:hl



1-12111 EVANS

WASH STATE DEPARTMENT OF FISHERIES, BUILDING
JYEMER, WASHINGTON 98504

July 8, 1974

Dr. Edward Perry
Acting Regional Director
Bureau of Sports Fisheries & Wildlife
United States Department of Interior
Fish and Wildlife Service
1500 Northeast Irving Street
P.O. Box 3737
Portland, Oregon 97208

Dear Dr. Perry:

Regarding the draft copy of the feasibility study on possible fish hatchery sites in Southern Puget Sound by the Bureau of Sport Fisheries and Wildlife Service, we have the following primary concerns. The first is that it appears that such an implementation would be a direct duplication of the efforts being extended by the state and, of course, secondly, this duplication would be a much greater economic impact.

Presently, the only federally operated salmon hatchery in Puget Sound is the Quilcene Hatchery. To start an expansion among the eleven state hatcheries, release ponds and the proposed net pen complexes, in our estimation, is not the proper direction for the federal government to take.


It will complicate the management of the salmon resource and be far less efficient than simply adding another facility and/or facilities to the state system. Another concern, of course, is that the cost associated with the recently developed federal stations far exceeds, both in capital and operational

Dr. Perry

costs, those implemented by the state. While this is not a direct conflict, it is the responsibility of our state employees to call attention to these conditions in the best interest of the tax supporting public.

Before any further actions are taken, we are requesting a meeting between our staff and members of your staff to obtain more information on the short-term and long-term expansion goals of the federal salmon hatchery system within our state. There are other biological conflicts relating to species interaction that also perhaps should be discussed. We would be pleased to meet at your earliest convenience.

Sincerely,


Thor C. Tollefson, Director
Department of Fisheries

REN:59/2

REPORT OF THE PUYALLUP TRIBE OF INDIANS

November 14, 1977

fishermen.) Of those 341,000 coho, Southern Puget Sound tribes harvested only 83,778; the others were caught before they reached our fishing areas. (It is true that some of the fish were harvested by other tribes. However, as the tribal report indicates, attempts by the tribes to divide the treaty share fairly among ourselves are frustrated by the State's inability to prevent illegal non-treaty fishing and to distribute the non-treaty harvest over the course of the run. The total treaty harvest was only 137,000 out of the 331,000.)

Treaty fishermen, especially those from South Sound tribes, are restricted by one of the rulings in United States v. Washington which limits each tribe to what the court determines are its usual and accustomed fishing areas. Non-treaty fishermen can and do travel far and wide to fish the most productive areas. The solution to that problem is not, as the State has suggested, to require us to go out to the marine areas to fish. We will never give up our traditional river fisheries. The answer is to regulate fisheries in a way that will allow enough fish to return to the bays and rivers that we will have our proper opportunity.

United States v. Washington took away half our treaty right. In treaty times we had no difficulty harvesting as many fish as we needed, and our ancestors understood that they were reserving the right to continue to do so. That right has been imperiled by destruction of the resource and has now been further restricted by the federal court's ruling. The factors described in the joint tribal report and in the paragraphs above compound those limitations.

II. Tribal Position

The continuous interference with out treaty fishing rights which the State of Washington and its citizens have persisted in, despite several pronouncements by the United States Supreme Court recognizing our fishing rights, has not deterred us from protected those rights. Non-Indians have used their courts and have brought their police to our rivers in a never-ending campaign to prevent us from fishing, but we have refused to give up our struggle. It is because of our persistence and determination that our fishing rights have been maintained, although in many ways they have been stripped to the bone. As the tribal report has described, favorable court decisions have not put an end to that interference. They are still under attack - perhaps more intensely than ever - by wealthy and influential interests. However, just as our ancestors fought to preserve their way of life and passed it on to us, we will protect our land and our rights. Our fishing rights are not something which can be bargained away because of political pressure or threats or empty promises. Our fishing rights are a heritage which has been protected and handed down to us; we have a sacred duty to pass it on to our children. Fishing is not simply a business venture or a hobby, as it is with non-Indians; it is one of the most important parts of our way of life, our culture and beliefs.

Under the laws of the United States, treaties are part of the supreme law of the land. The federal courts have finally provided a method for protection and implementation of our treaty fishing rights. The courts recognized that as the

supreme law of the land, those treaty rights cannot be infringed by state law and state actions. It is quite natural, as a result of the many and varied forms which attacks on our rights have taken, that we would view with suspicion the creation of the Executive Task Force. We are well aware that the Task Force was established because of the anti-Indian propaganda campaigns and pressure which has been put on Congress to restrict tribal rights. Proposals which have been made to the Task Force and legislation which has been introduced and suggested by several Congresspeople indicate that many people view the Task Force as a vehicle for restricting or abrogating our treaty rights. We note that one of the Task Force's guidelines is "a utilization of the fishery consistent with recognized treaty fishing rights reserved under the Stevens Treaties of 1854 and 1855." The actions of the Regional Team of the Task Force, which were described in Volume I of the tribal report, do not inspire confidence that it is pursuing that goal. However, we hold the Task Force by its word and can only observe that a failure to live up to that guideline will represent another in the long and dishonorable history of broken promises to Indian tribes.

The first step in any discussion must be to determine how non-Indian governments and their citizens can assure us that our treaty and sovereign rights will be upheld. That includes implementation of the decision in United States v. Washington and protection of the sovereign and treaty rights which were not considered in that case. We certainly agree that it would benefit everyone to end the controversy and continuing disagreements over fishing in Western Washington, and that a solution

which is agreed to by everyone concerned is the best method of doing that. Before discussion of an agreement can take place, however, non-Indians will have to change the way they deal with Indians. We have learned over the centuries that your word and your promises cannot be trusted, no matter how sincere and how well-meaning the speaker is. We have lost our rights and our property by signing agreements with you. Before we can discuss fishing rights with you, you must prove that you will live by your word. There is nothing to indicate that this Task Force or the United States or the State of Washington will change their dishonest ways; in fact, the actions of the Regional Team discussed in Volume I show that it is maintaining that record of dishonor.

Any solution to fisheries problems must be consistent with the following principles:

1. The United States must deal with the tribes in an honest and straightforward way, and fulfill its role as trustee for the tribes. That includes consulting the tribes before it takes independent action, taking direction from us when it acts on our behalf, and refraining from actions which are done in our name but which are in fact harmful to us. Incidents such as the one described at pages 63-65 of Volume I are a violation of that duty and of the rules of ethics governing the legal profession. They would not be permitted by the courts if anyone besides Indians were the victims.

2. The United States must uphold the promise it made in the treaties to protect out fishing rights. That includes

protection of tribal management over tribal fisheries and protection of our fishermen from state court jurisdiction. It also includes regulation of non-Indian fishermen to insure that they do not infringe on our fishing rights. The United States should withhold from the State of Washington any monies which are to be used for fisheries or fisheries-related purposes until the State enacts legislation which will give its agencies the authority to prevent its citizens from infringing on our treaty rights. Enhancement and rehabilitation of the fisheries must be based on what is best for the resource and not be guided by political considerations nor by attempts to nullify the treaty fishing rights. We must have a voice in all fisheries management functions (such as setting run size estimates and escapement goals, collecting and maintaining data, doing scientific studies), and in all enhancement and rehabilitation programs.

3. There must be restrictions on ocean harvests of fish bound for tribal fishing areas. That would include enactment of legislation by the State of Washington and the United States restricting the catches of their citizens in areas under their respective jurisdictions. It must also include tribal representation on the various commissions, councils, and negotiating teams through which the United States deals with other countries that engage in commercial fishing. As discussed in the tribal report, agreements made by the United States with Canada have a substantial impact on our fisheries. The International Pacific Salmon Fisheries Commission sets regulations which impact our fisheries. In order to protect our fishing rights we must have representation

on the Commission. The procedural rules of the International Pacific Salmon Fisheries Commission must be changed to provide for open meetings, access to Commission staff and to written communications. The United States must make a commitment that any regulatory scheme will respect and uphold our fishing rights. The United States and Canada are now negotiating a new treaty which would cover many aspects of fishing by both countries. We must be involved in those negotiations and have representation on any committee which a new treaty establishes.

Another agency which has a significant impact on our fisheries is the Pacific Regional Management Council established pursuant to the 1976 Fisheries and Conservation Management Act. The tribes must have voting members on the Council with security clearance so that all activities of the Council will be open to the tribal representatives. Further, the federal government must make a commitment that all regulatory activities of the Council will respect and uphold our fishing rights. That would apply both to fishing in the 200-mile zone and to regulations which insure adequate escapement back to Puget Sound.

4. The federal courts and even state courts have repeatedly recognized that Indian treaty rights have been denied and restricted for many years. As compensation for the limitations which have already been placed on our rights, and which continue to be enforced against us, we should have returned to us a commensurate share of the ceded land which was the price we paid for reserving our fishing rights in the treaty. Non-Indians have taken back part of what they supposedly guaranteed to the tribes by the treaty, and it is therefore only fair that we have

returned to us part of what we gave up.

5. The United States should undertake a study of past and present actions by the State of Washington and its citizens which have been designed to arouse public passions against Indian tribes and to violate our civil liberties.

Discriminatory enforcement, anti-Indian publicity campaigns and smear tactics, destruction of our property and attacks on our property and attacks on our people, compiling secret files on our people, and similar activities should be investigated, exposed and punished.

6. The Bureau of Indian Affairs should restructure its loan and other financing programs to insure meaningful opportunities for individuals and tribes to invest money in acquisition of fishing gear and fisheries-related economic development projects.

REPORT OF THE SQUAXIN ISLAND INDIAN TRIBE

The Squaxin Island Tribe is completing a comprehensive report on the state of its fishery. The report will cover all aspects of the fishery from harvest management to needed enhancement. It will further attempt to highlight current problems and present workable solutions to these problems.

The Tribe had hoped that the completed report would be available by November 14, 1977. However, the completed document will now not be ready until November 15th or 16th. The Tribe has worked on the assumption that it would be better both for the Task Force and the Tribe to delay a few days, rather than submit an incomplete document. Once received, the Squaxin Island Tribe feels that the report will provide needed guidance to the Task Force in its efforts to develop solutions that are in harmony of the treaty right which the United States is charged to preserve and protect.

The report will not present a comprehensive unified management system. The Tribes believe that the Task Force utilizing the principles set out in Volume II can develop a meaningful system. Furthermore, the Squaxin Island Tribe has received the proposed plans submitted by the Quinault Tribe and the Point No Point Treaty Council. The Squaxin Island Tribe believes that the commission concept advanced therein is workable and provides a realistic point of departure for developing such a unified management system.

TRIBAL REPORT
TO THE
PRESIDENTIAL TASK FORCE ON
TREATY FISHING RIGHTS IN THE NORTHWEST

Volume VI

Supplement No. 1

Presented by
The Medicine Creek Treaty Area
(Puyallup, Nisqually and Squaxin Island Indian Tribes)

November 14, 1977



SQUAXIN ISLAND TRIBE

Route 1, Box 257 Shelton, Washington 98584

Calvin J. Peters - Chairman
 Bryan A. Johnson - Vice Chairman
 Sally Ann Norman - Secretary

Wesley Whitener - Treasurer
 John Keise - Councilman
 Florence Sigo - Tribal Historian

November 17, 1977

John C. Merkel, Chairman
 Northwest Regional Fisheries Task Force
 U.S. Department of the Interior
 10th Floor, U.S. Courthouse
 Seattle, Wash. 98104

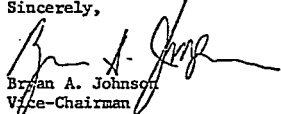
Sir:

Please find enclosed the Squaxin Island tribal report to the Regional Task Force. This report will provide a better understanding of the Squaxin Tribe's fisheries management program, and responds to many of the problems being addressed by the regional team.

Additional information and tribal position statement will be added to this report as our meeting with the Task Force progresses.

If you have any questions, please feel free to contact me.

Sincerely,


 Bryan A. Johnson
 Vice-Chairman

BAJ/pjd
 enclosure

SQUAXIN ISLAND REPORT
TO THE
PRESIDENTIAL TASK FORCE
VOLUME 3

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I. INTRODUCTION

The following synopsis of the Squaxin Island Fisheries Management Program shall serve as the reference document and official position of the tribe in its discussions with the Regional Task Force. Included is the current status of the Tribal management enforcement and judicial program. Also included are the future objectives of the fisheries program and the tribal responses to the areas of concern which the Regional Task Force is addressing.

II. SQUAXIN ISLAND FISHERIES PROGRAM - STATUS QUO

A. MEDICINE CREEK TREATY COUNCIL

The Medicine Creek Treaty Council (MCTC) was established to represent the Medicine Creek Tribes in inter-treaty affairs, and to serve as a coordinating body for the treaty area fisheries. The council also elected a chairman who serves as the representative to the Northwest Indian Fisheries Commission.

Within Medicine Creek, the council has developed a cooperative management system whereby the tribes have exclusive management and or co-management responsibilities, as among Medicine Creek Tribes, in their respective geographical regions. Any area of Puget Sound delineated by the Boldt Court as the "usual and accustomed fishing area" of a particular tribe which is not also the usual and accustomed area of another Tribe is subject to the exclusive management of the tribe with claim to that area. The exclusive management areas are generally shallow bays and rivers in proximity to the reservation. Where two or more tribes share a particular fishing area, those tribes share management responsibilities for that area.

This management concept was adopted by the Medicine Creek Tribes for the following purposes:

1. Each tribe lives in and is responsible for a small geographic region. They are able to monitor daily harvest and spawning escapement data in a manner not possible under centralized management.

2. By assigning to each tribe exclusive and or co-management areas, and insuring that fish reach those areas, the NCTC has been able to avoid intertribal conflicts, thereby encouraging orderly development of tribal fisheries.
3. This system guarantees that tribes who properly manage the anadromous resource returning to their areas will be the beneficiary of their efforts.

Under U.S. vs. Washington and through the Medicine Creek agreement, the Squaxin Island Tribe is co-manager of most marine waters of Puget Sound south of the Tacoma Narrows, with the exception of the Nisqually Reach (Area 13-1), and portions of the east bank of the Tacoma Narrows. The tribe is the exclusive manager of catch reporting areas 13B-1 through 13B-10. (see appendix "Map of Treaty Reporting Areas")

B. SQUAXIN ISLAND FISHERIES MANAGEMENT PROGRAM

1. OBJECTIVE

The objective of the Squaxin Island fisheries program is "to maximize the fisheries resource of the tribe and secure to the tribe the greatest practicable return from its fisheries resource in a manner which is consistent with the conservation and wise utilization of that resource. In order to realize these objectives, the tribe has enacted a fishing ordinance to further this policy and to provide a mechanism for its implementation. (see appendix, "Squaxin Island Fishing Ordinance")

2. MANAGEMENT HIERARCHY AND JURISDICTION

The following is a simplified summary of the Squaxin Island tribal management hierarchy, which is detailed in the fishing ordinance. Proposed regulations are submitted with biological justification, to the Tribal Council for enactment. The regulation is immediately filed with the U.S. District Court, and is distributed to the tribal fishermen and tribal patrol. It is the responsibility of the patrol to insure compliance with the regulation. Violators are tried in tribal court, before a federal judge on loan from the Quinault Indian Nation. The violator, if found guilty, will receive a penalty ranging from a reprimand to a maximum penalty of \$500.00 fine, imprisonment for up to 30 days, loss of

tribal fishing privileges for up to 30 days of the open fishing season, or any combination thereof.

The jurisdiction of the tribal enforcement officers extends only to the members of the Squaxin Island Tribe. However, interim agreements exist between some Medicine Creek Tribes which permit our officers to cite members of another Medicine Creek tribe into their respective tribal court. Our patrol does not have the authority to cite illegal non Indian fishermen. The inability of our officers to cite these people is demoralizing to the enforcement staff, and frustrates tribal fishermen who are unable to fish due to management closures.

3. BIOLOGICAL MANAGEMENT

The existing Squaxin Island exclusive and in common management areas were designated as a salmon preserve by the State of Washington in 1915. These areas were closed to all commercial net-fishing, in order to avoid the conflict between sports fishermen and commercial fishing gear.

The only commercial fishery to occur in this area since conception of the salmon preserve was a periodic terminal nontreaty fishery in Carr Inlet (13A), and an extremely limited tribal fishery, which commenced in the early 1960's. The Washington Department of Fisheries conceded these openings to the tribe in order to appease demands for recognition of treaty rights.

The Boldt Decision superceded those portions of state law, which closed salmon preserves to treaty Indian fishing. The Decision allowed the tribes to devise their own fisheries management programs and to enact regulations which are consistent with principals of species conservation.

The promulgation of this decision necessitated the immediate development of a fisheries management program which would regulate tribal fishermen through a system of enforceable restraints. To facilitate regulations of their fishermen, the tribe has developed a licensing system which utilizes embossed picture I.D. cards. Fishermen were required to present said cards to the buyer so that the information contained there in could be embossed on the fish ticket. This procedure eliminated opportunities for forgery and

eliminated fish ticket distribution problems. The management program was also encumbered by the fact that historical data necessary for harvest management needs did not exist. Further, all existing catch reporting and monitoring systems were slow, and insensitive to the needs of the Squaxin Island tribal management program. Development of the tribal system required revision and subdivision of anadromous catch reporting areas to meet the needs of the tribal harvest management system. (see appendix, "Treaty Catch Reporting Area") To insure expedient and accurate catch monitoring, the tribe initiated a telephone call-in soft data system, which required each fisherman to call in his daily catch to the tribal fisheries manager. This daily call-in enables staff to personally interview each fisherman and collect pertinent data which is unavailable through any other catch monitoring system. Soft data statistics are compared with fish tickets to insure each ticket is complete. The confirmed fish tickets serve as the hard data base for tribal fisheries programs. All hard data, with corrections, is forwarded to state and federal agencies as it becomes available. This system is independent of all existing systems and consistently proves to be more accurate than any other data monitoring program.

During the previous three years, the tribe has collected adequate data to develop, with the help of Fisheries Assistance and Research (FAR), a computer "Terminal Area Harvest Management Model". This model utilizes daily catch and effort statistics to update run size, compute desired and predicted escapement estimates, and recommend allowable exploitation for the following week. The sophistication of this model typifies the extraordinary fisheries management advances made by the Squaxin Island Tribe.

The Squaxin Island Tribe has proven it's competency as a fisheries manager, through enactment of, and compliance with, the principles of the fishing ordinance, together with the development of credible management, enforcement and judicial systems. The status of the tribal management program qualifies the tribe for self-regulatory status.

4. ENHANCEMENT

The Squaxin Island Tribe has been involved with the Department of Fisheries

in cooperative enhancement projects at the Squaxin Island seafarm, a marine net-pen facility, since 1970. Although it is our desire to utilize indigenous stocks at the seafarm, it is presently unfeasible. The alternative is to utilize hatchery-reared fish, but to minimize the competition with indigenous stocks by releasing smolts at the seafarm and harvesting the adults as they return to the release site. This site is ideal for this type of program in that the island and areas adjacent to the seafarm are devoid of freshwater sources. Thus, this area does not serve as a rearing area for smolts, and is not the major migratory route of any native stocks.

An extensive three year research project is currently underway to evaluate the contribution of seafarm releases to the local fisheries, and to natural production. Preliminary data suggests that seafarm origin fish augment natural production since they seek out the spawning areas throughout the south sound basin after milling near their release point. Seafarm fish randomly mix with, but do not replace, the natural runs. Thus, the genetic diversity of natural stocks is protected.

The Tribe has also extended its enhancement projects to an off-reservation hatching and rearing facility. An off-reservation facility was necessary since there are no freshwater sources on Squaxin Island. Although this facility was scheduled to be operational by the fall of 1977, an extensive and unorganized state permit system will delay completion until the spring of 1978.

Once completed, the new hatchery and existing seafarm facilities will provide a flexible and complimentary rearing arrangement whereby juvenile salmon can be reared and released at either site or outplanted into designated streams.

III OBJECTIVES OF THE TRIBAL FISHERIES PROGRAM AND RESPONSES TO REGIONAL TASK FORCE AREAS OF CONCERN ¹

A. FISHERIES MANAGEMENT INSTITUTIONS

The Squaxin Island Tribe recognizes that the major problem with Puget Sound management is the lack of coordination between parties and that no

¹ Task Force Paper Reporting on the Proposals, Recommendations, and Suggestions Submitted by All Interested Parties through November 1, 1977; November 3, 1977

single agency can or will provide a full range of management functions. Thus, it is our position that a federal commission be designed to oversee the management of the anadromous resource while reserving management authority in the tribes and state. The tribe has adopted that portion of the Quinault Treaty Area Proposal which defines the framework of the proposed "Northwest Fisheries Commission".

This is the only acceptable management structure which will insure that our treaty rights are guaranteed. Any management structure which permits the State of Washington to be the sole manager is adamantly opposed. This opposition is resultant from many years of conflict with the state over our fishing rights and their refusal to enact legislation recognizing these rights. The state's record stands as our example of why they are incapable and unwilling to provide "a full range of management functions".

The tribe must stress that we will not negotiate with the Task Force on additional issues such as steelhead, on reservation, ceremonial and subsistence catches, if any management agency concept other than the one suggested in the Quinault proposal or one recommended by the Regional Task Force.

B. ENHANCEMENT OBJECTIVES

The Squaxin Island Tribe perceives enhancement as any effort which will increase the freshwater and/or estuarine survival of any species of salmon. This shall include hatcheries stream restoration, stream improvement, and elimination of pollution sources from fresh and marine waters which are detrimental to salmon survival.

The objective of the tribal enhancement program is to insure a competitive and equitable annual family income to each of the anticipated 75 tribal fishermen. This income is to be distributed over a six month period commencing in mid July and terminating in late December. These goals will be met by maximizing natural production and augmentation by artificial means so that our final objective can be realized. However, before the tribe is willing to be a party to a major enhancement program, extensive planning must be directed toward the following areas to insure that our goals are attainable.

1. Develop a balanced production system between hatchery and natural systems so as to avoid the hatchery versus wild harvest conflicts which consistently reduce natural production. This will be done by upgrading the natural environment and selecting enhancement stocks which are segregated from natural stocks by both space and time.
2. Examine the carrying capacity of southern Puget Sound for salmon production. This unknown takes on important dimensions in light of the trend towards increased chum salmon production. Due to the relatively long seaward migration time of Chum fry (120 + days versus 60 days for coho) the estuarine areas and bays of Puget Sound must provide sufficient food as well as protection from predator species. Basic research concerning feeding and behavioral patterns has been completed, but quantitative knowledge of carrying capacity and stock interaction is not available.

Without this information, future enhancement projects will be operating on a trial and error basis. This type of research will require a cooperative approach by tribal, state and federal biologists to discover the facts.

3. The success of any South Sound enhancement program is contingent upon harvest management policies in north Puget Sound.

C. HARVEST MANAGEMENT

The Squaxin Island Tribe is the southern most commercial fishing and management agency in Puget Sound. The stocks returning to our areas are affected by all northern Puget Sound management plans. Thus, the tribe is unable to develop a fisheries enhancement plan which permits restoration of natural stocks to meet tribal per-capita objectives. This plan will be initiated once anticipated northern Puget Sound mixed stock exploitation rates are known. These exploitation rates are based upon two management options. The first is to establish rates which will adequately harvest all hatchery surplus in mixed stock areas. This methodology is the least desirable, in that restoration of natural production will not be possible due to continued over fishing. The second management option is to develop an enhancement and harvest management program whereby artificial and natural production rates are balanced, so

that each stock has the same allowable exploitation rate in mixed stock areas. This will require extensive enhancement effort in every watershed so its full natural production potential is realized.

Due to the importance of natural production to the Squaxin Island fisheries the first proposed management option is totally unacceptable. The second concept is negotiable in that hatchery and natural production need not have the same exploitation rate, but the mixed stock fishery must be managed so as to protect the weakest stock. Further, the applied exploitation rates must be conservative in nature to temper potential errors in run forecasts and to insure that a harvestable surplus reaches the Squaxin Island usual and accustomed fishing grounds. If a surplus from the stronger stocks occurs, it must be taken in areas which least impact the weaker stock.

D. LICENSING SYSTEM

We are willing to accept a standard licensing format which provides information necessary for management. However, under no circumstance will tribal fishermen be licensed by anyone other than their respective tribe. Licensing by an outside agency denies the tribe management ability to control gear types or fleet size this would be considered an erosion of the management ability of the tribe. A system which licenses boats as opposed to licensing fishermen is unacceptable.

E. GEAR REGULATION

Several proposals are being circulated which would effectively reduce the nontreaty fleet. Additional proposals suggest that the treaty fleet be geared up. We are very supportive of nontreaty fleet reduction. Further, we understand the need to gear up the tribal fleets enabling them to compete for Fraser River pink and sockeye salmon. However, this expanded fleet will also fish upon south sound destined coho and chum stocks. The additional effort upon our stocks will eliminate any viable fisheries in our usual and accustomed areas. This would force our fishermen to leave the tribe's fishing grounds to compete in the northern fisheries. The exodus of fishermen will erode the developing tribal unity

and cultural identity, which has been given new life since the implementation of the Boldt Decision.

Thus, our position is, we will not support any gear up program which results in displacement of our fishermen or reduced harvestable surplus returning to our fishing areas.

RESOURCE DISTRIBUTION

A. Phasing in of treaty share over limited time interval. As previously discussed, the fish returning to our areas are subjected to more intercepting fisheries than any other stocks in Puget Sound. Table 1 provides a summary of the annual harvest and average per capita benefit per fishermen for the previous three years.

From this table it is apparent that the tribe can not agree or afford to reduce our annual catch in order to phase in the treaty share.

Table 1 Squaxin Island Tribe Annual Harvest by Species

	<u>1974</u>	<u>1975</u>	<u>1976</u>
Chinook	2,739	6,036	9,221
Chum	25,722	4,221	28,094
Coho	13,726	19,152	6,843
TOTAL:	42,187	29,409	44,158
Average Per Capita Benefit:	\$4,843	\$4,939	\$5,838

We have serious reservations about the success of any phase in program. The Regional Task Force suggested a reduced treaty share for the 1977 season. The nontreaty fishery harvested their share and continued an illegal fishery which drastically reduced the actual treaty share well below the court ordered allocation. The tribes that were most drastically affected by the revised sharing formula and illegal fishery were the southern Puget Sound tribes. Thus, we can not agree to a gradual phasing in of the treaty share.

APPENDICIES

1. TREATY CATCH REPORTING AREA
2. SQUAXIN ISLAND FISHING ORDINANCE

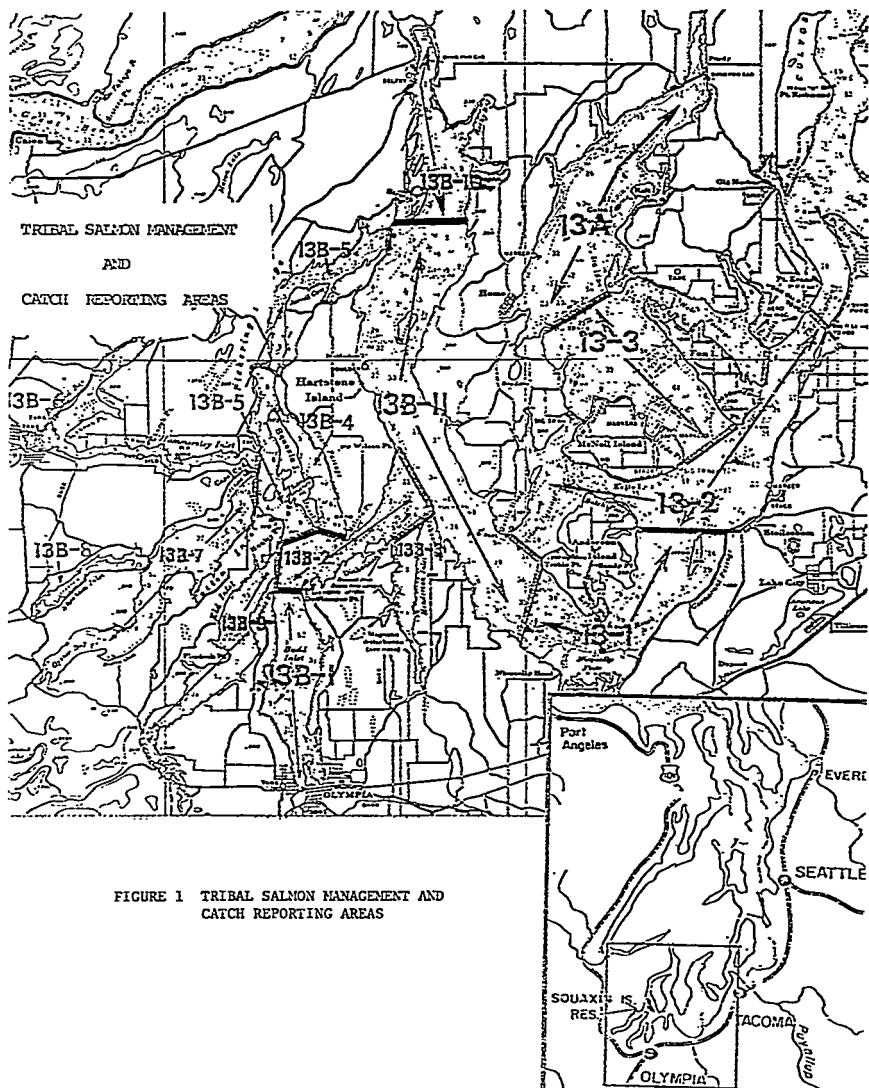


FIGURE 1 TRIBAL SALMON MANAGEMENT AND
CATCH REPORTING AREAS

**SQUAXIN ISLAND
FISHING ORDINANCE**

SQUAXIN ISLAND
FISHING ORDINANCE

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SQUAXIN ISLAND
FISHING ORDINANCE

SECTION I:

Statement of Policy and Purpose

It is the policy of the Squaxin Island Tribe of Indians to maximize the fisheries resource of the Tribe, and to secure to the Tribe the greatest practicable return from its fisheries resource, in a manner which is consistent with the conservation of that resource. It is the purpose of this Ordinance to further this policy and to provide a mechanism for its accomplishment.

This Ordinance shall be known as the "Squaxin Island Fishing Ordinance"

SECTION II:

Jurisdiction

The provisions of this Fishing Ordinance shall be applicable to all enrolled members of the Squaxin Island Tribe, and to any other person or entity whenever such person or entity is either acting under authority of the Squaxin Island Tribe of Indians, or acting upon Tribal property. Any person or entity acting under Tribal authority, or entering upon Tribal property, shall be deemed thereby to have consented to the following:

- (a) To be bound by the terms of this Ordinance;
- (b) To the exercise of jurisdiction by the Squaxin Island Tribal Court over said person or entity in legal actions arising pursuant to this Ordinance; and
- (c) To arrest, service of summons and process, and constitutional search and seizure, in conjunction with legal actions arising pursuant to this Ordinance.

SECTION III:

Definitions

A. "Ceremonial Fishery": A fishery conducted by one or more Tribal members for the purpose of obtaining fish to be used solely for Tribal ceremonial purposes.

B. "Closed Season": For any species of fish, all of the time during the entire calendar year excepting the "open season" for that species as specified by Tribal regulation.

C. "Emergency Regulation": A regulation promulgated to accomplish a limited purpose for a limited period of time.

D. "Fish":

(1) As a noun (as in "species of fish"): All types of anadromous and non-anadromous fish, including shellfish.

(2) As a verb (as in "to fish"): To attempt to catch, trap, net, or otherwise take any fish from its natural habitat by any means whatsoever.

E. "Fish Ticket": A written receipt for the sale of fish, the form of which has been approved by the Tribe.

F. "Person": Any individual, corporation, partnership, Indian tribe, or any other entity, whether public or private.

G. "Site Reservation": The prescriptive right of a Tribal fisherman to fish in a designated fishing area to the exclusion of all other fishermen.

H. "Subsistence Fishery" A fishery conducted by one or more Tribal members for the purpose of obtaining fish to be used solely for personal consumption.

I. "Open Season": For any species of fish, the time period or periods designated by Tribal regulation during which it is lawful to fish for that species pursuant to this Ordinance.

J. "Test Fishery": A fishery conducted on a limited basis for the purpose of obtaining biological or technical information necessary to further the purpose of this Ordinance.

K. "Tribal Chairman": The Chairman of the Tribal Council of the Squaxin Island Tribe of Indians.

L. "Tribal Council": The Tribal Council of the Squaxin Island Tribe of Indians.

M. "Tribal Fisherman" (or "Authorized Tribal Fisherman"): A Tribal member who is authorized to fish pursuant to this Ordinance.

N. "Tribal Fishery": Fishing done in any Tribal fishing area pursuant to this Ordinance.

O. "Tribal Fishing Areas": All fishing areas within the Tribal property, together with all usual and accustomed fishing grounds and stations of the Squaxin Island Tribe of Indians.

P. "Tribal Member": An enrolled member of the Squaxin Island Tribe of Indians.

Q. "Tribal Property": The Squaxin Island Reservation, together with all other property owned by, or held in trust by the Federal Government for, the Squaxin Island Tribe of Indians.

R. "Tribe": The Squaxin Island Tribe of Indians.

SECTION IV:

Authority of Tribal Council

The fishing rights granted to the Squaxin Island Tribe of Indians by the Treaty of Medicine Creek were granted to the Tribe as a whole, and thus will be regulated by the Tribe through the Tribal Council.

Except as may be otherwise provided by Tribal ordinance, all authority to regulate the Tribal fishery, and to carry out and enforce the provisions of this Ordinance and any regulations adopted hereunder, shall be vested in the Tribal Council. Such authority may be delegated by the Tribal Council to the extent deemed necessary by the Council to effectuate the purpose of this Ordinance.

SECTION V:

Fish Committee

The fisheries resource of the Squaxin Island Tribe shall be monitored by an advisory body known as the Fish Committee, whose membership, functions, and powers shall be as follows:

A. Membership

(1) The Fish Committee shall have five members, all of whom shall be enrolled members of the Tribe. The members of the Fish Committee shall be appointed by the Tribal Council for a one-year term, said term to begin on the first day of the calendar year. Any member may be appointed to serve for more than one term.

(2) If there at any time exists a vacancy on the Fish Committee, the Tribal Council shall appoint a person to fill that vacancy for the remainder of the term.

(3) Any member may be removed from the Fish Committee by the Tribal Council for malfeasance in office.

B. Conduct of Business

(1) The officers of the Fish Committee shall be the Chairman, whose duty it shall be to preside over the Committee meetings, the Vice-Chairman, whose duty it shall be to preside over the Committee meetings in the absence of the Chairman,

and the Secretary, whose duty it shall be to keep the minutes of the Committee. These officers shall be elected from the Committee by a majority vote of all the members of the Committee, and shall be elected within the first month of each new term. Emergency elections may be held to fill vacancies occurring at other times.

(2) The Fish Committee, acting in conjunction with the Tribal Council, shall devise a schedule for regular meetings of the Fish Committee throughout the term. Emergency meetings may be called by the Chairman, by the fisheries manager, by the Chief Enforcement Officer or by the Tribal Council.

(3) The Committee may not propose regulations, or make advisory recommendations, unless such regulation or recommendation is approved by a majority vote of a quorum of the Committee. Any four members of the Committee shall constitute a quorum. The Chairman shall not vote unless the vote is tied.

C. Powers and Functions

The powers and functions of the Fish Committee shall be as follows:

- (1) To gather information pertinent to the regulation, conservation, and enhancement of the fishery of the Squaxin Island Tribe, and to make such information available to the Tribal Council;
- (2) To draft proposed regulations, for consideration by the Tribal Council, pertaining to the fishery of the Squaxin Island Tribe;
- (3) To draft proposed emergency regulations, for consideration by the Tribal Council, pertaining to the fishery of the Squaxin Island Tribe;
- (4) To act as an advisory body to the Tribal Council on matters pertinent to the regulation, conservation, and enhancement of the fishery of the Squaxin Island Tribe, and to promote the wise management of the Tribal fisheries resource in consistency with the purpose of this Ordinance;

(5) For each Committee meeting, to prepare a written summary outlining the salient proceedings of said meeting, including minority as well as majority view points, and to submit this summary to the Tribal Council within five (5) days after such meeting; and

(6) To exercise such other powers, and to perform such other functions, as may be delegated to the Committee by the Tribal Council in consistency with the purpose of this Ordinance.

SECTION VI:

Fisheries Manager

As the needs of the Tribe may dictate, the Tribal Council may employ a person to serve as the Fisheries Manager for the Tribe. This person shall be a fisheries biologist with at least a Bachelor's Degree in Fisheries Science, or with sufficient education and experience to perform the duties of the Fisheries Manager as set forth herein. The duties of the Fisheries Manager shall be as follows:

A. In accordance with the dictates of the Tribal Council, and in consistency with the purpose of this Ordinance, to be responsible for carrying out the practical application of the harvest management, resource enhancement, and resource survey programs pertaining to the fishery and fisheries resource of the Tribe.

B. To insure that the Tribal Council and the Fish Committee are duly informed regarding the fisheries resource of the Tribe, and to attend the meetings of the Fish Committee; and

C. To make recommendations to the Tribal Council regarding the fisheries resource of the Tribe.

SECTION VII:

Tribal Enforcement Officers

A. In the exercise of its authority to enforce this Ordinance, and the regulations adopted hereunder the Tribal Council shall employ persons to serve as Tribal Enforcement Officers. One of these officers shall be designated by the Council as the Chief Enforcement Officer, who shall have the responsibility to coordinate and regulate the activities of the Tribal Enforcement Officers in a manner consistent with the dictates of the Tribal Council, and with this Ordinance, and to attend the meetings of the Fish Committee.

B. In accordance with the dictates of the Tribal Council, the Tribal Enforcement Officers shall institute a field enforcement program designed to secure compliance with this Ordinance and the regulations adopted hereunder. Tribal Enforcement Officers shall be authorized to effectuate the arrest of any person when they have probable cause to believe that such person has violated one or more provisions of this Ordinance or of the regulations adopted hereunder. Tribal Enforcement Officers shall further have the power to confiscate fishing gear and/or fish in accordance with the provisions of this Ordinance and the regulations adopted hereunder.

C. In the hiring of Tribal Enforcement Officers, the Tribal Council shall give preference to Tribal members over persons who are not Tribal members. Enforcement officers from other tribes, or from governmental entities, may serve as Enforcement Officers for the Tribe if authorization to do so is extended by the Tribal Council.

D. No person shall be appointed to the position of Chief Enforcement Officer unless that person has first successfully completed an approved and accredited law enforcement training program. No person shall be employed as a Tribal Enforcement Officer unless he has either (1) successfully completed such a law enforcement training

program, or (2) agreed to successfully complete such a program within one year after his initial appointment as a Tribal Enforcement Officer. No person who fails to successfully complete such a program shall be employed as a Tribal Enforcement Officer for more than one year. Provided, however, that if the Tribal Council reasonably and justifiably determines that the attendance of such a program by a particular Tribal Enforcement Officer prior to the expiration of his first year of employment with the Tribe will create an undue financial hardship for the Tribe, or will render it impractical for the Tribe to properly enforce Tribal ordinances or regulations, the Council may allow that Officer to remain in the Tribal employ in his then present position. Provided further, however, that the Officer must successfully complete such a program as soon thereafter as it becomes practicable to do so.

SECTION VIII:

Tribal Fishing Regulations

All Tribal fishing areas shall be closed to fishing by Tribal members, or by persons or entities acting under Tribal authority or upon Tribal property, unless specifically opened for such purpose by duly-adopted regulations of the Squaxin Island Tribe. The power to promulgate such regulations shall be vested exclusively in the Tribal Council, although said power may be delegated by the Council in accordance with this Ordinance. No such regulation, except emergency regulations as set forth herein, shall become effective unless ratified by Tribal resolution.

A. Annual Fishing Regulations

Prior to the opening of the Tribal fishing season for any species of fish, the Tribal Council shall, consistent with the terms of this Ordinance,

promulgate annual regulations governing the conduct of the Tribal fishery with regard to that species. Such annual regulations shall include the following:

- (1) A delineation of all types of fishing gear which may be legally used to fish for the particular species;
- (2) If necessary, a delineation of specific types of gear which may not be legally used;
- (3) Specific requirements regarding daily telephone reports of fish catches;
- (4) A designation of all fishing areas which will be open for the taking of the particular species, and the particular times at which these areas will be open;
- (5) A specific designation of the duration of the fishing season; and
- (6) Such other provisions as may be necessary to further the purpose of this Ordinance, or as the Council may deem necessary to meet the requirements set forth by the United States District Court for the Western District of Washington in United States vs. Washington, Civil Cause No. 9213, and all subsequent proceedings under said cause number.

B. Additional Regulations

The Tribal Council shall, consistent with the terms of this Ordinance, from time to time promulgate such additional regulations as may be necessary to effectuate the purpose of this Ordinance.

C. Emergency Regulations

(1) The Tribal Council may from time to time promulgate such emergency regulations as may be necessary to effectuate the purpose of this Ordinance. Such an emergency regulation may modify existing regulations and/or create new regulatory law.

(2) The Tribal Chairman and Vice-Chairman, or, in the absence of the Tribal Chairman, the Tribal Vice-Chairman and one other Tribal Council member, or, in the absence of the Tribal Vice-Chairman, the Tribal Chairman and one other Tribal Council member, may from time to time promulgate such emergency regulations as may be deemed necessary to effectuate the purpose of this Ordinance. Such an emergency regulation may modify existing regulations and/or create new regulatory law, and shall have the same force and effect as if it had been promulgated by the Tribal Council.

(3) Upon promulgation of a resolution by the Tribal Council granting him authority to do so, the Fisheries Manager may, as biological evidence necessitates, from time to time promulgate emergency regulations requiring the closure of one or more fishing areas and/or the reduction or termination of one or more fishing seasons. Such an emergency regulation may modify existing regulations and/or create new regulatory law, and shall have the same force and effect as if it had been promulgated by the Tribal Council.

(4) An emergency regulation promulgated pursuant to this Section may be terminated at any time by the Tribal Council. No emergency regulation shall remain in effect which is not ratified by the Tribal Council at or before the first Council meeting held after the promulgation of said regulation.

(5) No emergency regulation shall be effective for more than ninety (90) days after the date of promulgation.

D. Notice Requirements

(1) No regulation adopted pursuant to this Ordinance shall become effective until notice of such regulation is supplied to persons authorized to fish pursuant to this Ordinance.

(2) For the purpose of this Section, notice of any regulation shall be deemed to have been supplied to persons authorized to fish pursuant to this Ordinance twenty-four hours after a copy of the regulation has been:

(a) Mailed to all such persons at their last known mailing address;

and

(b) conspicuously posted at the Tribal Center and allowed to remain there posted.

(3) Notwithstanding provision (2) above, any person shall be deemed to have been given notice of any regulation if said person has received a copy of that regulation.

(4) As soon as may be practicable after the promulgation of any regulation a copy of that regulation shall be filed with the United States District Court for the Western District of Washington, Tacoma, Washington, and mailed to all persons on the approved mailing list for United States Vs. Washington, Civil Cause No. 9213, United States District Court for the Western District of Washington, and shall be made available to other persons upon their request.

SECTION IX:

Fishing In Violation of Ordinance or Regulations Unlawful

A. It shall be unlawful for any Tribal member, or any other person fishing under Tribal authority, to fish within any Tribal fishing area except as provided herein and as provided in the regulations adopted pursuant to this Ordinance.

B. It shall be unlawful for any person to fish within or upon Tribal property except as provided herein and as provided in the regulations adopted pursuant to this Ordinance.

SECTION X:

Authorized FishermenA. Off-Reservation Fishery

(1) Only enrolled members of the Squaxin Island Tribe, sixteen (16) years of age and older are authorized to engage in the Tribal off-reservation fishery pursuant to this Ordinance.

(2) A Tribal member may secure the assistance of other tribal fishermen with off-reservation treaty fishing rights in the same usual and accustomed grounds and stations/whether or not such fishermen are members of the Squaxin Island Tribe, and may also be assisted by his or her spouse, and by Tribal members who are younger than sixteen (16) years of age.

(3) A Tribal fisherman may apply to the Tribal Council for authorization to receive on-site technical assistance from a person who is not an authorized Tribal fisherman. The Tribal Council shall grant the application for such assistance if it finds that the requested technical assistance will be limited to instruction, including demonstrative instruction, in one or more aspects of commercial fishing, that the proposed technical assistant is qualified to provide such instruction, and that such instruction will be necessary to enhance the fishing skills of the Tribal fisherman in a manner which will render him able to more effectively exercise his treaty fishing rights.

In approving the application, the Tribal Council shall specify:

- (a) Those aspects of commercial fishing for which technical assistance may be provided;
- (b) The name of the person authorized to provide such assistance; and
- (c) The length of time for which such assistance may be provided.

Upon such approval by the Tribal Council, the right of a Tribal fisherman to receive on-site technical assistance shall be subject to the following conditions:

(a) That participation by the technical assistant in the Tribal fishery be limited to instruction, including demonstrative instruction, in one or more aspect of commercial fishing;

(b) That the compensation provided to the technical assistant for rendering such assistance not take the form of a share or percentage of the fisherman's catch; and

(c) That the Tribal fisherman receive on-site technical assistance from no more than _____ person (s) at any one time.

The technical assistant shall be authorized to participate in the Tribal fishery only in accordance with the specifications and conditions set forth herein.

(4) A person authorized to assist in the Tribal fishery may do so only when he or she is in the company of an authorized Tribal fisherman.

B. On-Reservation Fishery

Any person authorized to engage in the Tribal off-reservation fishery pursuant to this Ordinance shall be authorized to engage in the Tribal on-reservation fishery. Any person authorized to assist in the Tribal off-reservation fishery pursuant to this Ordinance shall be authorized to assist in the Tribal on-reservation fishery under the same terms and conditions applicable to his or her assistance in the Tribal off-reservation fishery.

C. Tribal Identification

(1) Prior to exercising the right to engage in the Tribal fishery pursuant to the terms of this Ordinance, a Tribal member must first obtain a Tribal fishing identification card. This identification card shall be certified by the Tribal Chairman and shall include the name, Tribal affiliation, and enrollment number of the holder, together with a photograph of the holder. Said card shall be the property of the Tribe.

(2) The card must be on the holder's person, or within the immediate control of the holder, during all such times as he or she is exercising his or her right to fish pursuant to this Ordinance, or pursuant to the regulations adopted hereunder.

and must be presented to any authorized enforcement officer upon request. It shall be unlawful for the holder of a Tribal fishing identification card to transfer that card to another person for use by that person.

(3) A Tribal fisherman must present his Tribal fishing identification card to the buyer in the sale of any fish caught, trapped, or otherwise taken pursuant to this Ordinance.

(4) If a Tribal fishing identification card is lost, the holder must report this loss to the Tribe within forty-eight (48) hours from the time of loss. Upon the loss of a card, the holder shall be responsible for the payment of the Tribal fish tax on the proceeds from the sale of any fish sold pursuant to that card prior to the reporting of the loss.

D. Assistant Identification

(1) Prior to exercising the right to assist a Tribal fisherman in the Tribal fishery pursuant to this Ordinance, a person granted such right under this Ordinance, other than a tribal fisherman with off-reservation treaty fishing rights in the same usual and accustomed grounds and stations, must first obtain a Tribal fishing assistant identification card. This identification card shall be certified by the Tribal Chairman and shall include the name and, if applicable, Tribal affiliation and enrollment number, of the holder, together with a photograph of the holder. Any person issued a Tribal fishing assistant identification card shall be deemed to have consented to be bound by the terms of this Ordinance and the regulations adopted hereunder, and the card shall so state. The card shall indicate the status of the assistant - whether spouse, minor, or technical assistant - and shall contain the following boldface lettering: "NOT FOR SALE OF FISH". Said card shall be the property of the Tribe.

(2) The card must be on the holder's person, or within the immediate control of the holder, during all such times as he or she is exercising his or her right to

assist a Tribal fisherman in the Tribal fishery pursuant to this Ordinance, or pursuant to the regulations adopted hereunder, and must be presented to any authorized enforcement officer upon request. It shall be unlawful for the holder of a Tribal fishing assistant identification card to transfer that card to another person for use by that person.

(3) If a Tribal fishing assistant identification card is lost, the holder must report this loss to the Tribe within forty-eight (48) hours from the time of loss.

E. Providing Requested Information

To effectuate the purpose of this Ordinance, the Tribal Council may request Tribal members to provide statistical information pertinent to their role in the Tribal fishery. Such request shall be promulgated only through Tribal resolution. If a Tribal member fails to provide such information to the Tribal Council as requested, that member shall be forbidden from participating in the Tribal fishery for up to _____ fishing days, and for said period of time shall not be deemed an authorized Tribal fisherman.

SECTION XI:

Annual License Fee

A. No person may engage or assist in the Tribal fishery in any Tribal fishing area prior to paying the applicable annual licensing fee to the Tribe. The amount of said fee shall be determined on an annual basis by the Tribal Council, and may be increased or decreased from year to year by Tribal resolution as the Council deems necessary.

B. No Tribal fisherman shall be issued a Tribal fishing identification card prior to the payment of the applicable annual licensing fee by that fisherman. No person authorized to assist a Tribal fisherman in the Tribal fishery shall be issued a Tribal fishing assistant identification card prior to the payment of the applicable annual licensing fee by that person.

SECTION XII:

Sale of FishA. Sale by Authorized Fisherman or Tribal Council

(1) The original sale to a bona fide wholesale or retail buyer of any fish taken in the Tribal fishery must be by, or on behalf of, the Tribal fisherman catching the fish, or by the Tribal Council. Such sale may be made only by an authorized Tribal fisherman.

(2) The Tribal Council shall have the right, upon just cause, to forbid Tribal fishermen from selling fish to designated buyers.

B. Fish Tax

(1) There is hereby imposed a tax upon the proceeds from the sale by , or on behalf of, a Tribal fisherman of any fish sold pursuant to Subsection A (1) above. For each species of fish, the rate of the tax imposed upon the proceeds from the sale of said species shall be determined by Tribal resolution at least sixty (60) days prior to the first day of the Tribal open commercial fishing season for that species. Said tax shall not be modified at any time during the Tribal open commercial fishing season, but may be modified at other times as the Tribal Council may deem necessary. Provided, however, that no Tribal fish tax may be modified within sixty (60) days prior to the first day of the Tribal open commercial fishing season for the species to which that tax pertains.

(2) It shall be the duty of a Tribal fisherman who sells such fish to insure that the required tax is paid to the Tribal Business Manager within the time period specified in the applicable annual regulation. Together with said tax, the Tribal fisherman shall provide the Business Manager with a fish ticket indicating the number, species, and weight of the fish sold during said period, the amounts received from the sale of said fish, the name and address of the person(s) or company(ies)

to whom the fish were sold, and the Tribal fishing identification card number of the fisherman catching said fish.

SECTION XIII.

Subsistence Fishery

It is the policy of the Squaxin Island Tribe to insure that each Tribal member is provided ample opportunity to obtain from the Tribal fishery all fish needed for his or her personal subsistence consumption. If a Tribal member is legitimately unable for physical or mental reasons to actively engage in the Tribal fishery, it shall be the duty of the Tribe to insure that such person is provided fish from the Tribal fishery in a quantity sufficient to meet his or her personal subsistence needs.

A. Any enrolled member of the Squaxin Island Tribe who is otherwise authorized to engage in the Tribal fishery pursuant to this Ordinance may conduct a subsistence fishery upon any species of fish during the Tribal open commercial season for that species. Authorized Tribal fishermen may conduct a subsistence fishery during the closed season, or during the closed periods of the Tribal commercial fishing season, only upon the issuance of an emergency regulation authorizing such fishery. Provided, however, that the Tribal Council shall encourage Tribal fishermen to conduct their subsistence fisheries during the Tribal open commercial fishing season, and shall allow subsistence fisheries during the closed season, or during closed periods of the Tribal commercial fishing season, only on a very limited basis.

B. In conducting a subsistence fishery during a closed period, Tribal members may be assisted only by their spouse, and by Tribal members who are younger than sixteen (16) years of age.

C. Within twenty-four (24) hours after engaging in a subsistence fishery, a Tribal fisherman must submit a report to the Tribal Center detailing the number and

species of fish taken from each fishing area during the subsistence fishery. Such information will be made available to the proper agencies upon their request.

D. It shall be unlawful to utilize fish taken during any Tribal subsistence fishery for any purpose other than for personal consumption.

SECTION XIV:

Ceremonial Fishery

A. Any enrolled member of the Squaxin Island Tribe who is otherwise authorized to engage in the Tribal fishery pursuant to this Ordinance may conduct a ceremonial fishery upon any species of fish during the Tribal open commercial season for that species. Authorized Tribal fishermen may conduct a ceremonial fishery during the closed season, or during closed periods of the Tribal commercial fishing season, only upon the issuance of an emergency regulation authorizing such fishery.

B. In conducting a ceremonial fishery, Tribal members may be assisted only by their spouse, and by Tribal members who are younger than sixteen (16) years of age.

C. Within twenty-four (24) hours after engaging in a ceremonial fishery, a Tribal fisherman must submit a report to the Tribal Center detailing the number and species of fish taken from each fishing area during the ceremonial fishery. Such information shall be made available to the proper agencies upon their request.

D. It shall be unlawful to utilize fish taken during a ceremonial fishery for any purpose other than ceremonial purposes.

SECTION XV:

Test Fishery

A. The Tribal Council, or the Fisheries Manager when so authorized by the Tribal Council, may contract with one or more authorized Tribal fisherman

for the performance of a test fishery. Test fisheries may be conducted only on a limited basis, and only upon the existence of technical or biological evidence which reasonably indicates that such a fishery will be necessary to effectuate the purpose of this Ordinance.

B. A test fishery may be conducted during the closed season, or during closed periods of the Tribal commercial fishing season, only upon the passage of an emergency regulation authorizing such fishery. Upon compilation of the results of the test fishery, information regarding said results shall be made available to the proper agencies upon their request.

C. No fish taken during a test fishery may be sold by any individual fisherman, or any group of fishermen, for personal profit. Fishermen who contract with the Tribe to conduct a test fishery shall be compensated for their commitment of time, labor, and equipment according to an established scale to be set by the Tribal Council.

SECTION XVI:

Site Reservations

A. Upon the opening of the fishing season for any species of anadromous fish, any authorized and licensed Tribal fisherman may establish a right to fish for that species in a particular site by:

(1) Locating a fishing site within a Tribal fishing area which is either

(a) not a usual and accustomed fishing ground and station of another tribe, or

(b) by agreement, not fished by any other tribe,

and at which no authorized and licensed Tribal fisherman has fished during the preceding two and one-half (2½) fishing days; and

(2) Being the first authorized and licensed Tribal fisherman to fish the site after the expiration of said two and one-half (2½) fishing days.

B. As among Tribal fishermen and others fishing pursuant to this Ordinance, a Tribal fisherman who so establishes a site reservation shall have the exclusive right to fish said site while he is fishing said site.

C. Once a fisherman has established a site reservation, the reservation shall be deemed to have expired if the fisherman leaves the site for more than forty-eight (48) hours. All site reservations for a particular species shall expire upon the expiration of the annual open fishing season for that species.

D. For the purposes of this Section, a fishing site may be no larger than as may be necessary to accommodate the authorized gear used by the fisherman in establishing the site reservation on that site.

SECTION XVII:

Gear Identification Requirements

A. No boat, ship, or other nautical vessel may be utilized in the Tribal fishery unless an authorized boat identification tag is conspicuously displayed on the left side of the bow of the vessel. Such an identification tag may be obtained from the Tribal Center.

B. No fishing gear utilized in the Tribal fishery may be left unattended unless said gear is marked with a floating buoy. Said buoy shall be approximately twenty (20) inches in diameter, and shall be clearly marked with the owner's name Tribal affiliation, and BIA number.

SECTION XVIII:

Net Lighting Requirements

A. No fishing net may be utilized in the Tribal fishery unless it is marked with one light at each end of the net. Provided, however, that when one end of the net is anchored to shore, a light shall be required on the channel-ward side only.

B. All such lights must be clearly visible for three hundred (300) feet from

any angle of nautical approach.

SECTION XIX:

Ownership of Fishing Gear

It shall be unlawful for any Tribal member to work for any non-Indian person as a fisherman, or as the operator of any non-Indian-owned fishing gear or equipment, in order to take fish pursuant to this Ordinance for the primary economic gain of such non-Indian person. It shall further be unlawful for any Tribal member to participate in any shared-catch or percentage-of-catch agreement with a non-Indian person in exchange for the use of any fishing gear or equipment in the Tribal fishery. This Section shall not prohibit any credit purchase contracts for the acquisition of ownership of fishing gear and equipment by Tribal members. Provided, however, that without the prior approval of the Tribal Council, no Tribal member shall utilize any boat, gear, or equipment in the Tribal fishery unless he or she owns the controlling interest in such boat, gear, or equipment, or has entered into a valid written contract to purchase said controlling interest.

SECTION XX:

Violations and Punishments

A. Tribal Fishing Violation Penalty Schedule

(1) It shall be unlawful for any Tribal member, or any other person authorized to participate in the Tribal fishery pursuant to this Ordinance, to commit any of the acts designated herein as felonies, gross misdemeanors, or misdemeanors. Any such person convicted of committing any of said acts shall be subject to the sanctions set forth in the following penalty schedule.

(2) Felonies

(a) Felonies shall be punishable,

(i) For the first conviction, by a fine of up to TWO HUNDRED FIFTY and No/100 (\$250.00) DOLLARS;

(ii) For the second conviction, by a fine of not less than TWO HUNDRED FIFTY and No/100 (\$250.00) DOLLARS nor more than FIVE HUNDRED and No/100 (\$500.00) DOLLARS, or by imprisonment for up to fifteen (15) days, or by loss of Tribal fishing privileges for up to seven (7) full days of the Tribal open fishing season, or by any combination thereof;

(iii) For the third or subsequent conviction by a fine of FIVE HUNDRED and No/100 (\$500.00) DOLLARS, or by imprisonment for up to thirty (30) days, or by loss of Tribal fishing privileges for up to thirty (30) full days of the Tribal open fishing season, or by any combination thereof.

(iv) Any proceeds from the sale of any fish caught during the commission of any felony enumerated in paragraph (b) herein shall be forfeited to the Tribe. Whenever any person shall be arrested upon suspicion of the commission of one or more of the felonies enumerated in paragraph (b) herein, the Tribe shall forthwith confiscate any and all fish caught by that person during the suspected commission of said felony. Such fish shall be forthwith sold by the Tribe at the prevailing market value and the proceeds therefrom shall be held by the Tribe pending criminal prosecution for the suspected felony. Should said prosecution result in the conviction of said person for any of the felonies enumerated in paragraph (b) herein, said funds shall be retained by the Tribe. Should said prosecution result in the acquittal of said person on the alleged felony charge, such person shall be entitled to immediate receipt of these funds from the Tribe, less the Tribal fish tax otherwise applicable.

(b) The following acts shall be deemed felonies:

(i) For any species of fish, fishing for that species without prior Council authorization in a Tribal fishing area during a time designated by Tribal regulation as a closed season for that species;

(ii) For any species of fish, fishing for that species without prior Council authorization in a Tribal fishing area which has been closed for that species by Tribal regulation;

(iii) Fishing in a Tribal fishing area without having first been issued a current Tribal fishing identification card;

(iv) Participation in the sale of any fish designated as a subsistence fish;

(v) Participation in the sale of any fish designated as a ceremonial fish;

(vi) Participation in the sale for personal profit of any fish caught during a test fishery;

(vii) Participation in the Tribal fishery while using fishing gear which has not been authorized by Tribal regulation;

(viii) Knowingly falsifying a fish ticket in connection with the sale of any fish caught in the Tribal fishery.

(3) Gross Misdemeanors

(a) Except as is otherwise specifically provided herein, gross misdemeanors shall be punishable,

(i) For the first conviction, by a fine of up to ONE HUNDRED FIFTY and No/100 (\$150.00) DOLLARS;

(ii) For the second conviction, by a fine of not less than ONE HUNDRED FIFTY and No/100 (\$150.00) DOLLARS nor more than TWO HUNDRED FIFTY and No/100 (\$250.00) DOLLARS, or by loss of Tribal fishing privileges for up to seven (7) full days of the Tribal open fishing season, or by both;

(iii) For the third or subsequent conviction, by a fine of not less

than TWO HUNDRED FIFTY and No/100 (\$250.00) DOLLARS nor more than FIVE HUNDRED and No/100 (\$500.00) DOLLARS, or by loss of Tribal fishing privileges for up to fifteen (15) full days of the Tribal open fishing season, or by both.

(b) The following acts shall be deemed gross misdemeanors,

(i) Assisting in the Tribal fishery without having first been issued a current Tribal fishing assistant identification card;

(ii) Failure to report the loss of one's Tribal fishing identification card in the manner prescribed in this Ordinance within forty-eight (48) hours from the time of said loss;

(iii) Failure to adhere to daily call-in requirements, as specified in Tribal regulation, regarding one's fish catch number;

(iv) Participating in the Tribal fishery while allowing a person to be on the fishing boat whose presence thereon is not authorized by this Ordinance.

(c) It shall be a gross misdemeanor for any person who sells any fish caught in the Tribal fishery to fail to pay any duly accrued Tribal fish tax by the date specified by Tribal regulation. Any person found to have committed said act shall be required to pay to the Tribe any and all Tribal fish tax which said person owes to the Tribe, and shall further be punished,

(i) For the first conviction, by a fine of up to ONE HUNDRED and No/100 (\$100.00) DOLLARS;

(ii) For the second conviction, by a fine of not less than FIFTY and No/100 (\$50.00) DOLLARS or more than TWO HUNDRED FIFTY and No/100 (\$250.00) DOLLARS;

(iii) For the third or subsequent conviction, by a fine of not less than ONE HUNDRED and No/100 (\$100.00) DOLLARS nor more than FIVE HUNDRED and No/100 (\$500.00) DOLLARS, or by loss of Tribal fishing privileges for a period

not to exceed the period until the outstanding tax is paid, or by both.

(d) It shall be a gross misdemeanor for any person participating in the Tribal fishery pursuant to this Ordinance to knowingly fail to yield to a legitimate site reservation established by a Tribal fisherman. Any such person found to have committed said act shall be subject to the penalty schedule for gross misdemeanors set forth in paragraph (a) herein. Further, if such person has caught any fish while unlawfully fishing in said site, he shall be required to pay the holder of said site reservation all or a portion of the proceeds from the sale of said fish, in such an amount as the Court may deem just and equitable under the circumstances

(4) Misdemeanors.

(a) Misdemeanors shall be punishable,

(i) For the first conviction, by a fine of up to FIFTY and No/100 (\$50.00) DOLLARS;

(ii) For the second conviction, by a fine of ONE HUNDRED and No/00 (\$100.00) DOLLARS;

(iii) For the third or subsequent conviction, by a fine of up to TWO HUNDRED FIFTY and No/100 (\$250.00) DOLLARS, or by loss of fishing privileges for up to seven (7) full days of the Tribal open fishing season, or both.

(b) The following acts shall be deemed misdemeanors:

(i) Fishing in a Tribal fishing area without having one's current Tribal fishing identification card within one's immediate control;

(ii) Failure to adhere to Tribal gear marking requirements, as set forth in this Ordinance or the regulations adopted hereunder, while participating in the Tribal fishery;

(iii) Failure to adhere to Tribal gear lighting requirements, as set forth in this Ordinance or in the regulations adopted hereunder, while participating in the Tribal fishery;

(iv) The commission of any other act which is not otherwise specifically designated as a crime in this Section of the Squaxin Island Fishing Ordinance, and which is in violation of a specific provision of this Ordinance or of any regulation adopted hereunder.

(5) Whenever any person is sentenced to a loss of Tribal fishing privileges under this Section, the Tribe shall confiscate that person's fishing gear for the period of such loss of fishing privileges.

B. Initial Determination -

Upon the conviction of a defendant for any of the crimes set forth herein, the sentencing authority shall determine whether said conviction constitutes the first conviction, second conviction, or third or subsequent conviction of that defendant for said crime. In making this determination, the sentencing authority shall adhere to the following guidelines:

(1) If the crime in question is a felony, the sentencing authority shall consider all of said individual's convictions for said crime occurring within the three-year period immediately preceding the date of the conviction for which sentencing is being considered;

(2) If the crime in question is a gross misdemeanor, the sentencing authority shall consider all of said individual's convictions for said crime occurring within the two-year period immediately preceding the date of the conviction for which sentencing is being considered;

(3) If the crime in question is a misdemeanor, the sentencing authority shall consider all of said individual's convictions for said crime occurring within the one-year period immediately preceding the date of the conviction for which sentencing is being considered.

Provided, however, that no conviction may be considered which occurred prior to the effective date of this Ordinance.

C. Sentencing

Once it has so determined whether the conviction constitutes a first, second, or third or subsequent conviction, the sentencing authority shall sentence the defendant according to the guidelines provided in the applicable paragraph of the Tribal Fishing Violation Penalty Schedule set forth in sub-section A herein. In determining the severity of the sentence to be imposed, the sentencing authority may consider any and all information reasonably pertinent to an effective disposition of the matter, including, but not limited to, the defendant's character and reputation for trustworthiness, the circumstances surrounding the commission of the crime for which sentencing is being considered, any relevant prior convictions of the defendant and any mitigating circumstances.

D. Suspended Sentence and Probation

Whenever any person shall be convicted of any crime set forth in this Section, the sentencing authority may in its discretion, at the time of imposing sentence upon such person, direct that such sentence be stayed and suspended until otherwise ordered by the sentencing authority, and that said person be placed on probation upon such terms and conditions as the sentencing authority shall require. If said person completes his period of probation without violation of said terms and conditions, he shall be deemed to have satisfied the provisions of the sentence originally imposed. Provided, however, that if it is proven beyond a reasonable doubt that said person has violated one or more of said terms or conditions, the sentencing authority may, in its discretion, revoke his probation and enforce in full effect the sentence originally imposed.

SECTION XXI:

Interpretation

A. This Ordinance shall be liberally construed to effectuate its purpose.

B. The male gender, wherever used in this Ordinance, shall, unless otherwise stated, be interpreted to mean the female gender as well.

SECTION XXII:

Saving Clause

If any provision of this Ordinance, or its application to any person or circumstance, is held invalid or unconstitutional, the remainder of the Ordinance, or the application of the provisions to other persons or circumstances, shall not be affected.

TRIBAL FISHING VIOLATION PENALTY SCHEDULE

Page One

CRIME	PENALTY		
	FIRST CONVICTION	SECOND CONVICTION	THIRD or SUBSEQUENT CONVICTION
A. FELONIES			
1. For any species of fish, fishing for that species without prior Council authorization in a Tribal fishing area during a time designated by Tribal regulation as a closed season for that species.	Forfeited all fish caught during commission of the felony. Fine of up to \$250.00	Forfeited all fish caught during commission of the felony. Fine of not less than \$250.00 nor more than \$500.00, or by imprisonment for up to 15 days, or by loss of Tribal fishing privileges for up to 7 full days of the Tribal open fishing season, or by any combination thereof.	Forfeited all fish caught during commission of the felony. Fine of \$500.00, or by imprisonment for up to 30 days, or by loss of Tribal fishing privileges for up to 30 full days of the Tribal open fishing season, or by any combination thereof.
2. For any species of fish, fishing for that species without prior Council authorization in a Tribal fishing area which has been closed for that species by Tribal regulation.	Same as above	Same as above	Same as above
3. Fishing in a Tribal fishing area without having first been issued a current Tribal fishing identification card.	Same as above	Same as above	Same as above
4. Participation in the sale of any fish designated as a subsistence fish.	Same as above	Same as above	Same as above
5. Participation in the sale of any fish designated as a ceremonial fish.	Same as above	Same as above	Same as above
Continued on page Two			

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TRIBAL FISHERY VIOLATION PENALTY SCHEDULE

Two

CRIME	PENALTY		
	FIRST CONVICTION	SECOND CONVICTION	THIRD or SUBSEQUENT CONVICTION
6. Participation in the sale for personal profit of any fish caught during Tribal fishery.	Same as A (1) herein	Same as A (1) herein	Same as A (1) herein
7. Participation in the Tribal fishery while using fishing gear which has not been authorized by Tribal regulation.	Same as A (1) herein	Same as A (1) herein	Same as A (1) herein
8. Knowingly falsifying a fish ticket in connection with the sale of any fish caught in the Tribal fishery.	Same as A (1) herein	Same as A (1) herein	Same as A (1) herein
GROSS MISDEMEANORS			
1. Assisting in the Tribal fishery without having first been issued a current Tribal fishing assistant identification card.	Fine of up to \$150.00	Fine of not less than \$150.00 nor more than \$250.00, or by loss of Tribal fishing privileges for up to 7 full days of the Tribal open fishing season, or by both.	Fine of not less than \$250.00 nor more than \$500.00, or by loss of Tribal fishing privileges for up to 15 full days of the Tribal open fishing season or by both.
2. Failure to report the loss of one's Tribal fishing identification card in the manner prescribed in this Ordinance within 48 hours from the time of said loss.	Same as above	Same as above	Same as above

TRIBAL FISHING VIOLATION PENALTY SCHEDULE

Page Three

CRIME	PENALTY		
	FIRST CONVICTION	SECOND CONVICTION	THIRD or SUBSEQUENT CONVICTION
3. Failure to adhere to daily call-in requirements, as specified in Tribal regulations, regarding one's fish catch number.	Same as above	Same as above	Same as above
4. Participating in the Tribal fishery while allowing a person to be on the fishing boat whose presence thereon is not authorized by this Ordinance.	Same as above	Same as above	Same as above
5. Failure to pay any duly accrued Tribal Fish Tax by the date specified by Tribal regulation.	Pay any and all Tribal fish tax. Fine of up to \$100.00.	Pay any and all Tribal fish tax. Fine of not less than \$50.00 or more than \$250.00.	Pay any and all Tribal fish tax. Fine of not less than \$100.00 nor more than \$500.00, or by loss of Tribal fishing privileges for a period not to exceed the period until the outstanding tax is paid, or by both.
6. Knowingly failing to yield to a legitimate site reservation established by a Tribal fisherman.	Fine of up to \$150.00 Pay the holder of said site reservation all or a portion of the proceeds from the sale of said fish, in such an amount as the Court may deem just and equitable under the Circumstances.	Fine of not less than \$150.00 nor more than \$250.00, or by loss of Tribal fishing privileges for up to 7 full days of the Tribal open fishing season, or by both. Pay the holder of said site reservation all or a portion of the proceeds from the sale of said fish, in such an amount as	Fine of not less than \$250.00 nor more than \$500.00, or by loss of Tribal fishing privileges for up to 15 full days of the Tribal open fishing season, or by both. Pay the holder of said site reservation all or a portion of the proceeds from the sale of said fish, in such an

Continued on Page Four

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CRIME	PENALTY		
	FIRST CONVICTION	SECOND CONVICTION	THIRD or SUBSEQUENT CONVICTION
6. (Continued)		the Court may deem just and equitable under the circumstances.	amount as the Court may deem just and equitable under the circumstances.
C. MISDEMEANORS			
1. Fishing in a Tribal fishing area without having one's current Tribal Fishing Identification card within one's immediate control.	Fine of up to \$50.00.	Fine of \$100.00.	Fine of up to \$250.00, or by loss of fishing privileges for up to 7 full days of the Tribal open fishing season; or both.
2. Failure to adhere to Tribal gear marking requirements, as set forth in this Ordinance or the regulations adopted hereunder, while participating in the Tribal fishery.	Same as above	Same as above	Same as above
3. Failure to adhere to Tribal gear lighting requirements, as set forth in this Ordinance or in the regulations adopted hereunder, while participating in the Tribal fishery.	Same as above	Same as Above	Same as above
4. The commission of any other act which is not otherwise specifically designated as a crime in this Section of the Squaxin Island Fishing (continued on page Five)	Same as above	Same as above	Same as above

TRIBAL FISHING VIOLATION PENALTY SCHEDULE

Page Five

CRIME	PENALTY		
	FIRST CONVICTION	SECOND CONVICTION	THIRD or SUBSEQUENT CONVICTION
4. (continued) Ordinance which is in violation of a specific provision of this Ordinance or of any regulation adopted hereunder.			

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TRIBAL REPORT
TO THE
PRESIDENTIAL TASK FORCE ON
TREATY FISHING RIGHTS IN THE NORTHWEST

Volume VII

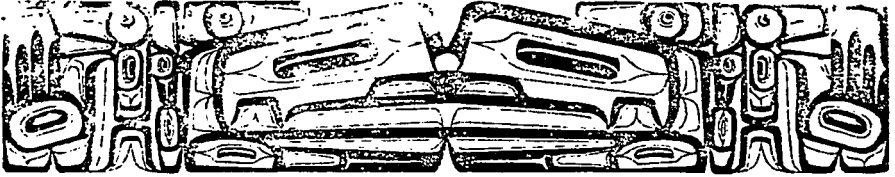
Presented by
The Tribes of the Point Elliott Treaty Area

November 14, 1977

Volume VII

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MUCKLESHOOT INDIAN TRIBE

38811 172ND AVENUE S.E. - ALBURN, WASHINGTON 98002 - (206) 839-3311

POSITION OF THE MUCKLESHOOT INDIAN TRIBE^{1,2}

In response to queries from the Presidential Task Force on Northwest Fisheries, the Muckleshoot Indian Tribe submits the following position:

- 1.) We cannot agree to any concession of our rights as reserved to us under the Treaties of 1854-55.
- 2.) Our Tribal sovereignty must be protected.
- 3.) Our dual status under the Treaties of Medicine Creek (1854) and Pt. Elliott (1855) must be protected.
- 4.) The findings of fact and conclusions of law in U.S. vs Washington (1974) only verify the rights reserved to us under the Treaties of 1854-55. We will accept and abide by the "Boldt Decision."
- 5.) We do propose mutual future understanding of the facts. Misunderstanding, misrepresentation, and miscommunication have clouded the issues. The Indian tribes and the U.S. Government negotiated and ratified the Stevens Treaties. Each tribe must decide for itself which course it must take with the Task Force. We will not accept any concession of our rights offered or proposed under either of the treaties signed.

Despite the fact that we will not accept any concession of our rights it may be possible for us to accept the following:

- 1.) We will not seek legal recourse and compensation for rights suppressed during the past century.
- 2.) We will not seek our 50 percent of the fish runs to the Pacific Northwest between the years 1855 and 1974 when U.S. vs Washington awarded this percentage to the Indian Tribes of the region.

¹This statement is presently pending formal Tribal Council approval.

²We wish to acknowledge and thank the Upper Skagit Indian Tribe for allowing us to use portions of their position statement.

- 3.) We will not seek legal damages from the State of Washington for illegal past rulings on Indian off-reservation fisheries.

Within the context of the above statements, we are open to discussion of certain management goals concerning the salmon resource of the Pacific Northwest.

Enhancement

We are presently preparing a proposal for a chum salmon rearing facility on an un-named tributary to Crisp Creek (Green River). State cooperation and full federal support is essential.

State and federal planning should include reduction of environmental hazards, i.e., river enhancement, and a policy to substantially increase efforts at enhancement of natural stocks of steelhead trout and spring chinook, fall chinook and coho salmon in the Lake Washington, Duwamish - Green River and White River systems.

We consider it essential that tribal fisheries biologists actively participate in any state or federal planning with respect to enhancement.

National/International Bodies

Indian representation with full voting powers should be mandatory on all national/international bodies. In addition, federal representatives serving on these bodies should formally be charged with federal trust responsibility to safeguard treaty rights, and should have clearly defined accountability to treaty tribes.

Management and Enforcement Structure

A commission made up of state and tribal representatives with the Federal Government participating as a trustee would be acceptable if it had treaty oversight, coordinating and limited policy-making functions. Its jurisdiction would have to be limited so that cooperative management between state and tribal personnel within defined watershed or marine areas would provide final local jurisdiction over matters of a local nature. Regional teams could provide responses to problems of a regional nature.

State and tribal cooperation at the local and regional levels should be extended into enforcement efforts which retain tribal sovereignty while increasing the jurisdiction and effectiveness of both state and tribal law enforcement officers. This should include local arrangements such as administrative agreements providing for cross-deputization. We are particularly concerned that all regulations be strictly enforced, especially relating to non-Indians by the State of Washington.

Box 368 • Reservation Road • LaConner, Washington 98257 • Phone (206) 466-3423 or 466-3184

Fleet Adjustment

A reduction in the non-Indian fleet followed by limited entry is desirable, but this must not be substituted for allocation to tribal fishermen of the reserved right to 50 percent of the harvestable number of fish plus ceremonial and subsistence fish. Provision of equal opportunity alone is not enough; the sovereign right to take fish is a right reserved by the Tribes. Therefore, questions such as whether there should be separate "Indian only" fishing days are not the issue. What is important is that the reserved property right remain intact. We expect to expand our fleet in the future and would like to see both state and federal funding involvement.

Off Shore

There should be a reduction in the non-Indian troll fishery effort. This would be helped by a buy-back program coupled with economic relocation. There should definitely be greater control of the ocean sport fishery. There is no need to increase minimum size limits; however, all fish should be counted as one fish, regardless of maturity. The ocean harvest should be based on a percentage of the total harvestable number.

Phase In

We are not in favor of a phase in of the 50/50 allocation. It has been three years since the U.S. vs Washington decision, and Indian allocation is still no where near 50 percent of the harvestable number of fish. Every effort should be made to meet this as soon as possible.

Steelhead

We do not wish to make any reduction in our right to take steelhead trout. However, planning which produced additional numbers of other species, e.g., chum and spring chinook salmon, to relieve Tribal dependency on winter steelhead would be acceptable under very stringent conditions. Thus, a proven increase in replacement stocks would justify season-by-season reduction in steelhead effort, particularly in the Duwamish-Green River. The Tribe requires its full 50 percent allocation plus ceremonial and subsistence fish. With respect to replacement fish, they should be of greater value than steelhead since steelhead are especially valued during the late fall and winter months.

On-Reservation, Subsistence and Ceremonial Catch

Subsistence and ceremonial catches should be kept separate from commercial catches and should not be included in the 50 percent allocation. We would not be willing to place a set number or percentage of the total harvest on our subsistence and ceremonial catches. Subsistence and ceremonial fish must retain special significance.

In Conclusion

As one of the leaders among Norhtwest Indian Tribes in the 1960's fishing rights cases, our Tribe is vitally interested in seeking a solution to the fishing controversy and our position is hereby submitted.



808 Fairhaven Avenue • Burlington, Washington 98233

November 8, 1977

Mr. Mason Morriset
Attorney at Law
208 Pioneer Building
1st and James
Seattle, WA

RECEIVED
NOV 10 1977

ZIONTZ, PIRTLE, MORRISSET, ERNSTOFF & C-ESTRNOT

Dear Mr. Morriset:

On behalf of the Upper Skagit Tribal Council, I am forwarding to you the tribal statement to be included in Volume II of the Task Force answers.

The Council is very involved in the fishing controversy and hopes that its input will be recognized and prove helpful.

Sincerely,

A handwritten signature in cursive script that reads "Maureen R. Fisher". The signature is written in dark ink and is positioned above the typed name.

Maureen R. Fisher
Business Manager



808 Fairhaven Avenue • Burlington, Washington 98233

We, the Upper Skagit Indian Tribe, recognize our treaty fishing right as a vital and irreplaceable resource, not only for our future development, but as an inseparable link to our cultural past.

As an intervenor Tribe in U.S. v. Washington in 1974, we recommend these proposals for implementation of that decision, which was again affirmed by the 9th Circuit Court of Appeals. It is our contention that proper implementation of those rights, reserved by the Tribe, is the only basis on which a settlement of the Northwest fishing controversy can be achieved.

The Tribe favors the Commission described in the November 10 Indian submittal, but favors local management of local resources. Regional teams could cooperate in providing specialized responses to problems of a regional nature. Because of the Gillnetters case, it might be necessary to amend the state constitution and applicable statutes. However, a commission with "federal" responsibilities would seem to have powers greater than those granted in the state constitution. Such a commission could delegate part of its authority to local management teams, subject to commission oversight.

The Tribal Council was especially concerned that politics not enter into local management decisions and that joint enforcement, not the hitherto unsuccessful management by the state alone, be the accepted method. The federal government should provide backup support as trustee and financial assistance.

State and tribal cooperation at a regional level should be extended into enforcement efforts which retain tribal sovereignty while increasing the jurisdiction and effectiveness of both state and tribal officers. This would include not only local arrangements such as administrative agreements providing for cross-deputization, but also a definite hire-Indian program in state enforcement agencies. This means a long-term commitment to Indian personnel.

The Council wanted to emphasize the ability of Indian and non-Indian people to work together and the need to take politics out of enforcement decisions.

Task Force Questions

A reduction in the non-Indian fleet, and limited entry, is desirable. But this must not be substituted for allocation of the reserved right to 50 percent of the harvestable share, plus ceremonial and subsistence fish. The Tribe will decide at the proper time whether to increase its fleet; this decision depends upon establishment of marine rights and the opportunity to fish productive runs. Financing of a marine fleet is desirable. But under no circumstances did the Council wish to in any way abandon or waive river rights. Provision of equal opportunity alone is not enough; the right to take fish is a right reserved by the Tribe. Therefore, questions such as whether there should be separate Indian days are not the issue. What is important is that the reserved property right be maintained intact.

There should be a reduction in non-Indian troll fishery efforts. This would be helped along by a buy-back program coupled with economic relocation. There should definitely be greater control of the ocean sport fishery, especially in the Straits of Juan de Fuca. There is no need to increase minimum size limits. All fish should be counted as one fish, regardless of maturity. The ocean harvest should be based on a percentage of the total harvestable surplus.

An Indian representative should be placed on each body and given full voting powers. In addition, federal representatives serving on these bodies, as well as on other commissions or councils, should formally, by administrative guidelines and regulations, be charged with federal trust responsibility to safeguard treaty rights and should have clearly defined accountability to treaty Tribes.

With respect to management on the high seas, the Council felt that federal efforts should be intensified.

The Skagit System Cooperative is preparing a proposal for chum spawning channels near Bacon Creek on the Skagit River. Full federal support and state cooperation is essential.

State and federal planning should include positive reduction of environmental hazards, a policy decision to favor natural rather than artificial management of the Skagit System, and more effective state planning with respect to introduction of non-native stocks.

There should be joint state, federal, and tribal efforts to reduce dependence on winter steelhead runs. State efforts to increase spring chinook runs should receive priority and be covered by a formal commitment. Chum runs in the fall can be enhanced to likewise reduce dependence.

The Tribe does not wish to make any reduction in its right to take steelhead. However, planning which produced additional numbers of other species, such as chum and spring chinook, to relieve tribal dependency on winter steelhead would be acceptable under very stringent conditions. Thus a proven increase in replacement stocks would justify season-by-season reduction in steelhead effort. The Tribe requires its full 50 percent allocation, plus ceremonial and subsistence fish. With respect to replacement fish, they should be of greater value than the steelhead, since the steelhead are especially valued during the long "dry spell" before spring chinook season.

Task Force Questions

The Upper Skagit Tribe considers it essential that tribal fisheries managers participate actively in any planning done by the state with respect to fish enhancement.

The Tribe finds a phase in of Canadian sockeye and pink stocks to be acceptable, depending upon access to a marine fishery. Fifty percent, or the appropriate pro rata share, would be the minimum. With respect to all other species, the Tribe is not in favor of a phase in or phase out as the case may be.

Subsistence and ceremonial catches should be kept separate from commercial catches and should not be included in the 50 percent allocation. The Tribe would not be willing to quantify its total harvest and place a ceiling on ceremonial and subsistence fishing. The Council wanted it emphasized that these purposes are quite important to the Tribe.

SKAGIT SYSTEM COOPERATIVE

Swinomish • Upper Skagit • Sauk-Suiattle



REPORT
of the
Skagit System Cooperative

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Introduction

The Skagit System Cooperative has submitted the following answers to the Task Force questions. Certain questions dealing with the on-reservation fishery and off-reservation sharing are answered by individual tribal statements.

Current S.S.C. Management

The Skagit System Cooperative (SSC) was organized in 1975 by the Swinomish Tribal Community, Sauk-Suiattle Tribe, and Upper Skagit Tribe to provide a coordinated approach to managing the fisheries of the Skagit River system. The board includes two representatives from each of the tribal groups. Programs of the Cooperative include fisheries management and enhancement, enforcement of fisheries policies, and identification of treaty right Indians.

The SSC representatives are responsible to the Tribal Councils or Senate of the Tribe they represent. Management personnel of the SSC include three tribal fisheries managers, two biologists, and three technicians.

Functions of the management section include allocation of harvestable numbers of salmon between the tribes, regulation of fisheries, catch data collection and analysis, conducting biological studies, promoting public relations and environmental protection.

SSC Enforcement

The Skagit System Enforcement is but one part of the SSC. As such, it gets authority from the SSC Board and the individual Tribes. The three Tribes in the SSC have cross-deputized officers so they have jurisdiction over all members of the SSC Tribes. Close cooperation between enforcement and other parts of tribal government is necessary to accomplish enforcement goals.

The fundamental missions of enforcement are the protection of the fisheries resource, prevention of illegal fishing, preservation of order, and safeguarding of individual rights and liberties.

The three Tribes in the SSC have made a strong stand regarding enforcement and have committed three positions in enforcement from tribal funding sources in addition to the five enforcement positions allocated in the SSC for a total of eight enforcement personnel.

The SSC officers work in close cooperation with other Indian Tribes in the area for patrolling and protecting the fisheries resource. The SSC officers also assist and have patrolled with the Washington State Fisheries and Game Departments in the Skagit River System.

All officers are being trained by either the Washington State Basic Law Enforcement Academy or the BIA Academy. Officers also receive in-service training through many other state, federal, and private agencies to accomplish their mission in a professional manner.

Enhancement

Philosophy. The management philosophy of the SSC has been to preserve the native stocks of salmon and steelhead in the Skagit River system. Enhancement programs, therefore, should be designed to supplement, not supplant, the native stocks.

State and federal planning should include positive reduction of environmental hazards, a policy decision to favor natural rather than artificial management of the Skagit system, and more effective state planning with respect to introduction of non-native stocks.

There should be joint state, federal, and tribal efforts to reduce dependence on winter steelhead runs. Efforts to enhance chum and spring chinook runs should receive first priority and be covered by a formal commitment.

The SSC considers it essential that tribal fisheries managers participate actively in any planning done by the state with respect to fish enhancement.

Goals and Objectives. Objectives of enhancement projects are the following:

1. Increase income to treaty and non-treaty fishermen in Skagit Bay and River.
2. Provide a harvest to fishermen during a season that little or no harvest occurs.
3. Provide a genetically sound enhancement program that will have minimal impact on the native stocks.
4. Reduce dependence on winter steelhead runs.
5. Select projects that will create a minimal impact on the natural attributes of the river.

Enhancement Needs. The critical time period for treaty fishermen on the Skagit Bay and River is November through May. During these months, chum, steelhead, and spring chinook are entering the Skagit River. All Three species have poor returns, as Table 1 describes.

Table 1

	<u>Average Return 1970-1975</u>	<u>Escapement Goal</u>	<u>Average Total Harvest 1970-1975</u>
Chum	39,132	53,000	5,257
Steelhead	NOT AVAILABLE	-----	12,778
Spring Chinook	2,535	3,000	603

If the 100 treaty fishermen harvested every single fish, the average income would be less than \$2,300. The actual average income has not been computed but it would be approximately one-half of this figure. Based on the figures and the fact that summer chinook and coho contribute fairly well to the tribal economy, the Tribes of the SSC have selected chum and spring chinook enhancement as first and second priorities on the Skagit River system. Due to the political uncertainties, steelhead has been listed as a third priority.

Existing Programs. Currently, the SSC has two continuing chum enhancement projects. These include a system of Netart boxes at Munks Creek located on the Swinomish Reservation and a pond structure on the Old Sauk Channel which is located on the Sauk River, a major tributary to the Skagit River. Releases from the two projects totaled 378,794 chum fry. Native Skagit eggs were collected for both projects. Total adult return expected in 1979 is 1,504. The original intention of the projects was to supply seed stock for a proposed chum spawning channel in the Upper Skagit River.

Proposed Enhancement Projects. Enhancement proposals for chum and spring chinook have been presented to the Regional Task Force Advisory Committee. The chum proposal consists of a 10,000 foot spawning channel capable of receiving 29,630 adult spawners at a 1:1 sex ratio. The spawners will yield 52.8 million eggs and 25.7 to 36.9 million fry, with an expected return of 133,738 to 192,114 adults. These would yield \$1.0 to \$1.6 million annually to the fishery with an average benefit:cost ration of 10.5:1.

The spring chinook proposal consists of increasing the capabilities of the Washington Department of Fisheries' Clark Creek Hatchery for enhancing spring chinook. Proposed facilities include:

1. Rearing pond 90' x 400'
2. Combination adult holding and juvenile rearing pond 90' x 300'
3. Twenty 10' x 100' raceways
4. Additional pumping capacity (9000 g.p.m.)
5. Drainage system and bypass channel
6. Adult sorting facility
7. Wells with 20 cff. capacity
8. Freezer, feed room, and storage

The operations of this facility will include an annual egg take of three million and fry or smolt production of two million. We expect average annual returns of 10,000 adult hatchery and 2,500 wild spring chinook, for a total of 12,500 adults.

Capacity goals for the wild and hatchery stocks total 4,500, leaving 8,000 harvestable in the terminal area. Since outside catch to escapement is 3:1, the total harvest will include 38,000 spring chinook with a combined commercial and sport value of over \$700,000 annually. Over a fifty-year project life with low benefit estimates, the project's benefit-cost ration is 2.02:1.

Subsistence and Ceremonial Fisheries Policy

Subsistence and ceremonial catches should be kept separate from commercial catches and should not be included in the 50 percent allocation. The Tribes would not be willing to quantify their total harvest and place a ceiling on ceremonial and subsistence fishing. The SSC wanted it emphasized that these purposes are quite important to the Tribes.

Steelhead Policy

The Tribes do not wish to make any reduction in their right to take steelhead. However, planning which produced additional numbers of other species, such as chum and spring chinook, to relieve tribal dependency on winter steelhead would be acceptable under very stringent conditions. Thus a proven increase in replacement stocks would justify season-by-season reduction in steelhead effort. The Tribes require their full 50 percent allocation, plus ceremonial and subsistence fish. With respect to replacement fish, they should be of greater value than the steelhead, since the steelhead are especially valued during the long "drv spell" before spring chinook season.

Another condition would be improved enhancement and management techniques in the Department of Game.

The Status of steelhead should not be changed to "sport" fish.

In the event that the Tribes would be forced to give up steelhead, at the minimum, the Upper Skagit and Sauk-Suiattle Tribes would demand full marine rights.

International Bodies

An Indian representative should be placed on each body and given full voting powers. In addition, federal representatives serving on these bodies, as well as on other commissions or councils, should formally, by administrative guidelines and regulations, be charged with federal trust responsibility to safeguard treaty rights and should have clearly defined accountability to treaty Tribes.

Gear and Effort Proposals

Limited entry may be desirable to the Tribes in the future as a means of guaranteeing a certain level of income to tribal fishermen. Presently no such proposals exist and will not until the problems facing treaty fishing rights are solved.

Off-Reservation Sharing (Individual Tribal Statements)

Swinomish Tribal Community. The Swinomish Tribal Community is not willing to accept a phase in of the 50/50 allocation of any species between treaty and non-treaty fishermen. The treaty fishermen are capable of harvesting their allocation if given the fishing time needed to do so. The Boldt Decision is an accurate interpretation of Indian treaty fishing rights. We do not condone or accept any change in the 50/50 allocation.

Upper Skagit and Sauk-Suiattle Tribes. The Tribes find a phase in of Canadian sockeye and pink stocks to be acceptable, depending upon access to a marine fishery. The United States government has traded chinook and coho that would have returned to the Skagit River system for Canadian sockeye and pink. The Upper Skagit and Sauk-Suiattle Tribes, who have treaty rights to harvest the chinook and coho, have

no opportunity to harvest the sockeye and pink salmon for which the exchange has been made. The beginning phase in percentage would be 30 percent. Over a five-year span, the percentage would increase by increments of five until 50 percent was reached in 5 years.

On-Reservation Fishery (Individual Tribal Statements)

Swinomish Tribal Community. The exclusion of the on-reservation catch is a proper reading of the treaty. A combination or set percentage is not desirable. Such action would result in a reduction of the Swinomish catch. It is an intrusion on the sovereign and treaty rights of the Swinomish Tribal Community to govern their reservation waters.

Upper Skagit and Sauk-Suiattle Tribes. It is a hardship for the treaty fishermen whose Tribe has no reservation but whose fish stocks must return through reservations of other Tribes located downstream. On-reservation catches should be accounted for in the 50/50 allocation.

LUMMI AQUACULTURE
PROPOSAL FOR FISH ENHANCEMENT
FUNDS

PREPARED

BY

LEROY DEARDORFF

STEVE SEYMOUR

LUMMI INDIAN TRIBAL ENTERPRISES
MARIETTA, WASHINGTON 98268
206 734-1030
206 733-1151

TO: Federal Regional Task Force on Fisheries
FROM: Lummi Indian Tribal Enterprises-Aquaculture Division
SUBJECT: Proposal for Fisheries Enhancement Funds

Over the last six years, Lummi Tribal Enterprises has brought together a successful fish cultural operation. Incorporating a large freshwater rearing facility with a saltwater rearing and release site has led to a flexible system capable of tremendously enhancing the Nooksack River, Puget Sound and the Coastal Commercial and Sport fishery. We are in the process now of fine tuning our Coho production mainly through time and size of release and brood stock selection to gain the utmost in fishery contribution and adult hatchery returns.

We are still in the initial process of evaluating the three other salmonid species on how they can most favorably impact productivity at both Skookum Creek Hatchery and the saltwater sea pond.

Given adequate funding to continue present production schedules and the Research and Development projects plus modest capital additions, the Lummi Aquaculture Project can not only maintain but substantially increase its enhancement efforts. The systems now used by Lummi Aquaculture, and the people working within the Aquaculture, all add up to a program that has proven it can function well in coastal fisheries enhancement.

Due to a slip up in our internal communications we have had a relatively short period of time to prepare this proposal. Therefore, the balance of the material included herein is a somewhat informal compendium of internal documents prepared at an earlier date for other purposes.

These include the following:

- A. A brief survey of the people and functions making up the Aquaculture organization.
- B. A statistical summary of salmon releases made by Lummi Aquaculture from 1969 through 1977. Releases have been built to a level of almost 4.0 million salmon in 1977 including 1.8 million Chum, 1.7 million Coho, 295 thousand Chinook and 52 thousand Steelhead.
- C. Two different tag studies evaluating the impact of Lummi salmon releases on the various components of the salmon fishery. These initial studies provide a good deal of encouragement as to the overall economic contribution of the Lummi program. Ongoing studies will continue to monitor this contribution as well as provide data for improving our productivity.
- D. Brief descriptive summaries covering history and plans for sea ranching releases of Coho, Chum, and other species plus comments on egg taking operations and incubation facilities.
- E. Annual operating budgets for those elements of our Aquaculture organization contributing to fisheries enhancement and some short-term capital needs.

Hopefully, information included under the following tabs A through E will provide insight into our compliance with the technical guidelines applicable to fisheries enhancement. We believe our program is in substantial compliance based on the following guidelines used in our operations....

To establish runs of adult Coho, Steelhead, Chum and Fall Chinook which are compatible with the Nooksack River system and return to the terminal hatchery sites in sufficient numbers for continued propagation.

Maintain the genetic variability of hatchery return stocks through random breeding and selection methods.

Evaluate and reduce the impact of hatchery release fish upon natural and other hatchery stocks with river system.

Evaluate rearing system to achieve the highest quality smolt consistent with good survival and fishery contribution.

Continue to evaluate the fishery contribution of all species released through tag studies.

From a funding standpoint most of the enhancement effort to date has been part of an overall economic development program funded by Federal agencies (O.E.D. and E.D.A.) whose primary objective is creating commercially viable enterprises which will generate profits and cash flow as well as employment for the Lummi Tribe. Even though the Lummi fisheries enhancement program appears to be making a significant economic contribution in terms of contribution to the coastal fishery (see tag studies), it is not an economically viable program in terms of the more limited economic measures used by O.E.D. in evaluating program success.

We believe continued funding to support present fisheries enhancement is relatively certain for 1978 but the longer term outlook for funding is much less promising for the reasons discussed in the previous paragraph.

Therefore, we request funding support for ongoing operation of our enhancement program totalling \$500 thousand per year for the next ten years. The specific budget amounts supporting this request are detailed under Tab E. This funding should enable Lummi to contribute a minimum of 4.0 million hatchery salmon (including almost 2.0 million Coho) to the fishery annually. In addition a capital investment of \$65 thousand would enable us to expand our Chum hatchery capacity by a minimum of another 4.0 million Chum salmon within a few years with only a nominal increase in annual operating costs.

This proposal is more of a generalized summary and will be followed up by a second part addressing more of the technical details.

Should you have any questions on the material included in the proposal or need additional information, please contact Leroy Deardorff or Steven Seymour at the address shown on the title page.

AQUACULTURE

AQUACULTURE VENTURE

Introduction

The Aquaculture Venture is the largest and most complex venture or component of the Lummi Indian Tribe's Enterprise's. It is composed of an administrative component and 4 different divisions. These departments are illustrated in the organization chart on the following page and briefly described below:

1. The Lummi Fish Hatchery is located on Skookum Creek, a tributary of the Nooksack River about 35 miles from the reservation. This is a multi-purpose Fish Hatchery producing primarily Coho Salmon, Chinook Salmon, Chum Salmon, and Steelhead Trout.

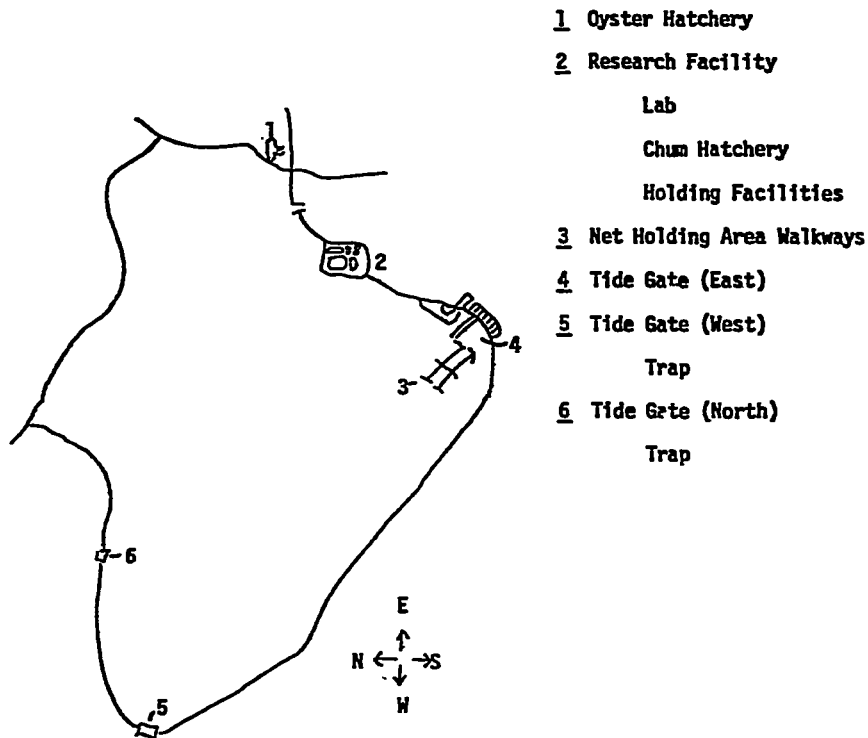
Phase I of the hatchery was semi-completed so that incubation was able to be started on a limited basis in the Winter of 1972. This first full year of operation was 1973.

Three of the primary goals of the Skookum Creek Hatchery are: (1) to re-establish runs of Silver, Chum, Chinook, and Steelhead trout on Nooksack River so as to improve the quality and quantity of catch of all fishermen, particularly the Lummi fishermen. (2) To train Lummi personnel to operate and manage the facility on a realistic and scientific basis. (3) To provide fingerlings for the release and return program at the sea pond.

2. The Sea Pond Fish Operations utilizes the 750 acre sea water pond facility on the Lummi tidal flats for the operation of a "Release and Return Program", also known as "Sea Ranching" utilizing, Coho, Chinook, Chum Salmon and Steelhead reared at the Skookum Creek Hatchery. In sea ranching fish are released

and then trapped and harvested upon their return to the sea pond one to three years after release. During the released time the fish have matured and then return to site of release as adults.

This facility has the responsibility of running the sea ranching operations from the dike enclosed 750 acre sea pond facility on the Lummi tidal flats. The design of the holding-to-imprint walkway and net facility is shown below. Three tide gate areas are also used to trap fish in the release and return program. These are also indicated.



In the diagram, located at site number 2, is the facility which has been proposed as the site to modify into a Chum hatchery. Actual and potential planned releases from the sea pond are reflected below.

NUMBER OF FISH RELEASED FOR SEA RANCHING

	<u>Coho</u>	<u>Chum</u>	<u>Chinook</u>	<u>Steelhead</u>	<u>Total</u>
1975 Act.	380,000	210,000	-0-	-0-	590,000
1976 Act.	750,000	400,000	17,000	20,000	1,187,000
1977 Act.	1,400,000	1,750,000	300,000	60,000	3,510,000
1978 Proj.	1,500,000	1,750,000	500,000	090	3,750,000
1979 Proj.	1,500,000	1,750,000	500,000	150,000	3,900,000

Numbers of releases trebled from 1976 to 1977, reflecting the close down of the pan-sized program for Coho, the establishment of a low overhead Chum salmon hatchery at the sea pond in 1977, and the first significant sea pond release of Chinook salmon. Modest increases in releases are anticipated in the 1978/79 period.

3. The Sea Lab is the newest facility just completed which started operation with the start of the 1976 year. It houses the central production monitoring functions as well as research and development of fish and shellfish, disease diagnosis, genetics, and tag studies on released fish.

The primary responsibilities of the Sea Lab fall into the following areas....

Developing, monitoring, and evaluating projects that will test critical variables related to the sea ranching program to provide management with the data necessary to make a reasonable evaluation of the economic potential in sea ranching for LITE and the most cost/effective way to pursue that potential.

Developing, monitoring, and evaluating projects directed toward improving oyster seed productivity and mortality per case of seed.

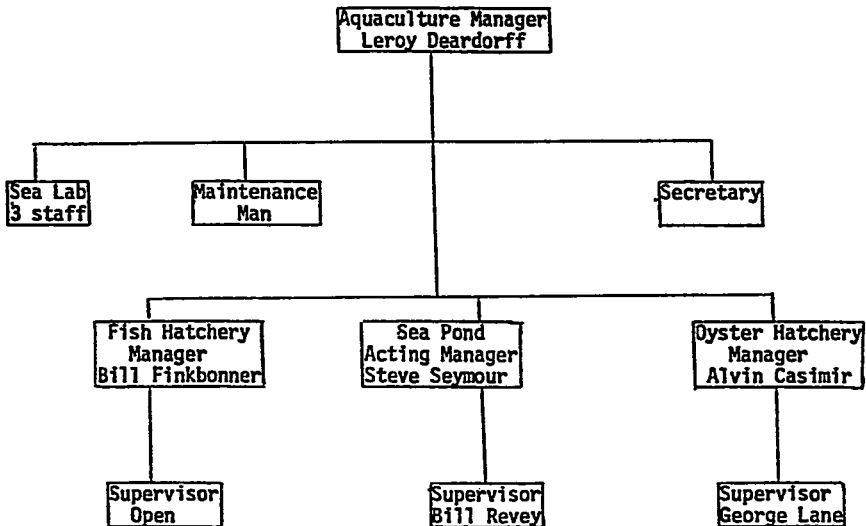
- . Establishing quality control standards for all Aquaculture operations and the monitoring systems necessary to ensure adherence to these standards.
- . Providing a technical resource for on-going Quaculture operations.

Organizationally, the Sea Lab approach is based on a small, well-qualified staff supported as needed by outside consulting resources.

4. The Oyster Hatchery is a highly technical facility located on the edge of the Lummi Sea Pond. It spawns oysters, incubates larvae, sets larvae on oyster shells, and sells oyster spat to the Lummi Outside Oyster growing operations and to other West Coast oyster farmers.

5. Aquaculture Administration The Aquaculture Manager, Secretary, Fish Technical Director, Maintenance Man and costs shared by all 4 cost centers are a part of Aquaculture Administration.

ORGANIZATION CHART



Leroy Deardorff is manager of the aquaculture venture and responsible for the efficient operation of the same. The supportive staff consists of sea lab with technicians trained in fish disease diagnosis, research, water quality analysis, the related fields. Over-seeing sea lab as director is Steve Seymour with a B.S. in Biology and Masters Thesis under review in Fisheries. Steve also lends support to the other cost centers, i.e. sea pond, fish hatchery. The fish hatchery is managed by Bill Finkbonner who comes to us from Lummi Fisheries Department and who has had aquaculture training and work experience in state hatcheries of 3 years. Sea pond is temporarily managed by Steve Seymour while Bill Revey the supervisor gains experience and skills to manage the operation.

As an added advantage, these people, Wallace Heath, Doctor of Marine Biology, Dick Poole, M.S. Fisheries, Keith Johnson, Doctor in Fisheries, Jim Ellis, B.S. Fisheries, and all local state and federal reseach stations have made their services and time available to aid us in the current program. The four mentioned people were directly involved in the development of Lummi Aquaculture and stay in close contact on its progress.

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FISH PLANTS

LUMMI AQUACULTURE PROJECT
FISH PLANTS

<u>YEAR</u>	<u>SPECIES</u>	<u>AMOUNT</u>	<u>SOURCE</u>	<u>SIZE</u>	<u>DATE</u>	<u>AREA</u>
1969	Chinook, Fall	100,000	Dr. Donaldson	80/1b	June	Red River
	Coho	109,912	Dr. Donaldson	40/1b	June	Red River
1970	Coho	150,000	Dr. Donaldson	40/1b	June	Red River
	Chinook, Fall	200,000	Dr. Donaldson	40/1b	June	Red River
	Coho	20,100	Nooksack	30/1b	June	Red River
1971	Chinook, Fall	200,000	Dr. Donaldson	80/1b	March 1	Red River
	Coho	100,000	Nooksack Hatchery	35/1b	March 27	Red River
	Rainbow	200,000	Dr. Donaldson	50/1b	March 18	Saltwater Pond
	Rainbow	250,000	Quilicene	25/1b	February	Kwina Slough
	Coho	2,000,000	Columbia River	800/1b	May 11	Skookum
	Chinook, Fall	45,413	Dr. Donaldson	35/1b	March 25	Skookum
	Chinook, Fall	124,100	Dr. Donaldson	35/1b	April 22	Kwina Slough
	Chinook	22,000	Dr. Donaldson	25/1b	May	Saltwater Swimout
	Chinook	174,000	Wash. State Dept. Fisheries	25/1b	March 12	Red River
1972	Speelhead	250,000	Skookum	30/1b	June	South Fork Nooksack
	Coho	100,000	Nooksack Hatchery	15/1b	June	South Fork Nooksack
	Chum	350,000	Skookum (Lloyd Meeds Present)	830/1b	May	Kwina Slough

<u>YEAR</u>	<u>SPECIES</u>	<u>AMOUNT</u>	<u>SOURCE</u>	<u>SIZE</u>	<u>DATE</u>	<u>AREA</u>
1972	Chinook	300,000	Skookum	35/1b	June	Kwina Slough
	Coho	275,000	Dr. Donaldson	35/1b	June	Kwina Slough
	Chinook	20,000	Dr. Donaldson	10/1b	June	Saltwater Pond Swimouts
	Coho	250,000	Skookum	6"-8"	July	Saltwater Pond Swimouts
	Nets Blew Over And Released Most Of The Fish					
1973	Chinook	250,000	Skookum	35/1b	June	South Fork Nooksack
	Coho	100,000	Skookum-Accidental Release	35/1b	May	South Fork Nooksack
	Chums	350,000	Skookum	425/1b	July	South Fork Nooksack
	Steelhead	30,000	Skookum	15/1b	July	South Fork Nooksack
	Steelhead	15,000	Skookum	15/1b	July	Marietta Nooksack
	Trout	300,000	Skookum-Accidental Release	50/1b	Spring	South Fork Nooksack
	Coho	600,000	Skookum-Accidental Release	4 to 8 oz.		Saltwater
	Trout	50,000	Skookum-Accidental Release	4 to 8 oz.		Saltwater
1974	Chinook	80,000	Skookum	110/1b	July	South Fork Nooksack
	Coho	345,000	Skookum (28,000 LV Mark)	27/1b	May	South Fork Nooksack
	Coho	20,000	Skookum	22/1b	June	WDF Chucksnut
	Coho	60,000	Skookum-Accidental Release	23/1b	June	South Fork Nooksack
	Chums	620,000	Skookum	850/1b	June	Nooksack (Kwina Slough)
	Steelhead	18,000	Skookum (1,800 LV Mark)	9/1b	April	South Fork Nooksack
	Coho	192,000	Skookum (50,000 LV Mark)	4.9/1b	December	Saltwater Pens

<u>YEAR</u>	<u>SPECIES</u>	<u>AMOUNT</u>	<u>SOURCE</u>	<u>SIZE</u>	<u>DATE</u>	<u>AREA</u>
1975	Steelhead	57,000	Skookum (10,000 LV Clip)	13,4/1b 18,9/1b	May 30	South Fork Nooksack
	Coho	98,000	Skookum (15,000 CWT, Adip)	19/1b	June 3	South Fork Nooksack
	Coho	3,000	14/9/2	7,2/1b	June 19	South Fork Nooksack
	Chum	550,000	Skookum	550/1b	June 5	Kwina Slough
	Chinook, Fall	13,072	Skookum - CWT Adipose	90/1b	June 27	South Fork Nooksack
	Chinook, Fall	216,067	Skookum	92/1b	June 27	No Mark
	Coho	9,700	Skookum-Accidental Release	20/1b	May	Sea Pond
	Coho	7,000	Skookum-Accidental Release	26/1b	May 9	Sea Pond
	Coho	81,900	Skookum-Accidental Release	17/1b	May 26-31	Sea Pond
	Coho	72,000 14,182	Skookum-Accidental Release	17/1b	May 27	Sea Pond CWT Adipose
	Coho	3,805	Skookum	17/1b	May 30	Sea Pond
	Coho	27,810	Skookum	17/1b	May 30	Sea Pond
	Coho	71,800	Skookum-Accidental Release	20/1b	June 5	Sea Pond
	Chums	225,000	Skookum	100/1b	July 2	Circular Raceway Research Facility No Mark
	† Coho	29,400	Skookum	15/1b	July 3	Sea Pond-15,000 CWT Adip.
	Coho	25,000	Skookum	17/1b	July 8	Circular Raceway Research Facility-No Mark
	Coho	25,040	Skookum	6,6/1b	August 26	Sea Pond-14,740 CWT Adip.
	Coho	33,787	Skookum	7,2/1b	August 29	Sea Pond - No Mar-s

<u>YEAR</u>	<u>SPECIES</u>	<u>AMOUNT</u>	<u>SOURCE</u>	<u>SIZE</u>	<u>DATE</u>	<u>AREA</u>
1976	Coho	421,000	Skookum	15.1	May 7	South Fork Nooksack Tags Ad & CWT 10,486 14/03/11 Vac. Eva 14,242 14/04/11 " "
	Chum	225,014	Skookum	256	June 4	South Fork Nooksack
	Chinook, Fall	80,654	Skookum	56,8	June 15	South Fork Nooksack 12,767 Ad & CWT 14/08/11
	Steelhead (Winter)	21,000	Skookum	12,4	June 8	South Fork Nooksack 4,000 LV Fin Clip
	Coho	201,978	Skookum	15.1/1b	May 10	Sea Pond
	Coho	196,046	Skookum	15.6/1b	May 10	Sea Pond
	Coho	235,820	Skookum	11.4/1b	May 12	Sea Pond
	Coho	57,796	Skookum	17/1b	May 12	Sea Pond/CWT Adipose
	Coho	26,767	Skookum	13/1b	May 26	Circular Raceway, Res. Facility-CWT Adipose
	Steelhead	12,302	Skookum	14.8/1b	June 24	Circular Raceway, Res. Facility-CWT Adipose
	Chinook, Fall	17,005	Skookum	38,8/1b	June 24	Circular Raceway, Res. Facility, 12,735 CWT Adipose-1,649 Adipose 2,621 No Marks
	Chum	242,458	Skookum	101/1b	June 25	Circular Raceway Research Facility-24,666 CWT Adipose
	Chum	165,474	Skookum	82.5/1b	June 25	Circular Raceway - Res. Facility - No Marks

<u>YEAR</u>	<u>SPECIES</u>	<u>AMOUNT</u>	<u>SOURCE</u>	<u>SIZE</u>	<u>DATE</u>	<u>AREA</u>
1977	Coho (1975)	160,060		17.1	Mar. 21	Sea Pond, Lummi Bay
		189,581		14.5	Mar. 25	Sea Pond, Lummi Bay
		209,822		17.1	Apr. 4	Sea Pond, Lummi Bay
		200,717		17.4	Apr. 6	Sea Pond, Lummi Bay
		254,666		18.0	Apr. 8	Sea Pond, Lummi Bay
		148,490		18.9	Apr. 26	Sea Pond, Lummi Bay
		146,276	Tavolek CWT Vaccine Exp.	23.2	Apr. 29	Sea Pond, Lummi Bay
		24,507		18.8	Apr. 29	Sea Pond, Lummi Bay
	Coho (1975)	235,904		18.9	May 25	Skookum
		140,747	Tavolek CWT Vaccine Exp,	19.6	May 25	Skookum
	Steelhead (1975)	37,602	Pdn CWT	15.9	May 20	Research Area, Lummi Bay
		14,582		8.7	May 25	Skookum
	Fall Chinook	29,181	Pdn CWT	200	Jun 14	Skookum
	Chum	242,529		405	Jun 10	Skookum
		579,100		660	May 6	Research Area, Lummi Bay
		250,000		475	May 17	Research Area, Lummi Bay
	Chinook	265,953		90	Jun 27	Research Pond
	Chums	224,600		94	Jun 29	Research Pond

TAG SURVEYS

TAG SURVEYS

I. INTRODUCTION

The Lummi Indian Aquaculture Project instituted a five year coded tag program in 1975 in cooperation with Federal and State of Washington authorities.

The program is now two years down the road and to date, the first two year releases (1975 and 1976) of both coho and chum salmon have been tagged and one year releases (1976) of fall chinook and steelhead have been tagged.

Following is a summary of the coded wire tagged coho returns for 1975 releases for two locations.

II. RESULTS OF CODED WIRE TAGGED SKOOKUM CREEK COHO, 1973 BROOD YEAR,1975 SPRING RELEASES

101, 000 Fish Released Spring 1975

15,000 Coded Wire Marked

	<u>NUMBER</u>	<u>POUNDS</u>	<u>VALUE</u>
Sport Caught	2,824	14,124	\$16,948
Commercial Caught	17,608	88,044	105,652
Returns to Skookum Hatchery October-December 1975	811	4,059	1,420
TOTAL:	21,243 Fish =====	106,227 lbs =====	\$124,020 =====
TOTAL SURVIVAL:	21% of fish released		
REARING COST:	\$0.15 per fish released = \$15,150		
COST TO BENEFIT:	<u>\$124,020</u> =		\$8.18
	15,150		

III. RESULTS OF CODED WIRE MARKED COHO RELEASED FROM LUMMI SEA POND, 1973
BROOD YEAR, 1975 SPRING, RELEASES

27,398 Fish Coded Wire Tagged Releases Spring 1975

	<u>NUMBER</u>	<u>POUNDS</u>	<u>VALUE</u>
Sport Caught	408	2,040	2,448
Commercial Caught	2,556	12,780	15,336
Return to Sea Pond September - December 1976	178	890	1,068
TOTAL:	<u>3,142 Fish</u> =====	<u>15,710 lbs</u> =====	<u>\$18,852</u> =====
TOTAL Survival:	11.4% of Fish Released		
REARING COST:	\$0.15 per fish = \$4,109		
COST TO BENEFIT:	<u>18,852</u>	=	\$4.57
	4,109		

IV. ASSUMPTIONS OF THE ABOVE TAGGING STUDY

1. Skookum Hatchery Unmarked fish are equally harvested as coded, wire tagged fish.
2. Average weight of adult coho is 5 pounds.
3. Market value to fisherman is \$1.20/lb.
4. 25 percent of the Sport and Commercial Fishery is sampled.
5. Adults returning to Skookum Hatchery are valued at \$0.35/lb.

V. CONCLUSIONS

- A. The First Year Coho Tag Releases showed outstanding ocean survival of 21% and 11% from the two release locations.
- B. The fishing throughout the Northwest Coast was significantly enhanced by releases from the Lummi Aquaculture Project.

SEA RANCH BY SPECIES

COHO PROGRAM

In 1974, a pilot project of sea ranching coho salmon was begun and the resulting adult salmon were captured in traps as they returned to the sea pond area. Promising results of this pilot program has prompted Lummi Indian Tribal Enterprises to shift emphasis into sea ranching over the pan size coho production program, and to evaluate the feasibility of incorporating fall chinook, chum, pink salmon and steelhead trout into the program.

The concept of ocean ranching is based on the reality that juvenile salmon and steelhead trout when released to the ocean, will feed, mature and return to their place or origin prior to spawning. Trapping the adult fish while in salt-water or shortly after entering freshwater, maintains excellent flesh quality and marketability.

The cost of rearing for juvenile salmon prior to release coupled with relatively good rates of adult survival and returns and the growing demand for ocean caught salmon presents substantial economic potential for sea ranching operations.

Presently Lummi Tribal Enterprises are rearing and releasing coho, chum, and chinook salmon and steelhead trout for the sea ranching venture. These fish are reared at Skookum Creek Hatchery from 3 to 18 months prior to being released into the sea pond for imprinting and ocean entrance.

COHO SALMON

L.I.T.E.'s present coho sea ranching program is aimed at releasing 1.5 - 2.0 million juvenile salmon per year. Coho Salmon are reared 18 months to size of 5-6" at the Skookum Creek Hatchery prior to being transported to the sea pond during March and April.

The fish are placed in net enclosures within the sea pond for a short time to allow the fish to imprint to the sea pond water prior to ocean release. Fish spend 18 months at sea and return to the sea pond traps from August thru December.

Initial time of release studies indicate July to be the best month to release Coho from the salt water net pens. During 1978-79, a further investigation will be conducted, with CWT fish to correlate size and time of release with total survival, fishery contribution, age class distribution, Puget Sound residency and Sea Pond return rates. Scale analysis of returning adults will be conducted, and correlated with CWT returns to establish growth rates and age class of the returning adults.

Na-K ATPase, an enzyme system ^{an} positively correlated with smoltification and migratory behavior, will be used to investigate different rearing parameters and releasesizes upon successful downstream migration and rapid saltwater entrance. Ongoing research will continue to investigate the time required for fish to imprint to the sea pond water, and artificial chemical imprinting.

Value of Vibrio Vaccines to Sea Ranching Salmon Survival:Vibriosis

is an ubiquitous disease in the marine environment and has the potential to impact marine survival of salmon. Vaccines are presently being used to protect juvenile salmon from vibriosis during short periods of saltwater rearing. Studies initiated in 1976 and 1977 are in the process of being evaluated to determine the effect of vaccinating juvenile salmon prior to both saltwater net pen and downstream river release, to their eventual survival and contribution to fisheries as adults.

Coded Wire Tagging Studies. A tagging trailer has been developed by the Fisheries Assistance Office, Bureau of Sport Fisheries & Wildlife, Olympia, Washington, for applying coded wire tags to salmonid smolts. Lummi Aquaculture has used this facility for two years for tagging programs to evaluate fish cultural procedures such as time/ size of release and vaccine evaluation programs. Studies of this nature need to be conducted further since only one parameter can be tested at a time. The cost incurred includes tagging wire and wages of the tagging crew. It averages 2¢ per tagged fish or about \$9,000 annually for production evaluation experiments.

Tagging is a very useful tool to sea ranching aquaculturists because it develops the basis for economic contributions made to sport and commercial fisheries as well as give specific recommendations for fish cultural procedures. Lummi Aquaculture uses tagging studies to also emphasize the fisheries enhancement contributions as part of the Indian/non-Indian fishing controversy. Tagging studies rely on the cooperation of all fisheries agencies which check landings of commercial species and is a method of continual development of a good working relationship between governmental agencies and private fish farmers.

Tag returns from 1975 coho release indicate that out of the 398,000 yearling released 53,400 or (13.4%) fish survived to maturity representing approximately 267,000 pounds worth \$300,000 to the commercial and sport fishing industries.

For every dollar spent for rearing, \$5.55 was returned to the industry as a whole.

The return rates for 1975 (100,000 1973 release) were 1.2% to the sea pond trap and 1.0% to adjacent Lummi gill net fishery. 1976 return rates (398,000 1974 release) increased to 1.8% to sea pond trap and 0.8% to local gill net Indian catch.

Future plans to modify rearing and release schemes at Skookum Creek and the sea pond facility could possibly reduce labor by 40-50% reducing production cost to 10 to 11 cents each. This figure compares favorably to rearing cost for coho at similar state and federal hatcheries.

C H U M P R O G R A M

CHUM SALMON PROGRAM

Chum salmon were introduced into the aquaculture project in 1972 to enhance the Nooksack River runs which had depleted due to over fishing, destruction of spawning sites and other environmental and human made problems. Using the chums in this type of program is vastly cheaper than most of the other salmonid species because they are not held long from egg through release cycle -- approximately 5 months is the maximum period of time chums require to develop to release size. Because of this relatively short handling and culturing period, Chum has caught the attention of the North Western United States and Canada and is being considered the species of salmon to be used in sea ranching.

Briefly, sea ranching is rearing salmon to a size that can be released into open waters and go to the ocean to feed until attaining maturity and returning to the site from which it was released. Ideally, the fish to be used would have very little cost in handling, rearing, and culturing and it could be raised in numbers significantly large enough to insure good returns and that once the returning adults arrived to release location, they would have a very promising monetary return to the firm working with them. The data received from the fish science world indicate that the chum could very well be that species of fish.

In 1975, the first chum salmon (255,000) were transported from the Skookum Creek Hatchery site and released - after a brief holding time, from the Lummi salt water pond in Lummi Bay. Because of the relatively good success with introduction into salt water and growth attained during the holding period, this program was increased to include 425,000 chums in 1976 and to 1.7 million in 1977. The numbers to be released will increase and be kept at 2 million

until significant results on return rates, size, etc. can be ascertained. The information on first releases will begin to compile during the fall of 1977 when three year old adults will begin returning; however, most chums normally do not return until the fourth year after hatching from eggs, so significant results will be realized next year.

Addressing the feasibility of significant return rates of chum salmon to our site is some what like to looking into a crystal ball and predicting what will happen. It is based on data furnished by the State of Washington hatchery system and looking at Japanese success story, and from data forwarded from Oregon, Alaska, and Canada. Working with this salmon, we are with a reasonable degree of confidence assured that we, too, can get the returns that will contribute a profit to LITE Enterprises. Washington State Hatcheries show that return rates of up to 5% have been experienced in her hatchery systems. The Japanese have shown success rates approaching 3% in their enhancement program. Historically, the old Indians of the Lummi Tribe claim that fish were extremely thick during spawning migration up the Nooksack River. It was not unusual to see fish caught in numbers exceeding 100 per boat per 15 minute drift through the Nooksack river. This happened less than 50 years ago. Other impressive data or return rates to Puget Sound are also available; however, the data all seem to indicate the same thing. We can expect to see these fish return in significant numbers.

Present figures by the State of Washington Department of Fish show that for every one pound of fish reared (chums) it costs them \$2. Or for every 400 fish released, they spend \$2. LITE concurs with the State's figures almost exactly; initially, we feel for the first 2 million chums we incorporate into our program, our costs will be approximately \$10,000. (Appendix B.) The major up front cost of this system will be redesigning the present research facility to

accommodate this program. The costs of which are included in the proposed budget. We plan to release chums to begin building our own self sustaining runs. We will begin a selective breeding program from the outset to pick and choose those qualities in the fish we see as best fitting our particular program.

On-going research and development work with Chum salmon by the Lummi Aquaculture program include:

1. An evaluation of vibrio vaccination of juvenile chums and its consequential effect upon survival and fishery contribution. These fish were coded wire marked and the data will be complete in 1981.
2. An evaluation of the gravel matrix incubation system for Chum salmon: An initial investigation began in 1977 using the deep matrix design at the sea pond and smooth matrix at Skookum Creek; investigations planned for 78-79 are concerned with the choosing of gravel matrix incubation design as most compatible with the sea pond design, water quality and climatic conditions.

Pink Salmon: No pinks are currently being reared in LITE facilities but have been reared in Puget Sound hatcheries by the Washington Department of Fisheries. The best results with pinks have been obtained in facilities which combine fresh water incubation and short term rearing with the introduction of salt-water 20-35 days after initial feeding. Pink salmon return on odd years only in the southern half of their natural range. Eggs are hard to obtain and a pilot program would have to begin at modest levels in order to build up a brood stock. An evaluation of the feasibility of sea ranching pink salmon could be made within four years (two generations).

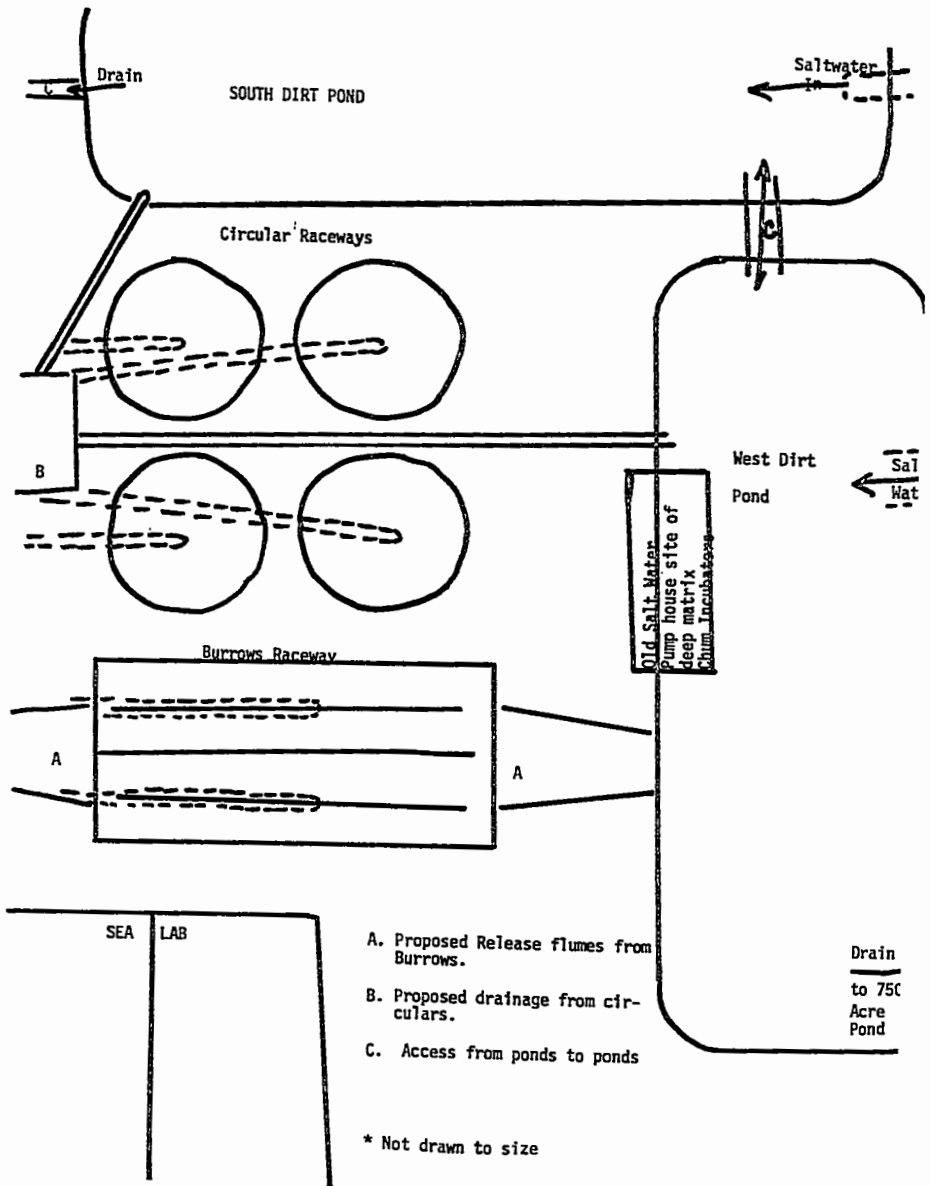
Lummi Aquaculture proposes to eventually get into a program of 6 to 8 million chums or more to be released from the Chum incubation facility located at the research site. Basic system for this program is already in place and will need modification to accommodate the anticipated numbers of future releases.

What is required is to modify existing cement circular drains to empty into a common collection box and to then provide for drainage to three different areas by way of valve control. This enables the release of chum fry into specific areas as the program dictates whether that be into one of the two dirt ponds or out to open waters.

Coupled with the need for before mentioned modifications is the need to inter-connect the two dirt ponds together and to connect the west pond with the large 750 acre salt water pond. The bottoms of both dirt ponds need to be graded and graveled to expedite releases into the pond or out to open waters. The design of releases after modification is to allow the fish fry to be fed in the dirt ponds and held until they attain 400/lb size then allow them to either release out of South dirt pond to open water or to let them migrate into the sea pond, there to feed on abundance of plankton growing in the pond. They would then be allowed to leave out of their own volition at hopefully a size that would enable greater survival in the open waters.

As another advantage to the proposed systems, we would be in a position to regulate the salinity of both large ponds which could encourage better survival of fry.

The next page attempts to show graphically the proposed changes at the Research Facility:



Estimated costs for these
changes are as follows:

(1) Modify all concrete pond Drains	.....	\$30,000
(2) Modify drain and intake system of dirt ponds	.....	15,000
(3) Grade and gravel dirt pond bottoms	.....	<u>20,000</u>
		<u>\$65,000</u>

5 Month Rearing Cost For Chum Program

Water supply, pumping, electricity	2,000
Feed 8,000 lbs. fish x 2 x .25/lb. feed	4,000
Labor	<u>4,000</u>
TOTAL Cost	\$10,000

Feeding 2 million fry 2.1 conversion

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STEELHEAD

CHINOOK

Winter Steelhead Trout: Steelhead have been reared annually at Skookum Creek Hatchery since 1972. The cold outside water temperature has prevented raising steelhead to the optimum release size of 6 fish per pound in 16 months of rearing. Because of this, returns from hatchery releases have been disappointing. In 1976, 20,000 steelhead were transported to the Sea Pond and released after 30 days of saltwater rearing to test their feasibility in sea ranching. During this time, they doubled their size and were extremely healthy. Because return rates and commercial sale value are very high, (up to 12% to sport fisheries, \$1.25/lb.) steelhead appear to be very favorable for sea ranching. They return after 18 months in saltwater which is a year sooner than chums or chinook. The trapping period for steelhead will be from December through February and will allow a little time for the Sea Pond employees to prepare for the March introduction of fish for release. A release goal of 100,000 smolts by 1979 could be realized with existing facilities.

Research & Development Goals

(1) Brood stock development: Of utmost importance is the development of a compatible brood stock for Skookum Creek Hatchery. One approach is to trap wild spawners in Skookum Creek and the South Fork of the Nooksack River. Perhaps a cooperative effort could be arranged with Indian gill net fisheries for trapping suitable egg source, the next management goal will be to develop a hatchery growth scheme which will produce a large (6/lb.) yearling smolt. This growth criteria can be met with the present development of a well water system and by using the existing hatchery heated recirculation system.

Juvenile steelhead hatchery release should be coordinated with a strong migration disposition which could be arrived at the monitoring gill ATPase during the spring months and by following the downstream movement of hatchery stock through juvenile trapping and seining operations.

Fall Chinook Salmon: These are reared in fresh water for 7 months (November to May) when they are ready for vaccination and gradual introduction to saltwater. Prior to 1976, chinook had been released only from the hatchery for brood stock. Fall chinook return as 3, 4, and 5 year old adults and those to the hatchery have been disappointing due to a heavy fishery on these fish in Washington waters. In 1976, 17,000 fall chinook were incorporated into the sea ranching program. These fish acclimated to saltwater well and the release was made on schedule. Adult chinook from this release will begin to return during August and September, 1977. The projected plan is for 300,000 releases yearly from sea pond and upwards of 250,000 from Skookum Hatchery site.

Research and Development Goals Include:

(1) Evaluating the correlation between fish size at releases with total survival and fishery contribution. Work in this project should include monitoring gill ATPase activity, downstream migration patterns, estuarine residence and outmigrations timing. This information when correlated with CWT returns and adult scale analysis should help dictate the most appropriate hatchery management policy to insure a rapidly outmigration smolt, reducing the interaction between wild and hatchery fish.

(2) Saltwater Pen Rearing and Release

This investigation is concerned with deliniating the best size and time of release from Lummi saltwater site to enhance, first adult returns to the Sea Pond and second the total contribution to the sport and commercial fisheries. Basically different groups of Chinook will be brought to the saltwater site, CWT, and released from June, thru October, size as well as time of release will be operating as these different groups and a final evaluation will be completed in 1981.

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EGG TAKE

On-Going-Production-Research

Production Egg Take

LITE is selectively breeding adult salmon, which return to the sea pond traps for adult quality, size and run timing. Present plans include taking a minimum of 500,000 coho eggs and 1 million chum eggs.

The fish are spawned and eggs inoculated at the sea pond facility. Upon eyeing, the coho eggs are taken to the Skookum Creek hatchery for rearing while the chum eggs are loaded into gravel matrix incubators for hatching, yolk absorption, and short term rearing prior to release.

Present work in investigating the effects upon egg maturation, fertility and flesh quality of holding adult salmon in fresh, brackish and saltwater prior to spawning. Incorporated in this program is a pilot study interested in accelerating egg maturation with the use of pituitary extracted gonadotropin hormone.

Early Run Development

Early Egg Take: A problem of chum salmon sea ranching in Lummi Bay is that adult returns may occur during period of potential freezing. Early returning chums will be used for brood stock to select for this quality. This would be accomplished by ripening early chum returns at the research facility, spawning and eyeing the eggs on site for loading into incubator boxes for release. Genetic manipulation of spawning time has proven to be a useful technique for steelhead and salmon fish culture and we should pursue this with the intention of altering time as return or accelerated to enhance sea ranching return rates.

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ESTIMATED BUDGET
EXPENDITURES FOR
AQUACULTURE FISHERIES
PROGRAM

FISH HATCHERY
Expenses Budget (yearly)

Labor Expenses:

Salaries	\$123,000	
Crew Travel	6,000	
Fringe	<u>16,000</u>	
TOTAL Labor		\$145,000

Operating Expenses:

Fish Feed	\$ 80,000	
Utilities	6,500	
Heating Oil	15,000	
Telephone	1,500	
Gas & Oil	6,050	
Repair & Maintenance	13,000	
Travel	1,500	
Supplies	8,000	
Medication	15,000	
Fish Tagging	11,000	
Rentals	2,000	
Miscellaneous	<u>500</u>	
TOTAL Operating Expenses		<u>\$160,050</u>
TOTAL Expenses		\$305,050

SEA POND
Expenses Budget (yearly)

Labor Expenses:

Salaries	\$67,000	
Fringe	<u>8,000</u>	
TOTAL Labor		\$ 75,000

Fish Feed	10,000	
Utilities	2,000	
Telephone	1,000	
Gas & Oil	3,000	
Repairs & Maintenance	9,000	
Travel	500	
Supplies	7,500	
Medication	5,000	
Fish Tagging	15,000	
Diving Equipment	500	
Rentals	800	
Miscellaneous	<u>500</u>	
TOTAL Operating Expenses		<u>54,800</u>
TOTAL Expenses		<u><u>\$129,800</u></u>

SEA LAB
Yearly Operating Expenses

Labor Expenses:

Salaries	\$ 45,000
Fringe	<u>5,850</u>

TOTAL Labor Expenses \$50,850

Operating Expenses:

Equipment Rental	250
Consultants	500
Utilities	2,500
Telephone	1,000
Gas & Oil	500
Repairs & Maintenance	1,800
Travel	1,000
Supplies	3,000
Medication & Drugs	1,500
Miscellaneous	<u>300</u>

TOTAL Operating Expense 12,350.00

TOTAL Expenses \$63,200.00

Total Operating Expense for Fisheries Program in the Lummí Aquaculture is as follows:

Fish Hatchery	\$305,050
Sea Pond	129,800
Sea Lab	<u>63,200</u>
	\$498,050
Chum Program	<u>10,000</u>

\$508,050

Estimated Capital Expenditures for Expansion of Chum Rearing

(1) Modify all concrete pond	.....	\$30,000	
Drains			
(2) Modify drain and intake	.....	15,000	
System of dirt ponds			
(3) Grade and gravel dirt	.....	<u>20,000</u>	
pond bottoms			<u>\$65,000</u>

* The above expenditures relate to the Chum Program

REPORT OF THE SUQUAMISH INDIAN TRIBE

The Suquamish Tribe is completing a comprehensive report on the state of its fishery. The report will cover all aspects of the fishery from harvest management to needed enhancement. It will further attempt to highlight current problems and present workable solutions to these problems.

The Tribe had hoped that the completed report would be available by November 14, 1977. However, the completed document will now not be ready until November 15th or 16th. The Tribe has worked on the assumption that it would be better both for the Task Force and the Tribe to delay a few days, rather than submit an incomplete document. Once received, the Suquamish Tribe feels that the report will provide needed guidance to the Task Force in its efforts to develop solutions that are in harmony of the treaty right which the United States is charged to preserve and protect.

The report will not present a comprehensive unified management system. The Tribes believe that the Task Force utilizing the principles set out in Volume II can develop a meaningful system. Furthermore, the Suquamish Tribe has received the proposed plans submitted by the Quinault Tribe and the Point No Point Treaty Council. The Suquamish Tribe believes that the commission concept advanced therein is workable and provides a realistic point of departure for developing such a unified management system.

**TRIBAL REPORT
TO THE
PRESIDENTIAL TASK FORCE ON
TREATY FISHING RIGHTS IN THE NORTHWEST**

**Volume VII
Supplement No. 1**

Presented by

**The Tribes of the Point Elliott Treaty Area
(Nooksahk, Suquamish, and Tulalip Indian Tribes)**

November 16, 1977

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Supplement No. 1TABLE OF CONTENTS

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to the Federal Task Force**

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NOOKSACK INDIAN TRIBE

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ENHANCEMENT PROPOSAL TO THE FEDERAL TASK FORCE
 FROM
 THE NOOKSACK INDIAN TRIBE

Statement of Goals

At the time the task force appointed enhancement committee announced a deadline for enhancement proposals ^{several} ~~several~~ questions were ^{raised} ~~raised~~ concerning the guidelines that were handed out. The questions addressed the kinds of enhancement proposals that appear to be described within the "points to be considered." On the surface the focus is directed at artificial production. In fact, the "points"... were taken verbatim from the critereia developed by WDF for rearing and releasing food fish. This is matter of putting the cart before the horse.

Artificial production is certainly indispensable to maintaining and improving current harvest levels, but it is the cart not the horse. The horse is natural production, not only at the level of release strategy, but more importantly, at the level of harvest strategy. The Nooksack Tribe takes exception with the philosophy that weighs sheer numbers of fish more heavily than protection and enhancement of natural runs. We are dedicated to the preservation of natural runs as our first and foremost area of concern, and we hope that this small voice will be heard in the immense arena of commercial fishing.

ENHANCEMENT PROPOSAL TO THE FEDERAL TASK FORCE
FROM THE NOOKSACK INDIAN TRIBE
Page 2

Native run enhancement

The Nooksack Fisheries Department is currently funded through September 1978. A portion of our budget is intended to fund a program of stream^d inventory, monitoring and enhancement. (see encl. 1) At present our budget limits us to a continuation of our program, which is adequate for inventory and monitoring, and somewhat limiting for enhancement. We could effectively utilize additional funding. Enhancement of natural areas has been, and remains, our highest priority. At current funding levels we can engage in barrier removals on a labor available basis. This was done last year with the help of several youth employment programs which we hope will be available to us once again this year. One purpose of this proposal is to seek additional funding for enhancement of natural runs in order to better utilize our proximity to the Nooksack river. We have found ourselves capable of monitoring thirty streams once per week on a continuing basis. We have coordinated with the Lummi Tribe and WDF to participate in annual spawning ground surveys with enough competence to have been requested by WDF to fill in when they are short of manpower. We have also coordinated with the Lummi Tribe and USFWS on tagging and recovery of tags in conjunction with our spawning surveys.

As a result of these past efforts; and our immediate proximity to the river, we believe we have developed more intimate contact with the Nooksack river and its tributaries than any other agency. We have identified several projects that are currently beyond our level of funding to pursue. These projects involve washing of silted gravel, replacement and/or addition of gravel, insatallation of gabion weirs and channel stabilization.

ENHANCEMENT PROPOSAL TO THE FEDERAL TASK FORCE
FROM THE NOOKSACK INDIAN TRIBE
Page 3

Artificial Enhancement

In addition to extensive plans for enhancement of native runs, the Nooksack Tribe is involved in several projects designed to artificially enhance the natural production of the Nooksack river. We have a pilot project in work that will demonstrate the feasibility of in-stream incubation boxes for the enhancement of chum, coho and/or pink salmon. Assuming success with this project we have identified several other areas where in-stream incubation would be feasible.

As a long range goal for the enhancement of the Nooksack watershed we are involved in site selection for a spawning channel due to past successes of that method of enhancing fish runs. This is seen as a cooperative effort between the Lummi and Nooksack Tribes.

In stream incubation and slough utilization

Our current project at Williams creek (Rutsatz) is about half way to completion (see encl. 2). The finished facility will incubate 250,000 chum eggs in netart type boxes , and rear them in a rearing pond to about 220/lb. Following the release of fed chum fry in April or May, coho fry will be obtained from the Nooksack hatchery at Kendall for rearing during May-July. This dual purpose approach is being considered for at least one other site presently under consideration. Several sites are being considered for in-stream incubation without rearing and appropriate studies will be undertaken to compare survival of chum salmon, with and without rearing.

ENHANCEMENT PROPOSAL TO THE FEDERAL TASK FORCE
FROM THE NOOKSACK INDIAN TRIBE
Page 4

Spawning Channel

The Nooksack Tribe proposes to implement a project based on the success of spawning channels in British Columbia. As part of our inventory and monitoring project we have identified five Nooksack tributaries that would meet the flow and water quality requirements of a spawning channel.

Understandably, these projects are limited in scope due to time limitations imposed by the task force. We have not addressed possible conflicts in release strategy because of the shortage of time. Our present project will not have much impact because it involves a relatively small number of fish from a natural run, and more importantly because the future release strategy on the Nooksack River is clouded by plans of the WDF to rear and release up to twenty million chum salmon in the next few years. We will certainly coordinate with all agencies concerned as releases are more clearly planned and announced.

A more specific breakdown of our plans follows:

NOOKSACK ENHANCEMENT PROPOSAL

A. Native Runs - Enhancement of the natural production of eight tributaries to the Nooksack River. Streams were selected according to their past productivity, potential for improvement, and accessibility.

<u>Tributary</u>	<u>*Project</u>				<u>Estimate Cost</u>
	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	
Thompson			X		a. gravel washing \$.50/yd x 2000 yds = 1000.00
Racehorse	X	X	X	X	b. gravel addition \$10/yd x 2000 yds = ²⁰ 10 ,000.00
Deadhorse		X	X	X	c. gabion weir \$150/min. x 50 weirs = 37,500 (includes salaries, equipment and maintenance)
Canyon	X	X			d. channel stabilization \$800/yd x 2000 yds = 16,000.00
Hutchison				X	
Kenny	X				
Boyd		X	X		
Anderson	X			X	

* a gravel washing

b gravel addition

c gabion weir

d channel stabilization

Total cost (1year) = \$64,500

B. Artificial Propagation

- Williams Creek (Rutsatz) Enhancement Project. This is a pilot project for both in stream incubation and slough utilization. The expected date of completion is November 15th.

<u>Component</u>	<u>Percent complete</u>	<u>Cost</u>
planning	100	n/a
funding	100	n/a
fishtrap	100	* \$150.00 (paid)
screens	100	\$2000.00 (paid)
incub. boxes	50	* \$150.00
dam	10	\$1500.00
intake	10	\$1000.00

Nooksack Enhancement Proposal - page 2

- * These costs reflect labor only, as materials Total Cost \$4800.00
were donated to the tribe.

If retroactive funding is available we request retroactive funding. If not, we submit this project as evidence of our competence.

2. In Stream Incubation. A number of Nooksack tributaries have, according to past records supported large chum runs. Based on the general success of other in stream incubation facilities, and on the experience gained from the Williams creek project, we propose such a project on one of six tributaries currently under study.

Item

site aquisition	\$1000.00
materials, boxes & intake	\$2000.00
labor	\$ 750.00
	<hr/>
Total Cost	\$3750.00

3. Slough Utilization. Two sloughs were recommended in a feasibility study completed this past spring (HITRON-77) a third slough has been identified by the Nooksack stream^monitoring program, and is currently under study for flow and water quality parameters.

Item

site aquisition	\$6500.00
materials, screens, boxes, & intake	\$4000.00
labor	\$1200.00
	<hr/>
Total Cost	\$11,700.00

4. Spawning Channel. This is the most ambitious project proposed by the Nooksack Tribe for enhancement of the Nooksack river salmon runs. Our monitoring program has identified several streams with characteristics that would be suitable for a spawning channel. We request funding for further study of the feasibility of such a project.

Nooksack Enhancement - page 3

Item

feasibility study for a spawning channel on the Nooksack River	\$5000.00
---	-----------

Total Enhancement Package.

1. Native Run Enhancement Plan	\$64,500
2. Williams Creek Enhancement Project	4,800
3. In Stream Incubation Project	3,750
4. Slough Utilization Project	11,700
5. Spawning Channel Feasibility Study	5,000
	<hr/>
Total Costs	\$89,750

THE DEVELOPMENT OF RUTSATZ SLOUGH IS A PROJECT THAT HAS BEEN UNDERWAY FOR THE PAST TWO YEARS. TWO FEASIBILITY STUDIES, ONE BY UIM FRAZIER (1966) AND THE OTHER BY JACK HITRON (1977) HAVE INDICATED THAT RUTSATZ HAS A LOT OF POTENTIAL.

THE FIRST PHASE OF IMPLEMENTATION INVOLVED DREDGING THE SLOUGH AND REMOVAL OF DEEPS. FOLLOWING THE DREDGING THE D.O. READING DROPPED FROM 8.2 ml/l TO 3.1 ml/l. THIS DROP IN D.O. IS ASSUMED TO BE THE RESULT OF INCREASED OXYGEN CONSUMPTION BY MICROORGANISMS STIRRED UP DURING THE DREDGING OPERATION. AS OF 30 OCTOBER, 1976 THE D.O. WAS 6.1 ml/l, STILL BELOW A DESIRABLE LEVEL FOR SALMONID REARING. THE FRAZIER REPORT RECOMMENDED NOT USING RUTSATZ FOR INCUBATION OR REARING UNTIL THE FOLLOWING YEAR.

DURING THE SPRING OF 1977 200,000 COHO FRY WERE OBTAINED FOR REARING IN RUTSATZ SLOUGH. THEY WERE FED FOR AS LONG AS FOOD WAS AVAILABLE, (THREE WEEKS) AND RELEASED.

THE NEXT PHASE OF RUTSATZ IMPROVEMENTS INVOLVES FOUR MAJOR PROJECTS, AS FOLLOWS:

FISH TRAP A FISH TRAP WILL BE INSTALLED IN THE STREAM BELOW THE CULVERT. IT WILL BE PATTERNED AFTER THE FISH TRAP BUILT AT THE NOOKSACK HATCHERY AT KENDALL, ENCL. 1.

SCREEN A ROTATING SCREEN WILL BE PURCHASED FROM STEVENS AQUA SCREEN AND INSTALLED IN A CONCRETE KEIR, ENCL. 2.

DAM A DAM WILL BE CONSTRUCTED OF SANDRAGS TO PROVIDE SUFFICIENT HEAD (1 FT) TO FEED INCUBATION BOXES, ENCL. 3.

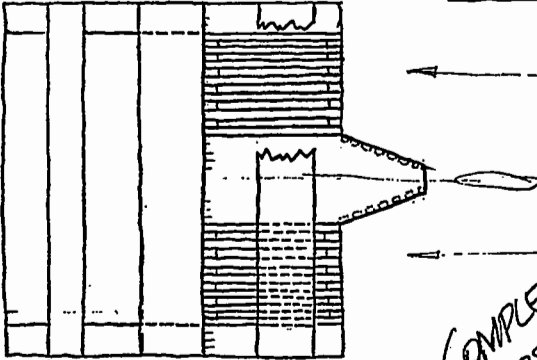
INCUBATION BOXES STOWN HAS PROVIDED FOUR 3' X 8' X 18" INCUBATION BOXES W/ BASKETS AND TRAYS. THE BOXES WILL BE MODIFIED TO A NET/NET GRAVEL BOTTOM TYPE, AND WILL BE PLACED AT OR NEAR THE DAM. ENCL. 4.

ENCLOSURE 1 TO TASK FORCE PROPOSAL

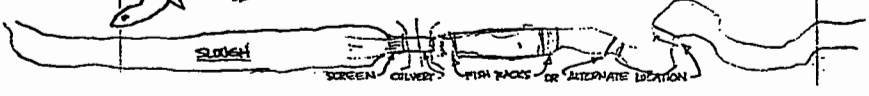
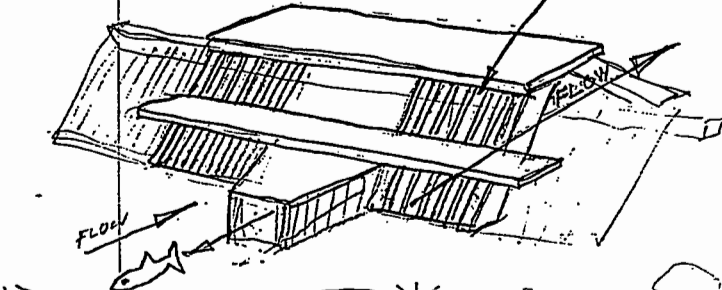
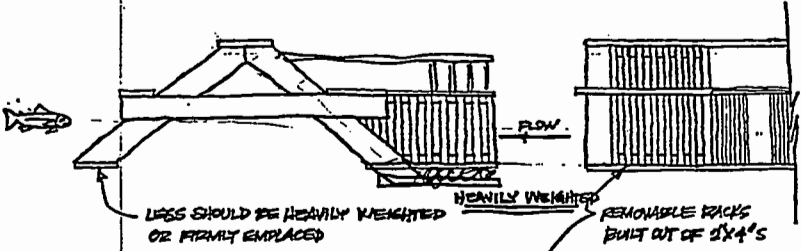
ENCL. 1.

FISH RACK

COULD BE BUILT OUT OF
A SURPLUS PICNIC TABLE



COMPLETED
28 SEPT. 77



RUTSATZ CULVERT MODIFICATION

CONTRACT OPEN FOR BID

THE ENCLOSED INFORMATION DESCRIBES A SQUARE CONCRETE PAD WITH TWO WALLS AND A CORNER POST. FIGURE 1 SHOWS THE DESIRED END PRODUCT, AND FIGURE 2 SHOWS ITS RELATIONSHIP TO THE CULVERT. FIGURE 3 SHOWS THE REVOLVING SCREENS THAT ARE TO BE HELD BY THIS CONCRETE PAD, WALLS AND POST. THE CRITICAL DIMENSIONS ARE SHOWN IN THE CIRCLE TITLED "SUGGESTED TYPE OF WEIR"

INCLUDE IN YOUR BID ESTIMATES OF TIME AND MATERIALS. ALSO RECOMMEND WALL, POST AND PAD THICKNESS, AND THE AMOUNT OF REINFORCING BAR YOU WOULD SUGGEST.

COMPLETED
20 OCT. 77

5

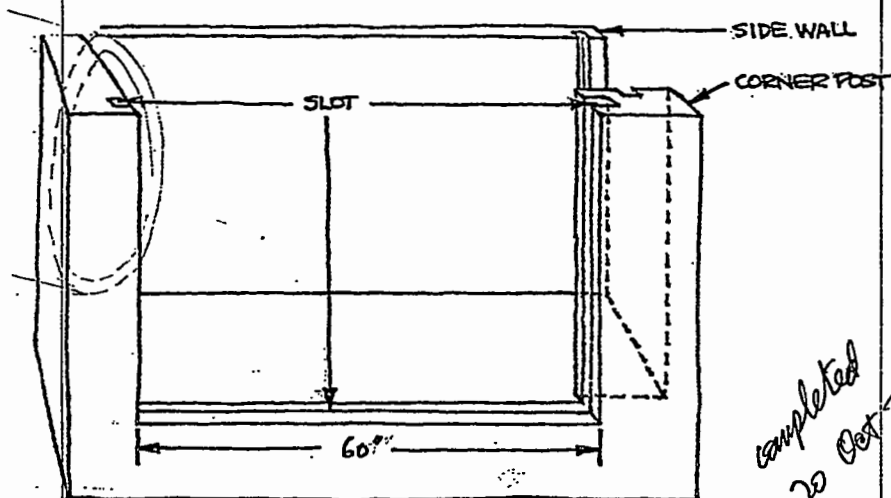
RUTSATZ ~~WEIR~~ CULVERT MODIFICATION

UNSOVED PROBLEMS

- WALL & FLOOR THICKNESS - REINFORCING BAR ?

~~VISUPPORT BETWEEN WEIR AND GROUND BOTTOM, DUNNED~~

THE FUNCTION OF THIS WEIR IS SUPPORT FOR TWO REVOLVING SCREENS. THE CRITICAL DIMENSIONS ARE: ① DISTANCE BETWEEN SIDE WALLS AND CORNER POST (60"), AND ② THE SLOT IN WALLS AND BOTTEM (2" x 2"). IN ADDITION, IT IS EXTREMELY IMPORTANT THAT THE WALLS AND CORNER POST BE STRAIGHT, PLUMB AND TRUE.



completed
20 Oct 77

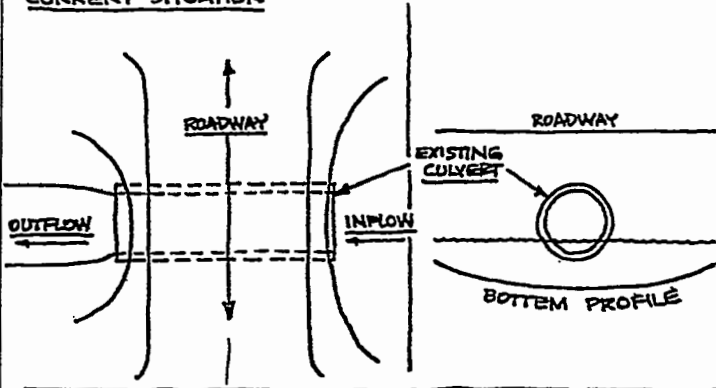
~~THE SLOUGH BOTTOM AT THE CORNER IS ABOUT EIGHT INCHES FROM THE FENCED WEIR. THE BOTTOM MATERIAL IS SOFT MUD FOR 6" 12", AND FINE SAND BELOW THAT.~~

THE SLOUGH BOTTOM IS HARD PACKED SAND & GRAVEL, LEFT OVER FROM SANDBASS. IT SHOULD SUPPORT THE CEMENT PLATFORM EASILY.

FIGURE 1.

RUTSATZ CULVERT MODIFICATIONS

CURRENT SITUATION



DESIRED MODIFICATION :

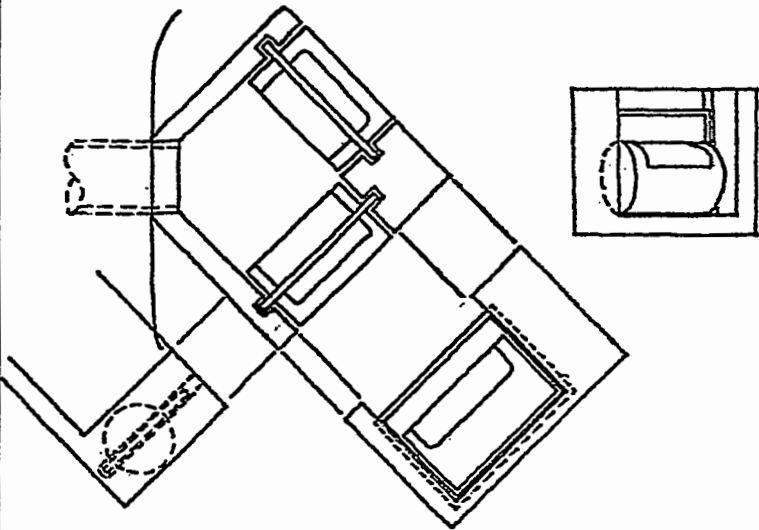
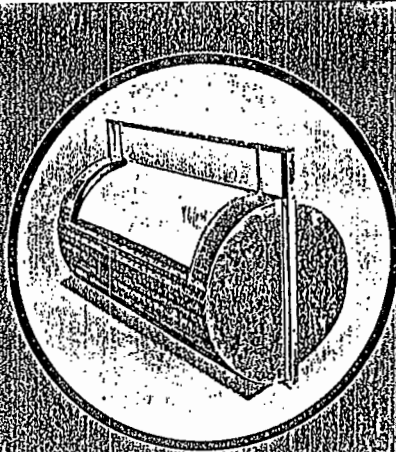
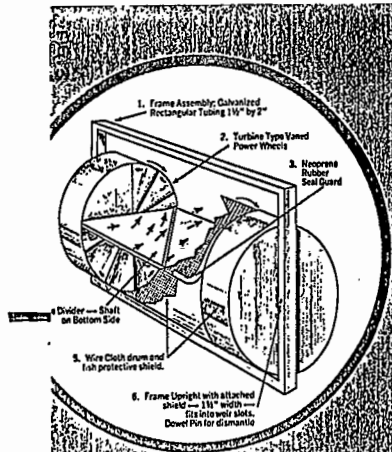
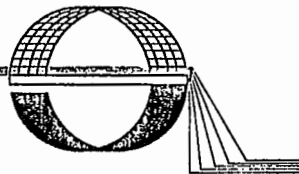


FIGURE 2.



Stevens



AQUA SCREEN

AN AMERSHAT REVOLVING SCREEN OFFERING SUPERIOR SERVICE

SPECIFICATIONS

WHEELS: TURBINE TYPE VANED FOR POWER. Heavy Sheet Metal

SHAFT: STEEL

BEARINGS: CADCO H.M.W. 400 WATER LUBRICATED—REPLACEMENTS AVAILABLE

PLATE DIVIDER: HEAVY SHEET METAL

WIRE CLOTH: 16 Ga. Dbl. Crimp Galvanized Openings Optional—Common Use-3 or 4-mesh

SHIELD: HEAVY SHEET METAL REINFORCED

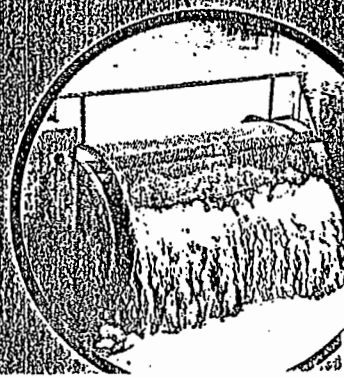
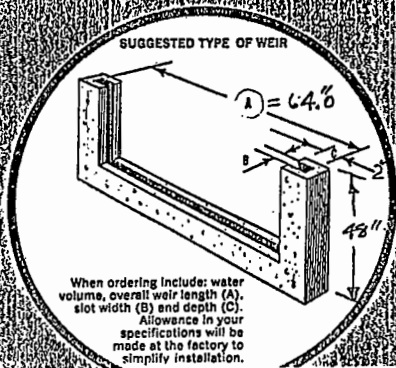
INTAKE: RUBBER SEAL GUARD

UNIT FRAME: RECTANGULAR TUBING standard 2" depth into slot by 1 1/2" width into slot. Can mfg. to fit odd size.

GALVANIZED MATERIALS

EASY DISMANTLE

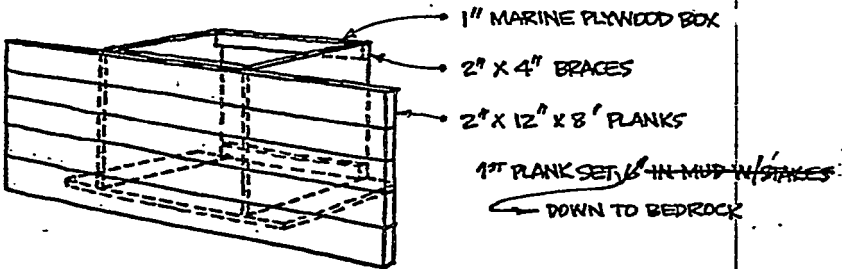
notated



RUTSATZ DAM ENCL. 3

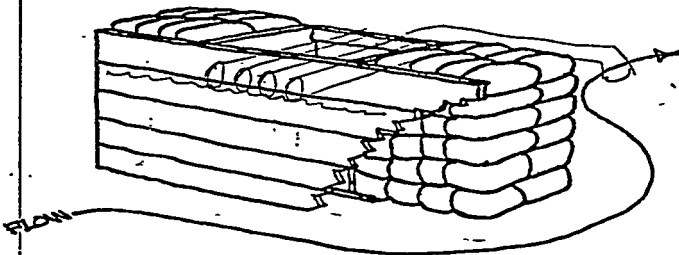
DRAIN POND - DETERMINE SITE - DITCH AROUND CENTER OF DAM

① FABRICATE SPILLWAY AND LOCATE IN CENTER OF SLOUGH

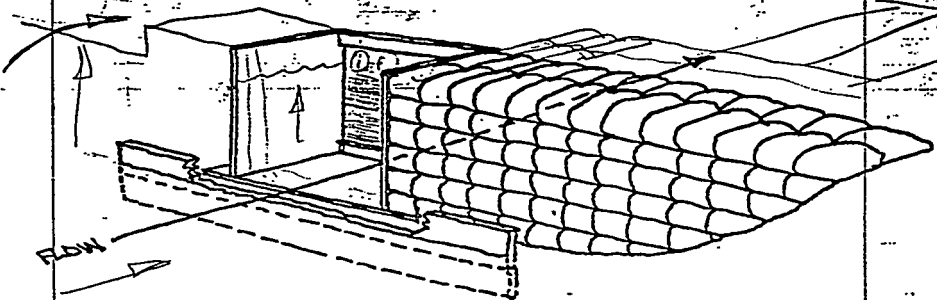


② SANDBAG AROUND SPILLWAY

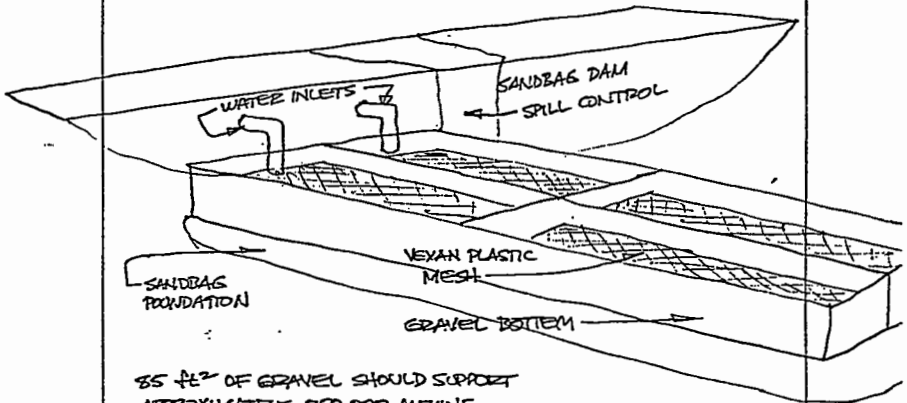
• SANDBAGS FILLED ON SITE



③ SANDBAG CUT TO BOTH ENDS



ENCL 4 INCUBATION BOXES



STREAM MONITOR PROGRESS REPORT

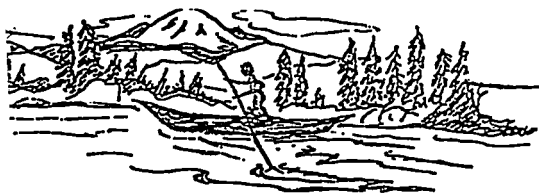
OCT. 5, 1977

By

MICHAEL BARCLAY

FISHERIES HYDROLOGIST

INTRODUCTION The next 3 pages are the NOOKSACK FISHERIES DEPARTMENT STREAM MONITORING PROGRAM REPORT of Sept. 22, 1977. This report is a concise and accurate explanation of the past and present monitoring program activities. However, in this progress report I will clarify some elements and add elements not mentioned. I will also interpret and discuss data gathered over the first 3 months of the program. Finally I will point out those efforts I have found to be of questionable value and those which I feel should be continued or intensified.



NOOKSACK INDIAN TRIBE

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NOOKSACK FISHERIES DEPARTMENT STREAM MONITORING PROGRAM

September 22, 1977

- A. PAST EFFORTS** Both the Lummi and Nooksack Tribes have engaged in monitoring the Nooksack River and its tributaries. Data has been collected by the Nooksack Fisheries Department on basic Chemical (ph, D.O., CO₂) and Physical (temp., flow, turbidity) Parameters and observations have been recorded regarding the general condition of the streams and immediate stream environment during the past three years.

The records kept in the past were inadequate in regards to both the continuity of monitoring necessary to provide a data base and the completeness of transferring the rough data into a useable form.

Beginning in June '77, the Nooksack Fisheries Department began a stream monitoring program for the purpose of determining the enhancement potential of tributaries to the Nooksack River. From June to September the monitoring crew made weekly checks of thirty four tributaries. A Hach Field Chemical Test Kit was utilized for chemical parameters and visual observations of stream characteristics were made and recorded on the stream survey form. (Enclosure one)

Immediate success was realized from this initial three month program in the form of debris removal projects identified by the monitoring crew and carried out by both the regular crew and YCC summer help. In addition, the monitoring crew was able to save thousands of Fry trapped by the extremely low water this year by moving them upstream into deeper pools and constructing both dams, to increase depth, and covers for the pools to provide shade.

This program was funded for three months, however the benefits to Nooksack System Natural production and the importance of establishing a data base warranted continuation of the program through the '77-'78 Fiscal year.

The Nooksack Fisheries Department is still in the process of finalizing objectives for the ongoing monitoring program however a general outline has emerged from this summers experience that will provide a clear picture of our immediate objectives.

Nooksack Fisheries Department
 Stream Monitoring Program
 September 22, 1977
 Page 2

B. IMMEDIATE OBJECTIVES

1. Continue to gather pertinent data from State, Federal, Tribal and Private Agencies, incorporate our data, and consolidate into a comprehensive profile of each stream.
2. Continue stream monitoring program with the following changes:
 - a. Add nitrite, nitrate and alkalinity tests.
 - b. Incorporate pertinent parts of the total resource information (Tri) System. (Enclosures two and three)
 - c. Reduce weekly checks on all streams to monthly with the exception of streams which warrant closer observation.
3. Participate in spawning ground surveys for all Salmonid species.
4. Identify and alleviate problem areas.
 - a. Barriers to fish migration - Locate, describe and obtain authorization to remove barriers. Coordinate with Environmental Protection Agency to have responsible party remove barriers when applicable.
 - b. Lack of spawning habitat - Determine areas accessible to migrating fish, but deficient in adequate spawning habitat, which could be improved through channel improvement and/or placement of gravel.
 - c. Poor quality spawning habitat - Improve quality of existing accessible spawning habitat by reducing siltation and other adverse conditions.
 - d. Low flow, flooding - Determine causes and frequency of extremes and attempt to resolve when feasible.
5. Develop and implement procedures for identification of, and complaint against sources ecological pollution.

Labor

It is difficult to accurately determine the manhour requirements for this program at present. The program will be staffed by a Fisheries Hydrologist and a hydrologist aide, providing a total of 80 manhours/week. Initially their time will be divided at about 32 manhours monitoring and 32 manhours on spawning surveys. The remaining 16 manhours will be spent on items 1 and 5 above. In addition, manpower will be available next summer through one or more summer employment programs to perform tasks identified by the regular crew during the winter and spring.

Nooksack Fisheries Department
Stream Monitoring Program
September 22, 1977
Page 3

Equipment

Our current program has made use of field Hach kits capable of measuring basic chemical parameters (ph, D.O. CO2), thermometers, sample bottles and a recently acquired Gurley Midget flow meter. We need to add field tests for nitrites, nitrates and alkalinity; and a frozen core sampler. We have partial access to a 4 x 4 vehicle and anticipate the need for full use of a 4 x 4 vehicle.

PAST EFFORTS I will first discuss in more detail the monitoring program carried out this summer. On page 6 is a list of the streams monitored. There are also my judgements of each streams relative quality for fish support. On June 13th we began monitoring these tributaries weekly. Except for a mid-summer lapse due to a supply shortage this weekly schedule was kept through Aug. 20, 1977. The parameters monitored were: Temperature, Dissolved Oxygen and Carbon Dioxide, PH, and water clarity. We were able to check all streams once in 2.5 days. The remaining 2.5 work days were spent making foot surveys of these selected streams. Our methods were to begin at the mouth and walk up stream until we faced a barrier to fish migration. Within this reach from mouth to barrier we used a combination of stream evaluation methods.

The two methods employed were: a) THE AQUATIC SUBSYSTEM METHOD OF THE TOTAL RESOURCE INFORMATION (TRI) SYSTEM and b) METHODS OF STREAM REACH INVENTORY AND CHANNEL STABILITY EVALUATION. Both these methods have been adopted by the U.S. Department of Agriculture/Forest Service. These methods were combined because the Fisheries Biologist and I felt we needed to contour the forms and methods to our specific needs. More contouring is needed before we'll be fully satisfied with the system.

Early in the summer, time was spent collecting documents pertaining to the Nooksack River System. Also, contact was initiated with many State, Federal, and local agencies which deal with the Nooksack River resource.

PRESENT EFFORTS The stream monitoring program is continuing, but, on a different schedule. The data gathered will be compiled and interpreted.

A large portion of the monitor crew's time is being spent on developing the Rutsatz incubation and rearing facility. Throughout the next 30 days this project will be high priority.

One assistant was hired for the up-coming spawning survey and tag recovery program. In-between construction days at Rutsatz emphasis will be on this fish identifying project.

The streams listed below are judged by their undisturbed location, constancy of water flow, and quantity and quality of spawning habitat. These are only preliminary judgements - to be substantiated by further study.

TOP QUALITY	AVG. QUALITY	POOR QUALITY
Thompson	Cavanaugh	Porter --- a, b
Deadhorse	Edfro	McCarty -- b, c
Boyd	Skookum	Jones --- b, d
Maple	Black Slough	McCaughey - a, b, c, d
Gallup	Toss	Smith --- b, d
Kenny	Glacier	Fishtrap - d
Hutchinson	Canyon NF	Bertrand - d
	Canyon MF	Tennile -- d
	Cornell	
	Racehorse	
	Ruteatz	
	Johnny Slough	
	Wick's Slough	
	Anderson	
	Kendall	

Explanation of Stream Quality Category:

TOP QUALITY -- All are relatively undisturbed, have a constant water supply good quality and quantity spawning habitat, and a good water quality. They also yield the greatest number of fish.

AVG. QUALITY - All are average in the above criteria.

POOR QUALITY - All these streams are plagued by one of the following:
 a) Extreme flooding has destroyed available spawning habitat. b) Extreme drying during the fall has prevented upstream utilization. c) Poor logging practices has resulted in barracading migration. d) Agricultural effluents such as silt, manure, and chemical fertilizers have killed off the run.

In regards to the above category of POOR QUALITY streams there is no natural reason the stream is sterile. In fact, some of these floodplain tributaries are historically the most productive.

FUTURE OBJECTIVES As soon as possible I would like to begin monitoring two bodies of water-RUTSATZ and JOHNNY SLOUGH. A complete water analysis will be done in coordination with a convenient laboratory, probably the FRESH WATER INSTITUTE of W.W.U. The purpose of this more intense monitoring is to determine the feasibility of a large scale fish culture facility at either or both of these locations.

Another goal is to give as much assistance as time and manpower will allow to the coordination of the spawning and tag recovery program being pursued by the Washington Department of Fisheries. I feel this is a good opportunity to express our eagerness and ability to manage the Nooksack River fishery.

Next summer the tribe anticipates a YCC program. The coordinator wishes to spend more time helping the fisheries department in stream enhancement. I will therefore spend time this winter ranking streams according to need of enhancement. Projects may include: Removal of barriers, bank stabilization, Gabion weir placement, and spawning gravel placement.

I will also, this winter, research some ~~common~~ ~~problem~~ areas plaguing fish reproduction and instream survival. ~~These~~ include the impact of logging which results in a disrupted water budget, poor agricultural practices which results in extreme siltation, water withdrawals, and fertilizer inputs. Solving these problems may be impossible due to the economics of the two industries involved, but, I will research it.

Besides all the above efforts I will continue those projects begun in June.

DATA DISCUSSION

The following two graphs illustrate those parameters monitored over the summer. These are only preliminary graphs, I will later improve the design and improve the accuracy. However, this first graphic illustration serves its purpose.

PH---The upper and lower limits which fresh water fishes can tolerate is 9 and 6 respectively. In no stream was the PH greater than 9 or less than 6.

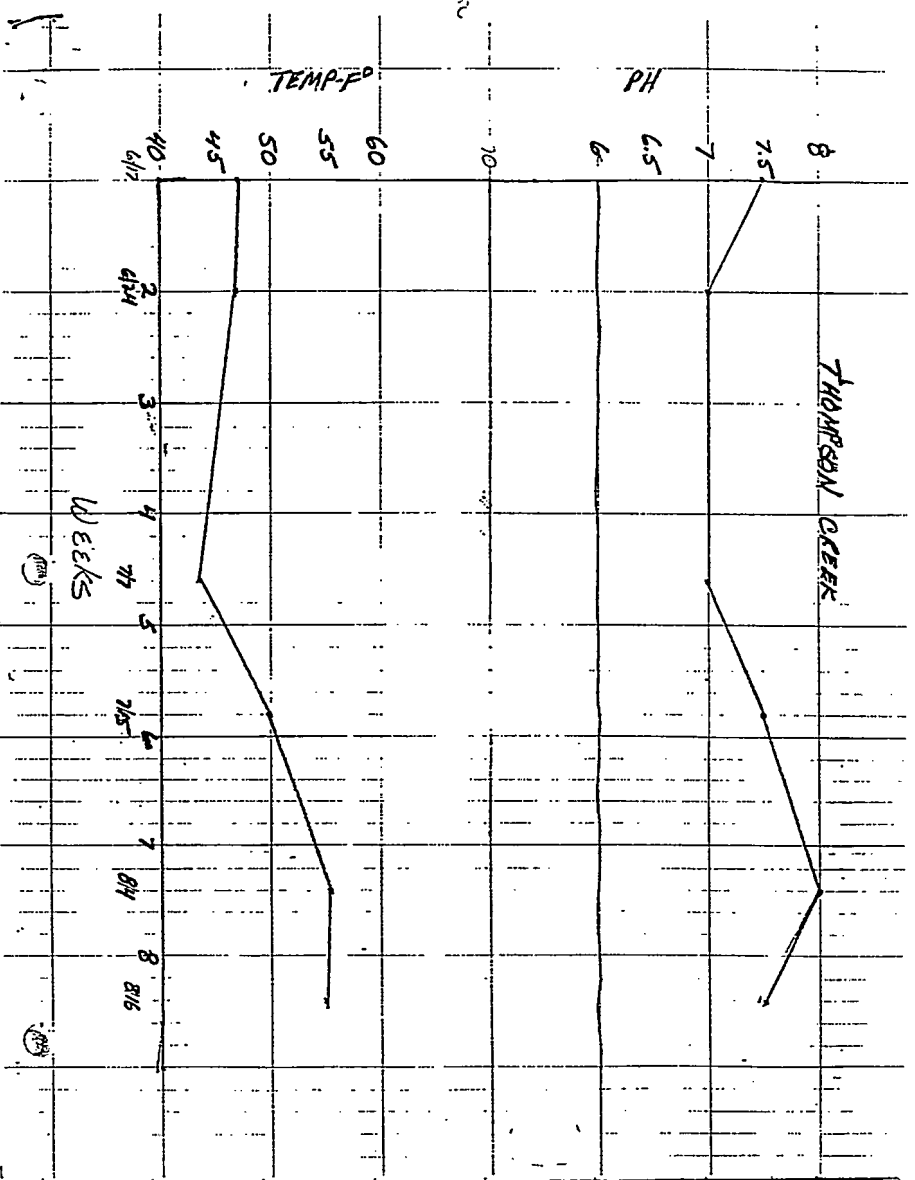
Temperature---Temperature's greatest effect on fish is its direct effect on the Dissolved Oxygen concentration. The greater the temperature the lower the Dissolved Oxygen concentration, and vice versa. In no stream did the temperature become lethal. However, in some standing pools where the temperature rose above 85°F fry were killed. These pools were separated from the flowing water.

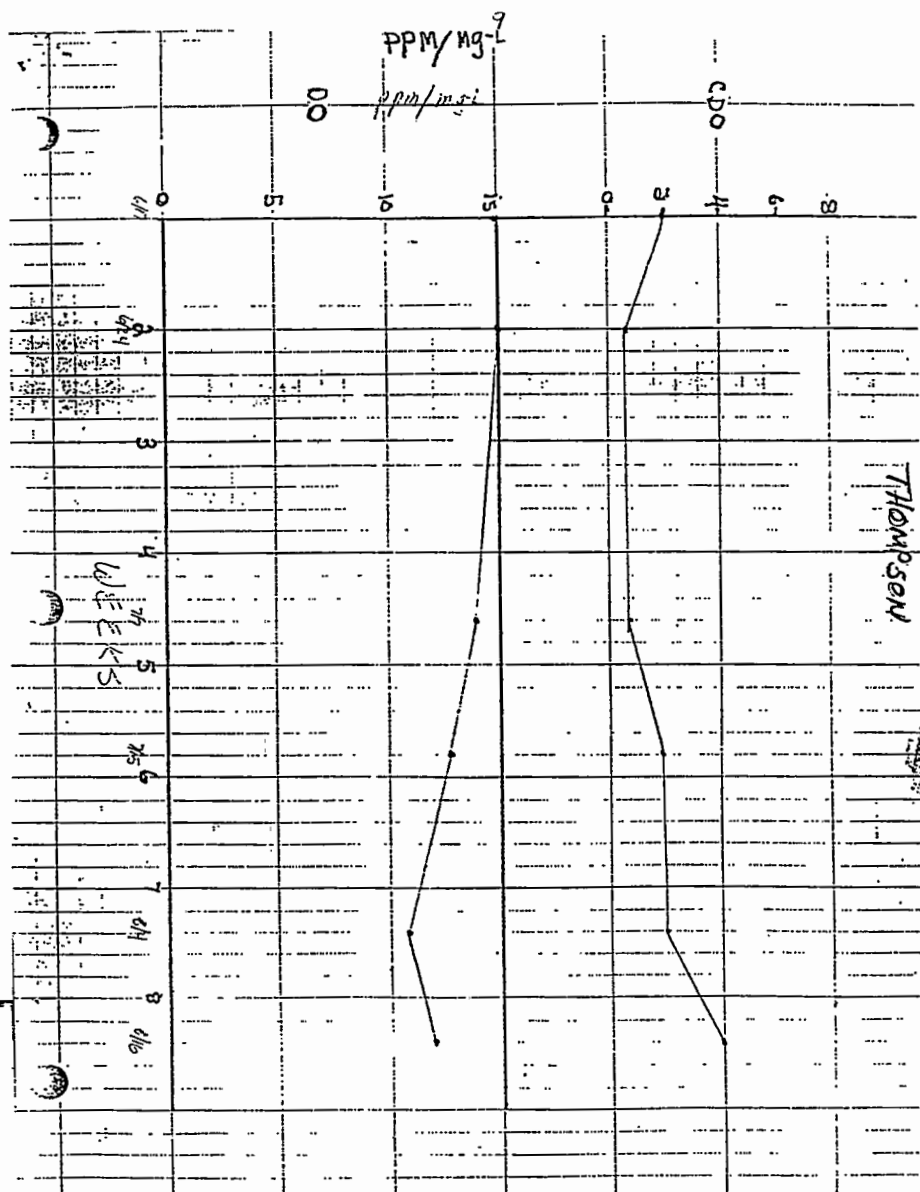
Dissolved Oxygen---The minimum level; a fresh water fish can tolerate is about 6.9 mg/l. In no stream did the DO fall below 8.5 mg/l.

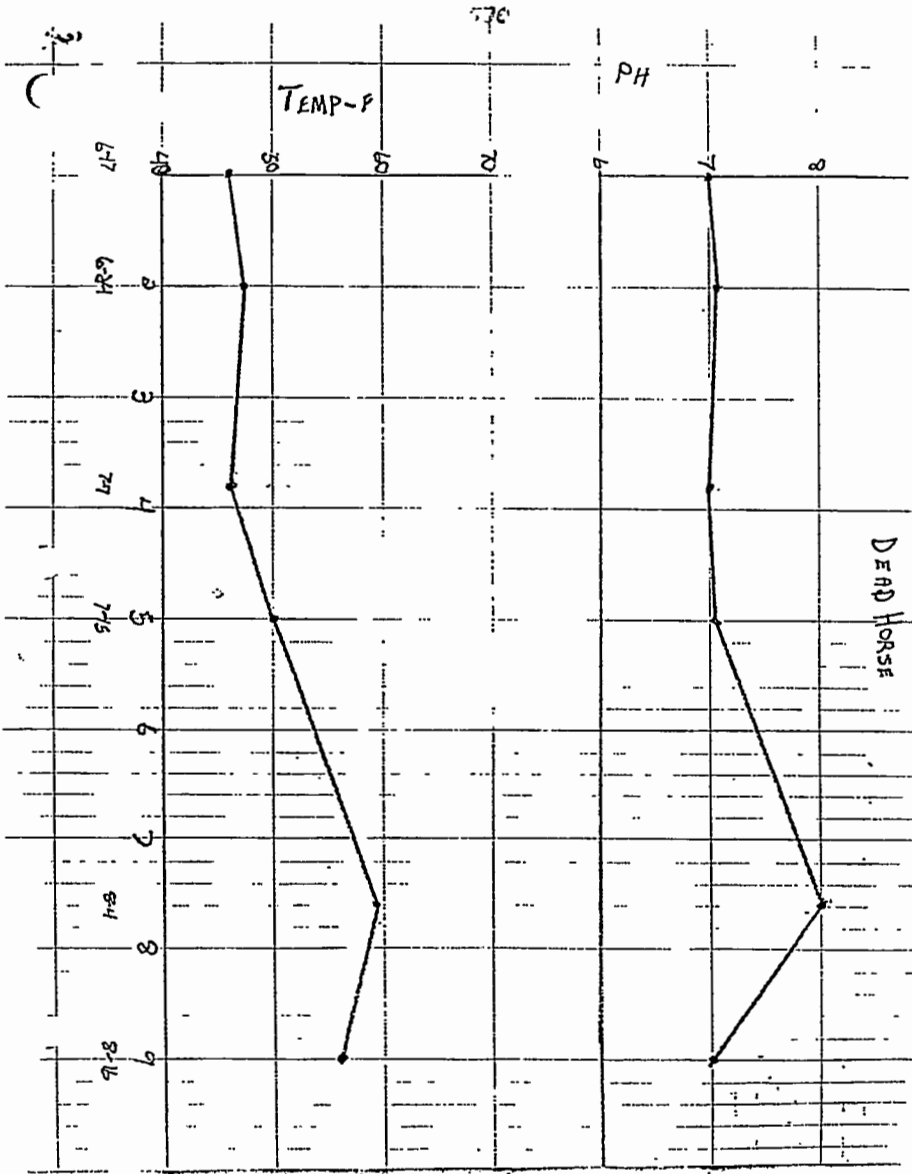
Carbon Dioxide---The upper CD tolerance of fresh water fishes is about 6 mg/l*5. In no stream did the CD levels reach this limit. Most hovered around 3 mg/l*5.

Turbidity---Turbidity is the amount of suspended solids in water. This can be qualitatively measured by water clarity and water color. For a more precise measurement a turbidity meter is needed. The importance of this measurement will first be determined before an instrument is purchased.

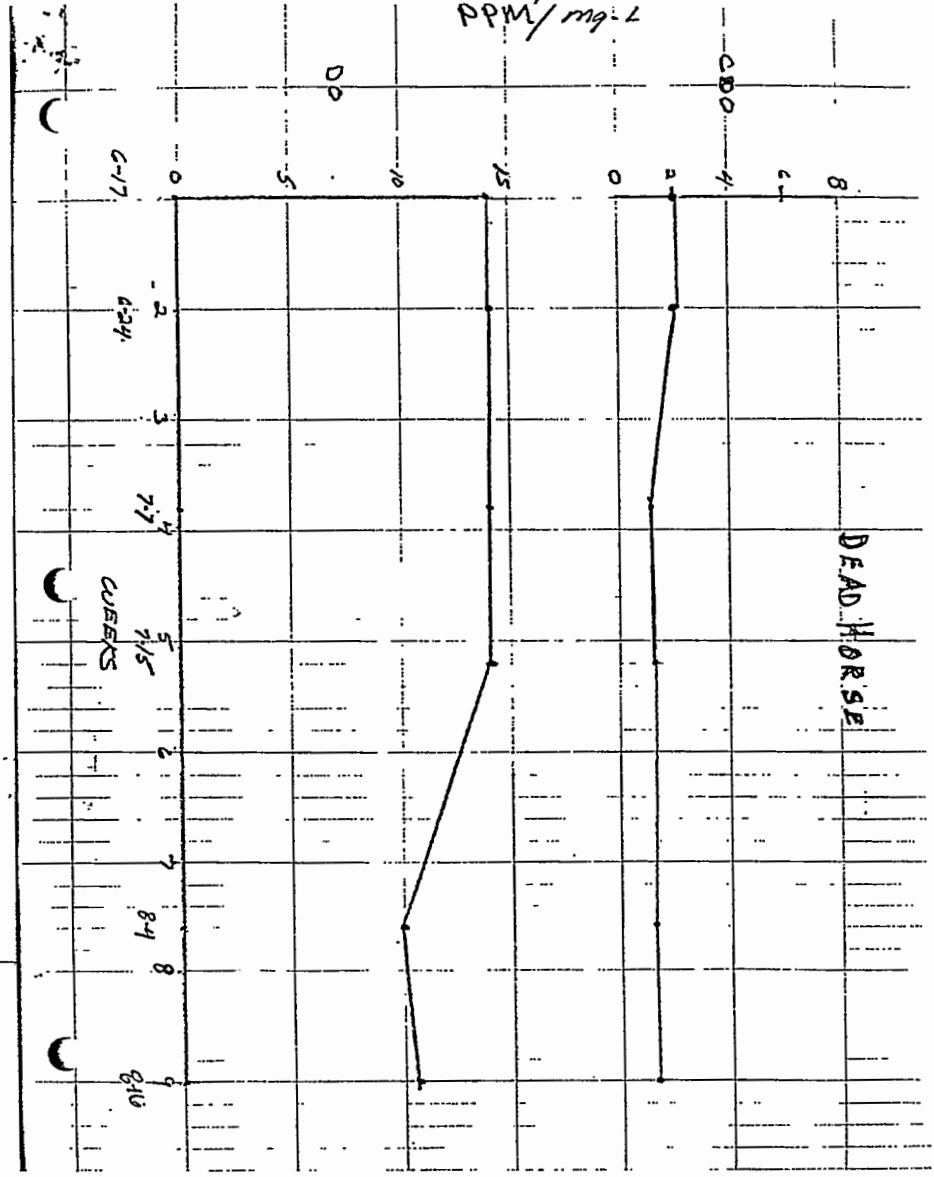
The graphs obviously show the chemical fluctuations over the summer months. I do not have a lot of confidence in the actual data. This is partly due to the elementary methods used and a lack of genuine concern for accuracy by the summer monitoring crew. These are ball park figures, but I am confident that the tolerance limits discussed above were not reached in any of the streams checked.







PPM/mg-L



PROGRAM CHANGES AND CONTINUATIONS

Because chemical fluctuations are not as great as anticipated and will become even less during the winter, I have rescheduled the Monitor Program sampling from weekly to every 3 weeks. I will however, begin to monitor selected streams more closely than before. These may be either top quality or poor quality streams.

The survey system used this summer on a few streams is a good one. I intend to refine my methods and materials this winter so that I can go full bore early next spring surveying and describing each important stream.

I have found, during my routine checks, smaller streams which may warrant more attention than that given to some of the larger streams. I will ~~continue to~~ ~~use~~ streams for further consideration.

I will continue to revise and refine the methods used until I am fully satisfied with the system. This is not to say that any data collected in the mean time is not valid. I feel comfortable with the progress made thus far, but not satisfied.

Michael Barclay



NOOKSACK INDIAN TRIBE

P. O. Box 157
Deming, Washington 98244
Telephone (206) 592-3021

November 14, 1977

OFF RESERVATION SHARING -Or- PHASE-IN OF THE 50-50 Boldt Orders.

The stated purpose of "phasing in" the 50-50 sharing formula ordered by the Federal Court is to mesh the future objective of a 50-50 allocation with the present reality of 6,372 non treaty fishermen and 1,438 Indian fishermen. It has proven to be inflammatory to allow more fishing time to Indians as a means of providing equal opportunity. An alternative method is to adjust fleet size to parity and allow equal time.

It is of utmost importance that one fact be understood by all parties involved in these discussions. Overall numbers of salmon native to Puget Sound have steadily decreased as a direct result of overfishing and environmental degradation. With the insignificant exception of a token reduction of the number of commercial fishing licences in 1975 and 1976 the state of Washington has failed to seriously approach the overharvest of the salmon resource. Commercial licences doubled between 1970 and 1974. The state of Washington and the U.S. government continue to allow logging operations, agricultural practices, and industrial firms which impact the Nooksack watershed to proceed in a way that continually reduces the quality of the environment and its ability to support the fragile balance of nature. A properly managed watershed, in conjunction with a sensible number of commercial licences might turn the downward trend of numbers of returning salmon around before the extinction of the species occurs. (consider seriously the once great runs of salmon native to California) Only after effective management is practiced will relative fleet size discussions make any sense. Our particular position follows:

The difficultys of adjusting fleet size are complex to say the least. One thing we know for certain is that it will take time. We understand the sense of allowing the adjustment, and as a consequence, the allocation, to be "phased in" over several years. However, We of the Nooksack Tribe depend on the fisheries of the Nooksack-Samish terminal area as does the Lummi Tribe. The combined fishing effort of the Lummi and Nooksack Tribes is currently sufficient to catch half of the harvestable fish returning to our river system. Consequently there is no need to phase in the treaty allocation as it is already phased in. The Nooksack Tribe is an up-river tribe. Much like most up-river tribes, we suffer more than tribes with developed marine fisheries when closures occur, often having no opportunity at all. In pursuit of a solution to this problem a Joint Management Proposal containing an allocation agreement is being negotiated with the Lummi Tribe with the objective of allocating the treaty harvest between the two tribes. The agreement is in its third draft, and is being expanded to include a discussion of some specific goals of Nooksack River system Indian County Management.

On Reservation Fisheries and Ceremonial and Subsistence Fisheries

These two areas are being addressed together because they are both subjects which are considered by the tribes to be non-negotiable treaty rights.

Beyond the distaste many non Indians have for treaty rights, the main problem inherent to the on reservation, and ceremonial or subsistence fisheries is one of accounting for the number of fish harvested but not sold. The solution to this problem lies within tribal management. We are in contact with our fishermen and know reasonably well how many fish are harvested which do not appear on fish tickets.

Steelhead The Nooksack^h Tribe considers steelhead to be another species of salmon. Nooksack fishermen feel threatened by any discussion involving giving up or limiting in any manner their treaty rights. However the unique nature of steelhead, and its importance to sports fishermen point toward the good sense of compromise on the issue. Nooksack is willing to discuss reducing fishing effort on Steelhead, provided the task force is willing to treat us fairly.

Gear and Effort proposals As mentioned in the discussion of phasing in the 50-50 allocation the Nooksack Tribe is in an unusual position. Regarding overall treaty and non-treaty effort, there must be a major reduction in the non-treaty fleet, and a limited program of increase in the treaty fleet. Regarding intertribal effort, there must be substantial increase of the Nooksack^h fleet, and a limited increase of the Lummi fleet.

We see our immediate need to be aquisition of twelve skiffs and one purse-seiner with complete gear sufficient to compete in the marine fishery for one full season.

Current Tribal Management

The Nooksack Fisheries Department is staffed with 9 personnel. The positions are Manager, Enrollment, Biologist, Hydrologist, Hydrologist assistant, Fisheries aide, Chief of patrol and two patrolman.

Management is accomplished with direction from the Tribal Council and Fish Committee. The manager reports to the Director of Programs.

The manager, chief of patrol, ~~reports to~~ (both representatives to the Point Elliot Treaty Council) and biologist coordinate between the fishermen, fish committee, NWIFC and state and federal agencies regarding management decisions affecting the Nooksack^h Tribe.

The enrollment officer takes care of tribal enrollment, and is the fisheries secretary. The Hydrologist and his aide perform survey work on the Nooksack River and its tributaries. This work includes spawning surveys and tag recoveries.

The fisheries aide maintains catch data, and spends part of his time on the bay patrol. Patrols are maintained on both the river and in Bellingham Bay.

Our immediate goal, simply stated, is self regulatory status. We are oriented toward Indian Country Management of the Nooksack watershed and pursuant to that goal we have entered into extensive discussions with the Lummi Tribe. Our position is that we who live on the river are clearly in better contact with the watershed than any other agency.

The Nooksack Fisheries Department is in the process of writing the third draft of what began as the Lummi-Nooksack Allocation Proposal. In its third draft, the proposal has been expanded beyond allocation into a proposal for Joint Management of the Nooksack Watershed.

FH/mj
cc/file

Area Code (206)
598-4851



THE SUQUAMISH TRIBE

P.O. Box 556 Suquamish, Washington 98392

TO: Regional Task Force

FROM: Suquamish Tribe

RE: Position Statement regarding Northwest Salmon Fisheries

DATE: November 14, 1977

Enhancement

The Suquamish request for enhancement of the salmon resource of the East Kitsap Peninsula watershed is detailed in a separate proposal. Briefly, the Tribe asks that the production in East Kitsap be maintained at a specific level to insure a constant level of income to a portion of the Suquamish fishing fleet. Further, the Tribe feels that a dependence on more than one salmon species will help stabilize the East Kitsap fisheries economy. The Tribal enhancement proposal therefore outlines an annual production schedule of 4,000,000 chum salmon, 1,500,000 chinook salmon, and 500,000 coho salmon. Production may be maintained through natural production, artificial propagation, or a combination of both. Artificial propagation sites must be chosen in such a way that the chance of interbreeding between hatchery stocks and natural stocks is kept to a minimum. Assuming all production will be supplied from artificial propagation only, a maximum capitalization cost of facilities of \$650,480 is developed. Annual operation and maintenance costs for the above facilities over a four year period is projected at \$540,480. An additional \$20,220 is requested for data generation on stream production.

Included in the proposal is a request for continuation of a Suquamish tagging study conducted in the fall of 1976. Harvest management strategies and allocation schemes for the Treaty Indian share of South Puget Sound destined coho and chum salmon will be based on the information generated from a long term study. A total funding of \$400,000 for a 4 year program is requested

Off Reservation Sharing

The Suquamish Tribe will not accept a phase in of the 50-50 sharing allocation of any salmon stock originating from Puget Sound. All recognized Puget Sound Tribes have been subjected to a "phase in" for the past 3 years due to the

efforts of the State of Washington to subvert the Boldt decision and undermine and eliminate individual tribal rights, as has been the case since the signing of the Treaties over a century ago. However, a phase in of the Treaty share of salmon stocks of Canadian origin may be acceptable. Such a phase in could not extend over a 5 year time period and could not begin at anything less than 35% as the initial Treaty share. The acceptability of such a phase in would be dependent upon the implementation of a management and enforcement system agreeable to the Tribe.

Subsistence and Ceremonial Fisheries

It is the position of the Suquamish Tribe that salmon catches for subsistence and ceremonial purposes can be included in the overall Treaty share provided that the existence and special significance of these fisheries continue to be recognized. In return the Tribe expects the Tribal enhancement goals for East Kitsap to be realized.

Steelhead

The designation of steelhead trout as a commercial fish must remain. Tribal fishermen must be allowed to continue to sell steelhead where these fish are caught incidentally in marine waters during fisheries for other salmon species. Although Tribal fishermen have the right to fish commercially for steelhead in freshwater, the Tribe has refrained and will continue to refrain from exercising that right as long as Tribal enhancement goals are realized. It must be emphasized that the Suquamish will never give up the right to commercially fish steelhead. Rather, Tribal fishermen will not exercise that right in freshwater fisheries.

Gear and Effort

In 1975 the Suquamish fleet consisted of 1 purse seine boat and 19 gillnet boats, most of which were skiffs under 20 feet long. Only 6 gillnetters had total income over \$10,000 and of these, 4 were leased from non-Indian fishermen. The fleet expanded to 5 purse seine boats and 22 gillnet boats in 1976. Only 7 gillnet boats had earnings over \$10,000 and 5 of these were leased. Three out of the 5 purse seine boats were also leased from non-Indians. For 1977 the fleet regressed somewhat to 2 purse seines and 21 gillnetters. Lease boats will again be the top money carvers in the gillnet fleet.

Fluctuations in the fishing fleet have been the direct result of spurious contracts between Suquamish fishermen and non-Indian boat owners in which the boat owners end up the benefactor from Indian fishing effort. Such agreements have been outlawed in the new Suquamish Fishing Ordinance, which also provides that all boat contracts must be approved by the Tribal Council before fishermen will

be allowed to fish. This will reduce the fishing fleet even further than it's present level. On the other hand, the usual and accustomed fishing grounds of the Suquamish Tribe, extending from the northern tip of Vashon Island to the Frasier River in Canada and including all of Hood Canal, are the largest of any recognized Tribe in the case area. It is therefore felt that some tribal fleet expansion can be accommodated.

Currently there are 215 B. I. A. hunting and fishing permits issued to Tribal members. These permits establish the members right to fish. Fishing licenses issued through the Pt. Elliott Treaty Council establish a member's intent to fish. This year 34 owner cards and 21 operator cards were issued to Suquamish members. Holders of owner cards must be boat owners and are allowed to sell fish. Those obtaining operator cards are only allowed to assist in fishing with an owner.

An overall limit to the size of the Tribal fleet is desirable and should coincide with the size of the harvestable resource. The Tribe has taken the position that, through 1985, the number of owner licenses issued to Suquamish members should be fixed at 75. Each gear type will require a specific number of licenses depending upon it's efficiency. For example, purse seines will require 10.0 licenses, gillnet boats over 32 feet long will require 1.5 licenses, gillnetters between 22 and 32 feet will require 1.0 licenses, and skiffs under 22 feet will require 0.7 licenses. A desirable fleet composition breakdown is as follows:

Number	Gear Type	License/boat	Total
2	Purse Seine Gillnet	10.0	20
14	a) 32+ feet w/power reel	1.5	21
20	b) 22-32 feet w/power reel	1.0	20
20	c) 16-22 feet-no power reel	0.7	14

Presently Tribal fishermen either own or have valid contracts on the remaining two purse seine boats, one gillnet boat over 32 feet in length, three gillnet boats between 22 and 32 feet, and perhaps 10 skiffs. Most of the skiffs are either in poor condition or lack a good set of gillnets. The Suquamish therefore request that initial funds be made available to increase the fleet by 15 skiffs, 15 gillnet boats at 26-28 feet, and 10 gillnet boats at 32 feet. The cost of skiffs would include two sets of gillnet gear. Prices for the larger gillnetters represent rough estimate only based upon the average price per linear foot of boat. Prices are as follows:

Gear	Cost/Unit	Total Units	Total Cost
Skiff	5,000	15	75,000
Gillnet -26'	25,000	15	375,000
Gillnet -32'	30,000	10	300,000

A total of \$750,000 would therefore be required. However, the Tribe feels that each fisherman should be required to pay one-half of the total cost of the gear used, with payments to be amortized over a period of years. Thus, the total amount requested for Tribal gear-up is \$375,000. Funding to individual tribal members would be tribally administered and dependent upon the Treaty Indian harvest and the fishing experience of the member in question.

On-Reservation Fisheries

At this time the Suquamish Tribe cannot agree to include the on-reservation harvest in the overall Treaty share. Due to the placement of the boundaries for Salmon Management Area 10, the integrity of the on-reservation fishery is already threatened. An intensive "all citizen" fishery in Area 10 could preclude the Tribe from exercising their on-reservation fishing rights altogether. It is felt that any further degradation of the on-reservation fishing concept would endanger the special significance of this very important fishery. The Tribe may be willing to set optimum levels on the harvest of each species.

Management

Attached you will find the pertinent parts of the fisheries code relating to management and the filing of regulations. Also attached is the organization chart depicting the structure of the Fisheries Department.

As you will see, regulations are filed only after input from our technical staff who in turn consults with any other technical people they may need, i. e., Norfish, Washington Department of Fisheries, Washington Department of Game, U.S. Fish and Wildlife Service, National Marine Fish, etc. The technical report is turned over to the Fisheries Manager who consults with the Tribal attorneys and the fishermen before presentation to the Tribal Council for approval and submission to the Court and WDF.

The Suquamish Tribe is also a party to the Point Elliott Treaty Council. This body writes regulations for those waters where usual and accustomed overlaps. Each of the nine Tribes of the Point Elliott Treaty Council elect a voting delegate to the Council. After consultation with each Tribe's technical staff regulations are proposed to the Council and voted on. A simple majority validates the regulations.

CHAPTER 4: FISHERIES MANAGER AND FISH COMMITTEE
MEMBERSHIP AND RESPONSIBILITIES

4.1 The Tribal Council shall appoint a Fisheries Manager who shall be responsible for

- (a) managing the Suquamish Tribal Fishery
- (b) coordinating the management of the Tribal Fishery with the tribal biological personnel and with the Point Elliot Treaty Council
- (c) recommending fishing regulations
- (d) fisheries enhancement efforts of the Suquamish Indian Tribe, and
- (e) carry out any other duties delegated to the Fisheries Manager under this Ordinance or by the Tribal Council.

4.2 The Suquamish Tribal Fish Committee

4.2.1 The Suquamish Tribal Fish Committee shall be composed of five (5) elected members.

- (a) One member representing the small inside gill netters (terminal saltwater and freshwater fishermen)
- (b) One member representing the large outside and inside gill netters (gill net units greater than twenty (20) feet)
- (c) One member representing the purse seine fishermen
- (d) Two tribal elders (preferably former fishermen).

4.2.2 In addition to the Committee members defined in sub-section 4.2.1 of this Ordinance, there shall be one alternate elected for each position, who will assume the duties of the regular member in said member's absence.

4.2.3 The responsibilities of the Suquamish Tribal Fish Committee shall include

- (a) representing the various groups of fishermen in an advisory capacity
- (b) attending meetings which involve development of
 - (1) Fishery Management strategies (enhancement, enforcement, etc.)
 - (2) fisheries regulations (annual and emergency)
 - (3) fisheries codes.
- (c) organizing fisheries meetings which inform the general body of fishermen about tribal management strategies and policies.

4.2.4 All duties and responsibilities of Fish Committee members shall be carried out pursuant to the Suquamish Fishing Ordinance.

4.2.5 Any registered, voting Suquamish tribal member is eligible for appointment to the Fish Committee, provided that no two (2) or more members of an immediate family may serve on this Committee at the same time. Immediate family shall be defined as a parent or parents and their offspring.

4.2.6 Appointment of Committee members shall be pursuant to the following:

- (a) The small inside gill netters, the inside and outside gill netters, and the purse seiners shall each elect one member to the Committee to represent the interests of their respective fishing group
- (b) The two (2) additional members of the Committee shall be elected by the Tribal Council.

4.2.7 The authority to remove Fish Committee members by simple majority vote shall rest with

- (a) each of the three (3) fishing groups, composed of the small inside gill netters, the large inside and outside gill netters, and the purse seiners over their respective representatives to the Committee
- (b) the Tribal Council over the two (2) tribal elders appointed to the Committee

(c) tribal fishermen over any elected officer of the Fish Committee,

(d) and shall be preceded by written notice to the Fish Committee.

4.2.8 Any officer or member subject to removal shall have the charges against him/her preferred in writing at least ten (10) days prior to the next scheduled meeting of the Committee. At that meeting the officer or member shall have the right to a fair hearing before the Committee, tribal fishermen and the Tribal Council.

CHAPTER 5: TRIBAL REGULATIONS5.1 Procedure for Development and Filing of Tribal Fishing Regulations

5.1.1 Within sixty (60) days of the normal run entry of a particular stock or race of fish into a usual and accustomed fishing area, technical personnel shall produce a first draft of the proposed regulations, which shall be reviewed and discussed by the Fisheries Management and technical personnel. All proposed regulations shall conform to the Suquamish Fishing Ordinance, and provide for conservation of the resource.

5.1.2 Within fifty (50) days of a normal run entry of a particular stock or race of fish into a usual and accustomed fishing area, the Fisheries Manager and technical personnel shall meet with the Tribal Fish Committee and tribal fishermen to review the proposed regulations.

5.1.3 Within forty (40) days of the normal run entry of a particular stock or race of fish into a usual and accustomed fishing area, the proposed regulations, including any revisions suggested by the Fish Committee shall be presented to the Tribal Council by the Fisheries Manager, technical personnel and the Fish Committee Chairman for review and discussion. Upon completion of said review and discussion, the Council, as the final authority in the adoption of fishing regulations, shall at its discretion approve said regulations with or without the revisions suggested by the Fish Committee.

5.1.4 Within forty (40) days of the normal run entry of a particular stock or race of fish into a usual and accustomed fishing area, the proposed regulations, including any revisions suggested by the Fish Committee shall be transmitted to the State for comment.

5.1.5 Within thirty (30) days of the normal run entry of a particular stock or race of fish into a usual and accustomed fishing area, the final draft of the tribal fishing regulations shall be mailed to attorneys of record, defendants, intervenors, and amici curiae who have a direct interest in Suquamish fishing policies.

5.2 Procedures for Development and Filing of Emergency Openings Closures

5.2.1 The Fisheries Manager shall have the authority to initiate emergency openings and closures, provided that

- (a) the Fish Committee is notified prior to such emergency action, if possible, and no later than forty-eight (48) hours after said action
- (b) the Fisheries Manager shall initiate emergency regulations pursuant to the provisions of this Ordinance and any other fishing regulations adopted hereunder, including any emergency regulations required by federal law for necessary conservation and/or equitable allocation of the resource.

5.2.2 If the Fish Committee disapproves of the Fisheries Manager's initiation of emergency regulations they may request a meeting with the Tribal Council at which there shall be present the Fisheries Manager, technical personnel, and a representative member of the Fish Committee.

5.2.3 The Tribal Council shall resolve any Fisheries Manager/ Fish Committee dispute by

- (a) supporting the emergency regulation initiated by the Fisheries Manager, pursuant to which no action will be taken, or
- (b) rejecting the actions of the Fisheries Manager and directing same to rescind within twenty-four (24) hours the regulation(s) at issue.

5.2.4 Emergency regulations shall be effective upon their adoption, or if different, as provided in the emergency regulations, shall be enforced upon service on a tribal fisherman or after the passage of twenty-four (24) hours whichever is the sooner.

5.3 Special regulations may be promulgated from time to time establishing special areas, season, gear, and limits applicable to any person subject to this Ordinance.

5.4 Fishing areas and/or catch reporting districts shall be pursuant to sub-section 1, 4.23 of this Ordinance.

5.5 The Suquamish Tribal Council may delegate to the Treaty Council, by resolution, the power to

- (a) manage the fishing areas that the Suquamish Indian Tribe has in common with other members of the Treaty Council, or
- (b) negotiate in common regulations with tribes not members of the Treaty Council.

5.6 The Port Madison Suquamish Indian Reservation and all waters off reservation fished by the Suquamish Indian Tribe are closed to tribal fishing unless specifically opened by properly adopted annual or emergency regulations promulgated under this Ordinance.

5.7 Commercial Fishing Tax

5.7.1 Commercial fishermen exercising fishing rights pursuant to this Ordinance shall pay a five percent (5%) tax on gross sales of their catch, provided however, that the Suquamish Tribal Council may change the amount of tax each year before the beginning of the fishing season.

5.7.2 The Tribal Council may authorize a fish buyer to withhold the Tribal Fish Tax at the time of each sale of fish and/or shellfish. A list of buyers so authorized shall be distributed to the Fishermen and kept available in the Tribal Office. Any fish buyer withholding the Tribal Fish Tax shall remit the amount withheld to the Suquamish Indian Tribe on a monthly basis or more frequently if so requested by the Tribal Council. Each payment shall be verified against fish tickets and logbook for the sale involved. The fish buyer shall be issued a receipt for the amount of tax remitted.

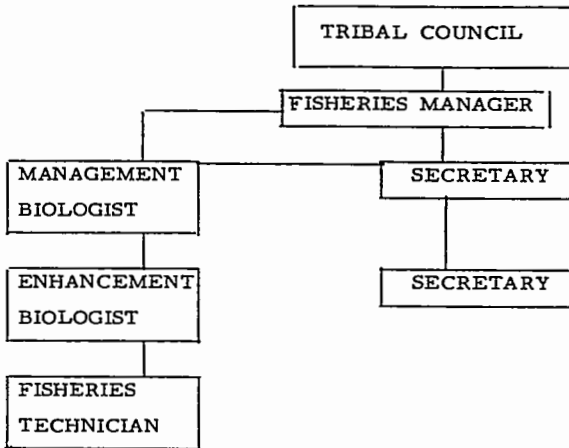
5.7.3 Forfeiture of tribal authorization for a buyer to purchase fish from Tribal Commercial Fishermen shall be for violation of procedures set down in Section 5.7.2 of this Ordinance and shall be through Suquamish Tribal Council and/or Fish Committee decree.

5.7.4 If a fish buyer authorized to withhold the Tribal Fish Tax at the time of sale does not do so, the fisherman shall pay the amount of the tax to the Tribe. At the time of payment of the tax the fisherman shall present his logbook and fish tickets for the sales involved. A receipt shall be issued to the fisherman for the amount of taxes paid, and the logbook and the fish tickets shall be returned to him/her immediately.

5.7.5 The funds raised by the Tribal Fish Tax shall be used in the Tribal Fisheries Program.

5.7.6 Failure by Tribal Commercial Fisherman to pay the fish tax as prescribed in this section is a violation of this Ordinance, and is subject to the sanctions found in CHAPTER 8 and/or sub-section 3.3.6 and sub-section 3.3.7 of this Ordinance and the Suquamish Law and Order Code. Each failure to pay is a separate violation, and each is independently actionable.

ORGANIZATIONAL CHART
OF THE
SUQUAMISH INDIAN TRIBE'S
FISHERIES MANAGEMENT PROGRAM



**Enhancement and Management
of the Salmon Resource
Indigenous to the East
Kitsap Peninsula Watershed**

Submitted by:

**The Suquamish Tribe, Port
Madison Indian Reservation**

Prepared by:

**Randy Hatch,
Fishery Biologist**

Funding Proposal Summary

Funding for long term enhancement and management research of indigenous East Kitsap salmon stocks is requested. The goal of enhancement is the annual production of 4,000,000 chum salmon smolts, 1,500,000 chinook salmon smolts, and 500,000 coho salmon smolts. Requested funding is broken down as follows:

Maximum Capital Cost of Facilities	650,480
Maximum Operation and Maintenance Costs (4 year period)	540,480
Stream Production Research Costs	20,270

Management research is aimed at: 1) the identification of distinct salmon stocks, 2) the accurate estimation of run timing, 3) the determination of routes and rates of migration. Funding for a 4 year tagging study is requested. The annual cost is projected at 100,000 for a total 4 year cost of 400,000.

The total funding requested is therefore as follows:

Enhancement	1,211,230
Management	400,000
TOTAL	1,611,230

Introduction

The Suquamish Tribe is now the only federally recognized tribe with usual and accustomed fishing rights in both the on-reservation waters of Port Madison Bay and Marine Salmon Management Area 10E (See Figure 1). In light of the fact that neither the Washington Department of Fisheries nor the Washington Department of Game plans to develop the salmon resources of East Kitsap, the Tribe feels responsible for not only the management but also much of the enhancement of East Kitsap fisheries. Toward that end the Suquamish Tribe is submitting the following proposal to the Presidential Task Force on Northwest Salmon Fisheries for the enhancement of salmon stocks indigenous to the East Kitsap Peninsula watershed.

This proposal has three primary goals. First, the Tribe wishes to provide a minimum annual income to those Suquamish fishermen who will depend almost entirely on the fisheries of East Kitsap for a living. Second, the Suquamish wish to expand the economic base of the Tribe through the operation of a salmon hatchery as well as through increased revenues from fish taxes. Third, the Tribe is deeply committed to the preservation and enhancement of those natural stocks of salmon which still survive within the East Kitsap watershed, and desire that the management of both mixed stock and East Kitsap terminal fisheries along with the enhancement of the East Kitsap watershed is carried out to insure natural stock preservation.

The proposal has been broken down into two main sections. Section one deals with the enhancement of the salmon resources within Management Area 10E and Port Madison Bay and is further divided into three subsections. The first of these is concerned with the present state of both natural and artificial production within East Kitsap, while the second identifies possible future areas of enhancement activity. Subsection three outlines the request for funding, part of which will be applied toward basic research to determine which of those enhancement areas listed in subsection

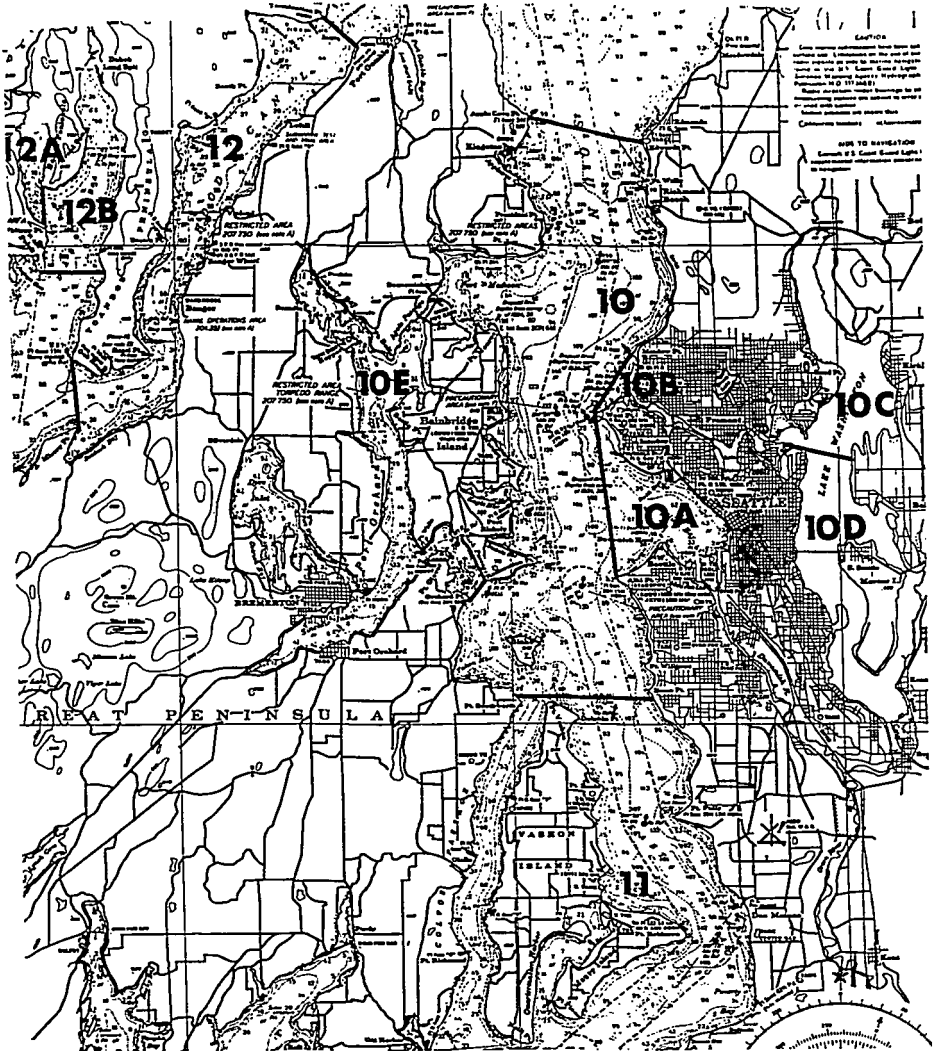


Figure 1. Salmon Management Areas Within Puget Sound

two will be consistent with necessary management considerations and natural stock protection. The remaining funding requested was developed based on the assumption that the necessary production in East Kitsap would be supplied by artificial propagation facilities only.

Section two presents a discussion on the necessity of management oriented research to determine routes and rates of migration of distinct salmon stocks within the South Puget Sound Region of Origin. Such information will be vital to the development of harvest management strategies as well as the equitable allocation of the Treaty Indian share of South Puget Sound stocks. Funding for a long term tagging study is requested.

Enhancement - East Kitsap

In light of the fact that no comprehensive study has yet been conducted on the natural and artificial production potential of the East Kitsap watershed, and how such production would fit into the management of mixed stock and terminal fisheries, the Suquamish enhancement proposal identifies an overall level of salmon production necessary to provide a minimum annual income to a portion of the total Suquamish fishermen. Once a comprehensive study is conducted, proposals for enhancement at specific sites may be evaluated according to the guidelines and biological criteria established by the Regional Task Force. The following two subsections, which examine the present resource and identify possible areas of future enhancement, were included as a prelude to such a comprehensive study.

I. Overview of the Resource

The terminal areas of primary importance to the Suquamish Tribe have been divided into the freshwater and marine areas of salmon management area 10E and the freshwater streams flowing into Port Madison Bay.

Management area 10E has been further divided into Sinclair Inlet, Dyes Inlet, Liberty Bay, and the combined waters of Port Orchard-Rich Passage. Within each area is presented observations on salmon escapement and general stream conditions, gathered from stream surveys conducted from October of 1976 through February of 1977. Any artificial enhancement activities known to the Suquamish are also included although the list is probably not complete with regard to off-station releases by the Washington Department of Fisheries. All numbers listed for off-station releases were taken from WDF's "Hatcheries Statistical Report of Production and Plantings, 1975".

Sinclair Inlet - Sinclair Inlet is pictured in Figure 2 along with its' major

stream drainages. As can be seen from Table 1, page 8 , Blackjack, Ross and Gorst Creeks all support runs of chum salmon. Blackjack supports both early and normal timing chum stocks while Ross supports a normal timing stock and Gorst supports a late timing stock. Tables 2 and 3, pages 9 and 10 , display the coho and chinook salmon escapements to these streams. It should be pointed out that the chinook escapement to Gorst Creek is the result of chinook plants into the creek by WDF that have begun to spawn naturally. The last year chinook were planted here was 1973. Off-station releases of coho salmon were also made by WDF in 1974 on Anderson Creek and Blackjack Creek totaling 48,000 and 32,400 fry respectively.

Blackjack Creek has had a series of log jams which greatly hinder salmon penetration under conditions of reduced rainfall, as was the case in 1976-77. However, during normal flows the stream level may be high enough to allow natural migration throughout the entire system.

A log jam formed by several large cedar trees felled by shake-bolt cutters has caused a complete blockage on Ross Creek at 0.5 miles. This blockage resulted in considerable redd superimposition downstream. Excellent spawning gravel exists upstream from the felled trees.

At 0.8 miles from the mouth, Gorst Creek is completely channelized and blocked to natural salmon migration. Below this point the stream exhibits good spawning gravel, although siltation is becoming a problem. The Domsea Farms salmon hatchery, located just upstream from the stream blockage, has probably had a negative impact on natural production due to discharges of organic wastes and warm water from their facility.

Dyes Inlet - The major streams of Dyes Inlet are pictured in Figure 3. The Chico Creek system, including its' tributaries of Dickerson, Kitsap, Wildcat and Lost Creek, is the largest salmon producer in the East Kitsap



Figure 2. Major Streams Within Sinclair Inlet--W.D.F. Stream Survey Catalogue

Table 1.

East Kitsap Escapement Counts for Chum Salmon: 1976-1977

		Sinclair Inlet				Dyes Inlet						Port Orchard		Liberty Bay			
		Curley	Blackjack	Ross	Gorak	Chico	Wildcat	Lost	Dickerson	Kitsap	Clear	Barker	0274	0275	Big Scandia	Dog Fish	0287
Oct	18-22	209	400	0	0	3	0	0	0	0	0	0	0	0	0	0	0
	25-29	150	1700	0	0	19	0	0	0	0	0	0	0	15	0	13	11
Nov	01-05	100	575	0	0	1100	17	4	1	52	15	377	0	69	5	22	32
	08-12	65	35	0	0	1288	65	27	6	149	39	479	0	75	13	44	73
	15-19	4	27	15	0	1282	23	26	2	156	45	356	0	62	21	86	179
	22-26	0	22	58	0	1222	67	113	11	117	6	220	0	62	24	56	87
	29-Dec 3	0	23	44	0	593	9	25	12	24	17	105	1	15	13	37	56
Dec	06-10	3	163	355	0	460	1	3	9	4	16	150	2	10	12	93	60
	13-17	7	137	233	18	265	1	3	8	1	6	85	3	3	9	64	29
	20-24	7	182	263	107	203	0	1	14	0	0	0	----	1	----	----	----
	27-31	44	255	129	195	156	0	0	5	0	4	0	0	----	0	21	0
Jan	03-07	28	94	45	184	113	0	0	1	0	0	0	0	0	0	11	0
	10-14	27	36	19	127	42	0	0	0	0	0	0	0	0	0	1	0
	17-21	21	0	6	231	29	0	0	0	0	0	0	0	0	0	0	0
	24-28	----	0	0	118	27	0	0	0	0	0	0	0	0	0	0	0
	31-Feb 2 ¹	0	0	0	90	6	0	0	0	0	0	0	0	0	0	0	0
Feb	07-11	0	0	0	50	1	0	0	0	0	0	0	0	0	0	0	0

Table 2.
East Kitsap Escapement Counts for Coho Salmon: 1976-1977

		Sinclair Inlet				Dyes Inlet					Port Orchard		Liberty Bay		
		Curly	Blackjack	Ross	Gorst	Chico	Wildcat	Dickerson	Kitsap	Clear	Barker	0274	0275	Dog Fish	0287
Oct	18-22	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	25-29	0	3	0	0	1	0	0	0	0	0	0	0	0	0
Nov	01-05	0	0	0	0	20	1	0	0	0	0	0	2	0	0
	08-12	4	6	0	13	36	0	0	0	0	0	0	1	1	0
	15-19	8	5	0	7	35	0	0	0	0	0	0	0	0	0
	22-26	62	40	0	43	37	0	0	0	0	6	0	0	0	2
	29-Dec 3	67	34	1	91	72	0	0	0	0	5	0	1	0	1
Dec	06-10	114	92	4	189	142	0	7	2	6	9	0	0	11	13
	13-17	153	109	4	65	102	0	5	2	5	34	0	10	9	9
	20-24	118	73	6	69	49	2	6	0	0	0	--	--	--	--
	27-31	83	72	18	45	18	0	2	0	4	0	5	5	2	0
Jan	03-07	84	19	8	39	4	0	1	0	0	0	0	0	0	6
	10-14	45	9	2	20	2	0	1	0	0	0	1	1	1	2
	17-21	9	0	0	8	0	0	0	0	0	0	0	0	0	2
	24-28	--	0	0	2	0	0	0	0	0	0	0	0	0	0
	31-Feb 2	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Feb	07-11	0	0	0	1	0	0	0	0	0	0	0	0	0	0

Table 3.
 East Kitsap Escapement Counts for Chinook Salmon: 1976-1977

		Sinclair Inlet		Liberty Bay
		Blackjack	Corat	Dog Fish
Oct	18-22	3	206	12
	25-29	0	200	15
Nov	01-05	25	238	7
	08-12	11	191	5
	15-19	0	75	0
	22-26	0	106	0
	29-Dec 3	0	30	0
Dec	06-10	0	22	0
	13-17	0	3	0
	20-24	0	0	--
	27-31	0	0	0
Jan	03-07	0	0	0
	10-14	0	0	0
	17-21	0	0	0
	24-28	0	0	0
	31-Feb 2	0	0	0
Feb	07-11	0	0	0

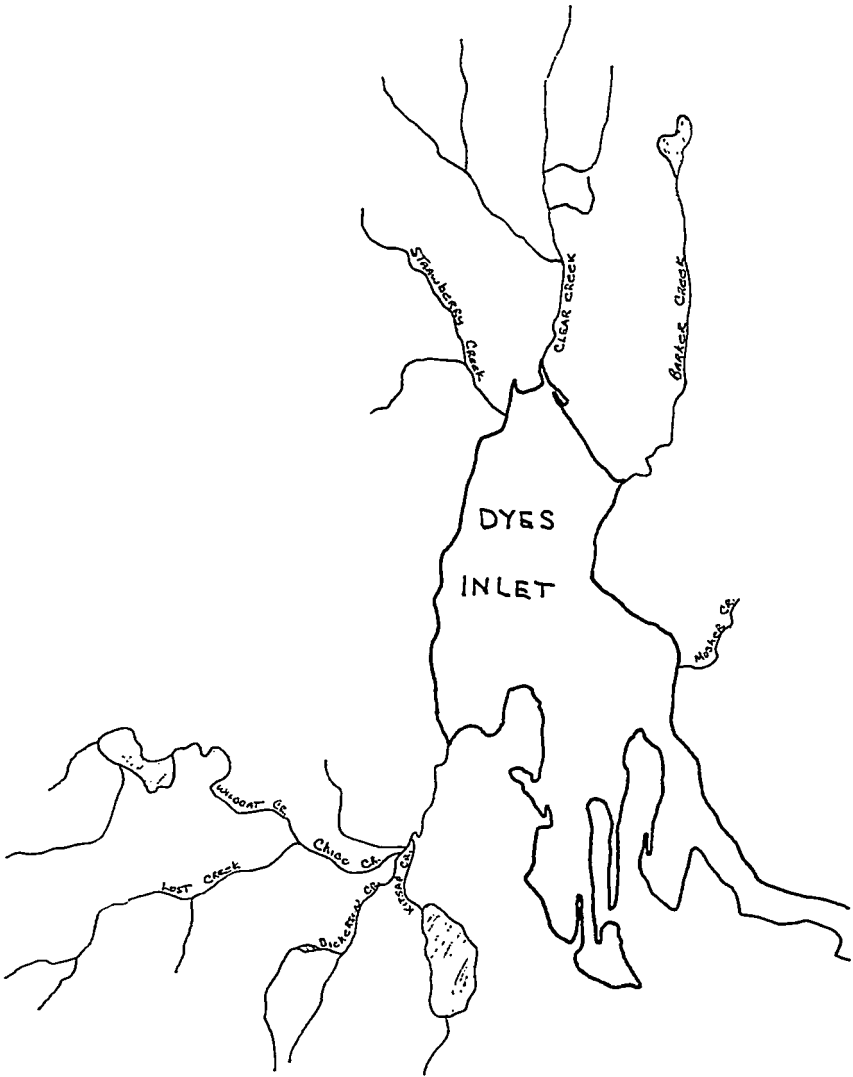


Figure 3. Major Streams Within Dyes Inlet--W.D.F. Stream Survey Catalogue

area. Table 1 shows the chum salmon escapement to the system for 1976-77. The other two salmon producing streams in Dyes Inlet are Barker and Clear Creek, both of which support a normal timing chum salmon stock. The main branch of Chico Creek also supports a run of coho salmon, as can be seen from Table 2. No chinook runs of any importance spawn in the area.

Enhancement of the salmon stocks has been limited to off-station releases by WDF. In 1974, 56,400 coho fry were released into Chico Creek and 149,868 coho fingerlings were released into Barker Creek. That same year 250,400 chum fingerlings were released into Clear Creek.

Chico Creek and its associated tributaries contain excellent spawning gravel throughout. However, the upper watershed area is plagued by stream bank erosion and resultant increased siltation rates. Other less serious problems have been created by ill-placed culverts and junk cast off by local residents. None of these constituted impassible barriers to migrating salmon.

Barker Creek is also relatively clean with no serious barriers. Good spawning habitat exists throughout the full length of salmon penetration. Beyond the limit of penetration, stream gradient flattens, the channel narrows and deepens, and the bottom becomes very muddy.

Clear Creek exhibits a variety of problems caused by the influx of civilization. For most of its length, the creek flows through active or overgrown farmland. In addition, construction on State Highway 3 and a new shopping mall in Silverdale have caused large deposits of sediment in the lower reaches. Suitable spawning gravel exists in only two short sections of the lower watershed.

Liberty Bay - The freshwater drainages of Liberty Bay are presented in

Figure 4. Salmon production in the major streams flowing into the bay is marginal. A normal timing chum salmon run is the only surviving stock of any importance. Some spawning was observed in Big Scandia Creek this past year but two poorly constructed culverts, many irrigation dams and brush restrict salmon access to the upper watershed. The only suitable spawning occurs below State Highway 3 for a very short distance.

Production in Dogfish Creek and its tributary, WDF Stream No. 0287, is only fair. Dogfish contains relatively good spawning habitat upstream from the mouth to the second culvert under the highway leading to Kingston. Beyond this point the stream enters low farmland and becomes narrow, slow moving, shallow and very muddy. Farmland in these upper reaches account for extreme turbidity present at almost all times.

WDF Stream No. 0287, while smaller than Dogfish, is clean, clear and has relatively good spawning gravel. With normal rainfall it is expected that salmon could penetrate further than was observed this past season.

Enhancement activity in Liberty Bay has been sporadic and generally unsuccessful. A small saltwater lagoon near the Keyport Naval Station was modified by WDF and planted with both chum and coho salmon in 1959. It is not known if other plantings occurred. In 1974 250,400 fingerling chum salmon were released into Dogfish Creek by WDF. Also the Natural Production Section of WDF has replaced a section of the Dogfish streambed with good spawning gravel, but the gravel has not been used to any extent by spawning salmon.

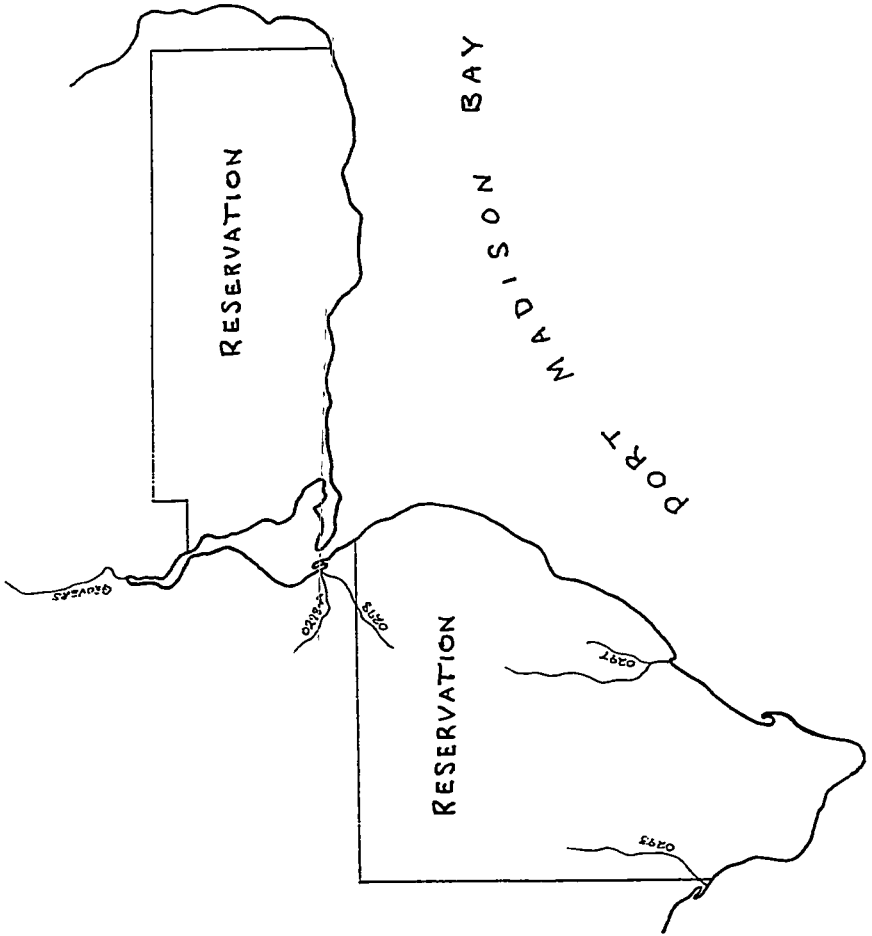
Port Orchard - Rich Passage - Portions of Port Orchard and Rich Passage can be found in Figures 2 and 4. The only stream with remanent salmon production in the Port Orchard area is the Steele Creek System which exhibits a small run of normal timing chum salmon (see Table 1, WDF Stream Nos. 0274 and 0275). No natural production of any consequence remains in

Rich Passage. However, Clam Bay and Little Clam Bay have been areas of varied enhancement activity for several years. The National Marine Fisheries Service has conducted several experimental projects in marine rearing pens within the outer portion of Clam Bay. In addition coho have been reared and released from from Little Clam Bay and chum salmon have been reared in a freshwater pond on Beaver Creek.

Port Madison Bay - The freshwater streams within the boundaries of the Port Madison Indian Reservation and in close proximity to the Reservation are pictured in Figure 5. The corresponding hydrology of these streams, collected by the U.S. Geological Survey between the months of January and December, 1976, is presented in Table 4. From the data presented it is obvious that Grover's Creek, WDF Stream No. 0299, is the only stream on or near the Reservation which has sufficient flow to support an enhancement facility for both incubation and rearing purposes. No stream shown in Figure 5 presently supports a salmon run.

Over the past two years the Suquamish enhancement activity has aimed at producing a brood stock of chum salmon that will return to Miller Bay. In the spring of 1976, approximately 30,000 chum fingerlings were planted in WDF Stream No. 0298 after being reared to a weight of 500 fish/pound. This past spring approximately 60,000 chum fingerlings were planted in Grovers Creek after being reared to a weight of 550 fish/pound. The first returns from these plantings should appear in Miller Bay in 1978.

It should be pointed out that the freshwater resources of Bainbridge Island were not surveyed this past season and therefore it is not known whether any of the streams support salmon runs. It should also be noted that with the above exception every stream within the boundaries of Management Area 10E was surveyed. However, only those streams found to contain spawning salmon have been described herein.



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Figure 5. | Port Madison Indian Reservation and Surrounding Waters

Table 4.
Hydrologic Data for 5 Streams on or Near the Port Madison Indian Reservation

Stream Number and Date of Collection	Discharge (ft ³ /sec.)	Water Temp (°C)	Coliform Bacteria (Col/100 mil)	Turbidity (JTU)	Dissolved Oxygen (mg/l)	Total Dissolved Gases, percent Saturation	Specific Conductance (umhos/cm at 25° C)	ph (units)
<u>Stream #0293</u>								
01/20/76	0.92	4.8C	26	0	12.5	102%	37	6.8
02/24/76	1.3	5.0C	100	1	7.9	110%	32	6.9
04/05/76	1. est.	7.0C	31	1	10.9	103%	20	6.7
04/06/76	0.81	8.2C	---	-	----	----	38	6.3
04/26/76	0.50	6.8C	12	2	11.4	103%	25	7.1
05/24/76	0.30	10.0C	600	1	9.7	103%	41	6.5
07/12/76	0.05 est.	----	---	-	----	----	--	---
07/14/76	0.01 est.	10.4C	450	2	6.6	109%	71	6.7
08/31/76	0.01 est.	10.8C	120	3	2.3, 2.9	119%	126	5.8
09/01/76	0.01 est.	----	---	-	----	----	--	---
09/27/76	0.01 est.	11.2C	---	4	7.0	108%	107	5.9
10/26/76	0.001 est.	9.6C	---	-	----	----	--	---
11/23/76	0.01 est.	7.0	---	-	----	----	--	---
12/20/76	0.01 est.	5.6	---	-	----	----	--	---
<u>Stream #0297</u>								
01/20/76	1.8	5.4C	34	1	12.0	102%	72	6.8
02/24/76	3.5	5.2C	160	1	12.0	101%	64	7.1

Table 4 (continued)

Hydrologic Data for 5 Streams on or Near the Port Madison Indian Reservation

Stream Number and Date of Collection	Discharge (ft ³ /sec.)	Water Temp (° C)	Coliform Bacteria (Col/100 mil)	Turbidity (JTU)	Dissolved Oxygen (mg/l)	Total Dissolved Gases, percent Saturation	Specific Conductance (umhos/cm at 25° C)	ph (units)
<u>Stream 0297</u>								
04/05/76	1.5 est.	5.8C	9	1	11.9	101%	57	5.9
04/06/76	1.42	7.2C	---	-	----	---	56	6.7
04/26/76	0.85	6.4C	13	1	12.0	101%	73	6.6
05/24/76	0.48	9.8C	110	1	10.6	101%	91	7.1
07/12/76	0.35 est.	----	---	-	----	----	--	---
07/14/76	0.30 est.	10.0C	1700	1	10.7	101%	90	6.8
08/31/76	0.20 est.	12.2C	290	1	10.1	101%	105	7.1
09/01/76	0.15	11.4C	---	-	----	----	--	---
09/27/76	0.24	11.4C	---	1	9.6	102%	108	6.8
10/26/76	0.21	9.2C	190	1	10.4	99%	116	7.5
12/20/76	0.26	3.6C	470	1	12.3	100%	103	7.2
<u>Stream 0298</u>								
01/21/76	0.5	3.8C	100	0	13.0	102%	70	7.1
02/24/76	3.0	5.0C	210	1	12.0	102%	57	7.2
04/05/76	1.5 est.	6.8C	14	0	11.4	101%	70	6.8
04/06/76	1.48	7.8C	---	-	----	----	66	6.1

Table 4 (continued)

Hydrologic Data for 5 Streams on or Near the Port Madison Indian Reservation

Stream Number and Date of Collection	Discharge (ft ³ /sec.)	Water Temp (°C)	Coliform Bacteria (Col/100 mil)	Turbidity (JTU)	Dissolved Oxygen (mg/l)	Total Dissolved Gases, percent Saturation	Specific Conductance (µmhos/cm at 25°C)	ph (units)
<u>Stream 0298</u>								
04/26/76	0.93	7.8C	43	1	11.7	101%	81	7.1
05/24/76	0.36	9.6C	160	0	11.2	100%	113	7.2
07/12/76	0.25 est.	11.0C	191	0	10.7	101%	124	7.7
08/31/76	0.30 est.	11.4C	320	0	10.4	100%	106	7.2
09/01/76	0.21	11.6C	---	-	----	----	---	---
09/27/76	0.12	11.2C	---	0	10.4	101%	126	6.9
10/26/76	0.11	9.0	100	0	11.0	99%	123	7.6
12/20/76	0.13	5.4	90	1	12.1	99%	121	7.2
<u>Stream 0298-A</u>								
01/21/76	0.4	5.2C	52	0	12.4	102%	97	7.4
02/24/76	1.4	5.6C	200	1	11.5	102%	88	7.5
04/05/76	0.6 est.	7.4C	8	0	11.4	100%	80	6.6
04/06/76	0.53	8.2C	---	-	----	----	87	7.1
04/26/76	0.59	8.6C	11	1	11.3	101%	105	7.1
05/24/76	0.51	10.2C	110	1	11.1	100%	107	7.4
07/13/76	0.35	11.6C	200	1	10.5	101%	116	7.8
08/31/76	0.30 est.	12.6C	48	1	10.2	101%	90	7.4

Table 4 (contineud)

Hydrologic Data for 5 Streams on or Near the Port Madison Indian Reservation

Stream Number and Date of Collection	Discharge (ft ³ /sec.)	Water Temp (° C)	Coliform Bacteria (Col/100 mil)	Turbidity (JTU)	Dissolved Oxygen (mg/l)	Total Dissolved Gases, percent Saturation	Specific Conductance (umhos/cm at 25° C)	ph (units)
<u>Stream 0298-A</u>								
09/01/76	0.39	12.4C	---	-	----	----	---	---
09/27/76	0.38	11.8C	---	1	10.6	100%	114	6.9
10/26/76	0.37	9.2C	82	1	11.2	100%	100	7.8
12/20/76	0.37	5.8	270	1	12.2	100%	107	7.6
<u>Grovers Cr.</u>								
01/26/76	10.9	4.8C	27	1	10.6	106%	85	6.7
03/03/76	15.2	1.0C	220	1	12.2	103%	84	6.3
04/06/76	11.8	9.2C	240	1	9.3	104%	79	6.7
04/27/76	7.2	8.4C	150	1	9.9	107%	73	6.9
05/25/76	3.49	9.8C	4000	2	9.1	104%	117	7.2
07/12/76	2.08	13.0C	1600	2	8.2	105%	126	7.6
09/01/76	2.52	11.8C	---	-	8.9	102%	111	6.7
09/28/76	1.92	12.4C	600	1	8.3	103%	136	6.8
10/26/76	3.19	9.2C	160	1	8.9	98%	107	7.2
12/20/76	3.07	4.6C	360	1	10.5	98%	122	7.1

II. Areas of Future Enhancement

Potential enhancement sites in the East Kitsap area have been divided into those sites where natural propagation should be enhanced and those sites where artificial propagation should be employed. Above all, it is the feeling of the Suquamish Tribe that interaction between spawning stocks of natural and artificially propagated fish should be kept to a minimum. It is felt that interbreeding between an indigenous stock and one which has been transplanted from another area would be highly detrimental since dilution of the natural gene pool could result in reduced fitness of the progeny and an overall decrease in productivity. Even if artificial propagation is applied to an indigenous stock and a random mating scheme is rigorously applied, the stock may still drift toward a decrease in genetic variability and the expression of recessive phenotypes. Enhancement sites have therefore been selected to reduce this hazard.

Enhancement of natural production should be concentrated in the southern portion of Management Area 10E, specifically to those streams which still support significant runs of fish or have the capability of doing so.

Sinclair Inlet - Blackjack Creek contains viable runs of early and normal timing chum salmon as well as a viable run of coho salmon. Enhancement efforts should concentrate on increasing these stocks through streambed and overall habitat improvements. It may be necessary to increase production beyond the incubation capabilities of the stream through the use of shallow or deep matrix gravel incubators, particularly with the early timing chum run.

Ross Creek exhibits stream conditions similar to Blackjack. The preservation and enhancement of the normal timing chum salmon stock may be accomplished through habitat protection and rehabilitation. Artificial incubation may be necessary. A more comprehensive study of stream

hydrology is needed to determine the feasibility for coho rearing.

Gorst Creek has the most undisturbed watershed of any stream in Sinclair Inlet. Unfortunately the City of Bremerton does not want salmon spawning in its' water supply. The stream habitat which is still accessible to returning salmon has been degraded through the operation of Domsea's facility and through abuse by local residents. The late timing chum stock is the only late stock indigenous to the East Kitsap area and should be protected at all cost. Both streambed rehabilitation and gravel box incubation will probably be necessary since poaching is a serious problem on Gorst. In addition the discharge permits of Domsea should be reviewed and revised to prevent further contamination of downstream spawning areas. More information will be needed to determine whether the resident coho and chinook populations are worth preserving since available rearing area is strictly limited.

Dyes Inlet - The Chico Creek system is the largest producer of normal timing chum salmon in East Kitsap and therefore deserves special consideration. The stabilization of eroding stream banks needs to be undertaken immediately and a general cleaning of the main branch of Chico through removal of junk and litter cast off by local residents would be desirable. Possibilities for creating salmon access around stream blockages in Kitsap and Dickerson Creeks should be explored. Kitsap Lake and Wildcat Lake may serve as potential rearing areas for fingerling coho, but more information on the Lake habitats will be necessary before the production potential can be determined. Because of the size of the system and the relative wild state of Lost, Wildcat, Dickerson and upper Chico, artificial incubation should not be necessary.

An increase in production of the normal timing chum stock on Barker Creek would probably have to come about through the use of gravel incubators since utilization of available spawning area appeared to be maximized this past season.

The use of gravel incubation on Clear Creek would probably be essential. Farming practices in the area have all but destroyed much of the native spawning gravel. Replacement of streambed gravel in some places may be desirable. It may be that the surviving salmon stocks in the creek are beyond recovery.

Two other streams in Dyes Inlet, Strawberry and Mosher Creeks, displayed good spawning gravel but no fish. The feasibility of developing runs of coho or chum salmon in these streams should be explored.

Artificial propagation should be confined to the northern areas of East Kitsap since natural stock production there has been either drastically reduced or eliminated.

Liberty Bay - Dogfish Creek provides the best opportunity for artificial propagation within Liberty Bay. According to "A Catalog of Washington Streams and Salmon Utilization, Volume 1, Puget Sound Region", published in 1975 by WDF, the mean annual flow in Dogfish over a period of 24 years was 8.94 cfs. If an enhancement facility was located on the main branch of Dogfish, suitable stock separation could be maintained between the natural production in tributary 0287 and artificial production. A brood stock for chum salmon could be developed from the natural spawners in the main branch of Dogfish, and once established, brood eggs could be hybridized periodically with surplus males from tributary 2087 to help maintain genetic variability.

Coho or chinook production might also be attempted. Saltwater rearing, using either marine net pens or the small lagoon at Keyport, could supplement freshwater rearing of these species.

Port Madison Bay - Grover Creek offers the best choice for an artificial production site in Port Madison Bay. The mean flow for 1976, taken from

Table 4, was 6.14 cfs., with a registered high and low flow of 15.2 cfs. and 1.9 cfs. respectively. Since precipitation in 1976 was well below the annual average, it is felt that the flows recorded represent a minimum. Assuming it takes a flow of 1 cfs. to rear one million fry, an annual production of two million salmon should be a safe level of operation if all rearing were to take place in freshwater. Production may be doubled or tripled through the utilization of saltwater rearing pens. It may also be possible to create a small lagoon for rearing purposes by damming the narrow northern tip of Miller Bay, (see Figure 6).

Two additional streams of potential importance flow into the lower western portion of Miller Bay. Only one, Stream No. 0298, is labeled by WDF. The other, lying just north of 0298, has been labeled Stream No. 0298-A to distinguish it in this proposal. From Table 4 a low monthly spring flow of .5 cfs. and .4 cfs. was recorded for Streams No. 0298 and 0298-A respectively. Assuming a flow of 90 gpm is necessary to incubate one million chum eggs in shallow matrix gravel incubators, the two streams have a combined potential to incubate approximately 4.5 million fish. Fingerlings could either be allowed to migrate freely to saltwater, or they could be fed prior to release in the small lagoon into which the streams flow (see Figure 6).

III. Necessary Enhancement Funding

As stated previously this proposal does not identify or detail a specific enhancement project for the Suquamish Tribe. Instead, an overall production goal necessary to provide a desired minimum income to a set number of Suquamish fishermen is outlined. The exact mechanism through which production is to be increased shall be determined once a comprehensive analysis of the natural and artificial production potential of East Kitsap has been completed.

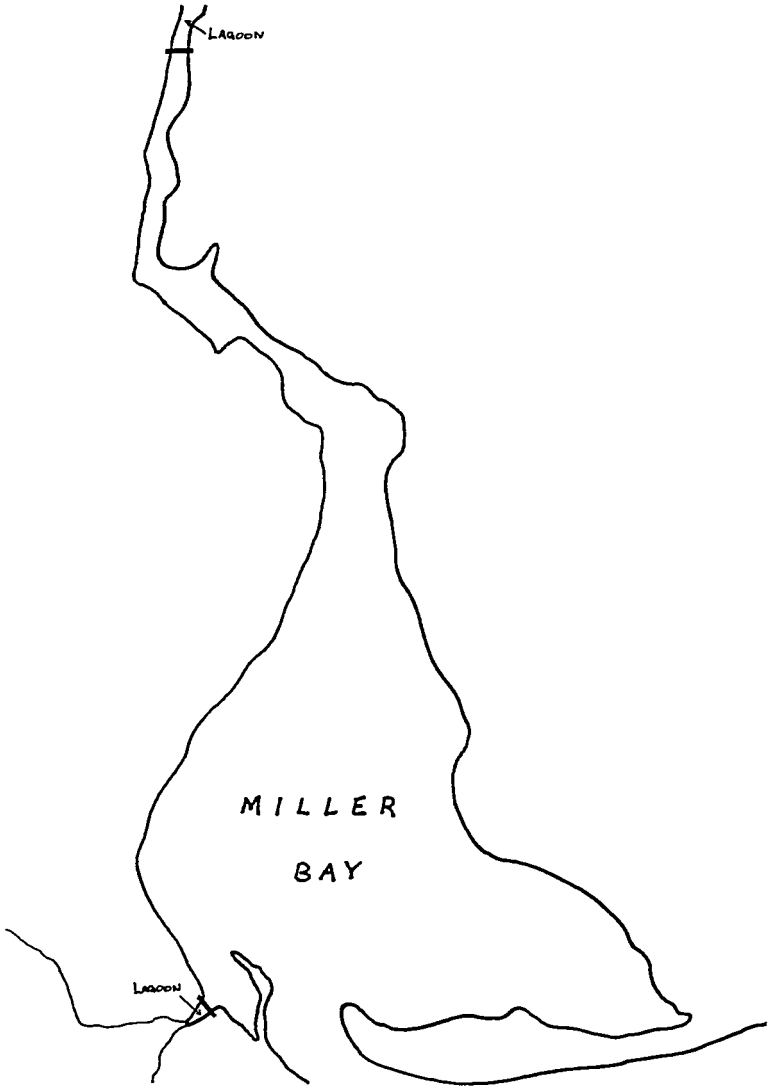


Figure 6. Potential Locations of Dyked Lagoons for Salmon Rearing in Miller Bay

The initial step toward identifying the required production level is an examination of present and past fishing effort and economic yield. Tables 5, 6 and 7 present the total catch and value by area and by gear type for the Suquamish fleet for the years 1975, 1976 and 1977 respectively. Catches for 1974 were not included because it was the first year of any substantial fishing effort on the part of the Tribe and therefore not representative of the situation as it now exists.

In 1975 the Suquamish fleet consisted of 1 purse seine boat and 19 gillnet boats, most of which were skiffs under 20 feet long. From Table 5 it is apparent that purse seine effort was concentrated in Hood Canal while gillnet effort was strongest in inner Puget Sound and East Kitsap, producing catch values of \$45,605 and \$64,092 respectively. The total East Kitsap harvest was divided among 17 boats and yielded an average value per fisherman of \$3671 (not including purse seine catch or value). Of the 19 gillnet boats, only 6 had total incomes of over \$10,000, and of these, 4 were leased from non-Indian fishermen.

The fleet expanded to 5 purse seine boats and 22 gillnet boats in 1976. Table 6 shows that purse seine effort was split between the San Juan Islands and inner Puget Sound, producing catch values of \$226,109 and \$160,103 respectively. Gillnets again fished primarily in inner Puget Sound and East Kitsap, with corresponding catch values of \$46,554 and \$50,781. Gillnet catches in the San Juan Islands amounted to \$24,820. With 16 boats sharing the harvest, the East Kitsap fishery yielded a total value per fisherman of \$3174. Only seven gillnet boats had total earnings of over \$10,000 and five of these were leased. Three out of the five purse seiners were also leased from non-Indian fishermen.

The figures presented in Table 7 for 1977 are not complete in that they do not include catches of normal timing chum salmon. However, the trends

Table 5
Catch and value for Suquamish Fleet - 1975

Location	Area	Gear	Total Catch	Value
San Juan Islands	7	P. S.	1068	5844
		G. N.	26	141
			1094	5985
Hood Canal	12	P. S.	824	5924
		G. N.	3220	23992
	12A	P. S.	2834	25655
		G. N.	515	4352
		7393	59923	
Inner Puget Sound	9	G. N.	130	1080
	10	G. N.	451	4418
	10A	G. N.	1063	11605
	10B	G. N.	436*	5136
	10C	G. N.	541*	4478
	Duwamish	G. N.	34*	293
	13A	G. N.	2428	18595
		5083	45605	
East Kitsap	On Res. 10E	G. N.	448	4540
		P. S.	223	1682
		G. N.	5594	57870
		6265	64092	
TOTAL			19835	175605

*Includes Steelhead Catches

Table 6
Catch and value for Suquamish Fleet - 1976

Location	Area	Gear	Total Catch	Value
San Juan Islands	7A	P. S.	815	5500
	7	P. S.	25879	220609
		G. N.	1212	11641
	6	G. N.	2065	13179
			29971	250929
Hood Canal	12	G. N.	1064	5976
	12A	G. N.	393	2102
			1457	8078
Inner Puget Sound	6B	P. S.	86	1561
	9	P. S.	507	10389
		G. N.	68	1328
	10	P. S.	14762	148153
		G. N.	1466	19003
	10A	G. N.	1497	24689
	10B	G. N.	65*	1310
	10C	G. N.	17*	138
Duwamish	G. N.	11	86	
			18479	206657
East Kitsap	On Res.	P. S.	841	19057
		G. N.	11	326
	10E	G. N.	6206	50455
			7058	69838 (16)
TOTAL			56965	535502

*Includes Steelhead Catches

Table 7

Catch and value for Suquamish Fleet - 1977

Location	Area	Gear	Total Catch	Value
San Juan Islands	7	P. S.	28559	143082
		G. N.	3032	19944
	7B	P. S.	285	5991
	7C	P. S.	778	20098
	6	G. N.	3533	22762
			36187	211877
Hood Canal	12	G. N.	287	2550
	12A	G. N.	28	925
	12C	G. N.	138	1425
	12D	G. N.	91	2452
			544	7352
Inner Puget Sound	9	P. S.	557	4569
		G. N.	46	391
	10	P. S.	189	1689
		G. N.	939	10325
	10A	G. N.	1644	10663
	10B	G. N.	306	3772
10D	G. N.	3976	22562	
			7657	53971
East Kitsap	On Res.	G. N.	456	4410
	10E	G. N.	356	3014
			812	7424 (6)
TOTAL			45200*	280624*

*Does not include fishery on normal timing S. Puget Sound Chum Salmon.

are still apparent. The fleet regressed somewhat to 2 purse seine boats and 21 gillnet boats and the total catch reflected the effort reduction. Purse seine effort was strongest in the San Juan Islands with a catch value of \$169,171. To date, gillnet catches have been heaviest in the San Juans and inner Puget Sound, yielding catch values of \$42,706 and \$47,713. Due to the absence of hatchery outplants, the East Kitsap harvest of chinook and coho has amounted to \$7424, for a resulting value per fisherman of \$1237. In the gillnet fleet leased boats will again be the top money earners.

Currently there are 215 BIA hunting and fishing permits issued to Tribal members. These permits establish the members right to fish. Fishing licenses issued through the Point Elliott Treaty Council establish a member's intent to fish. This year 34 owner cards and 21 operator cards were issued to Suquamish members. Holders of owner cards must be boat owners and are allowed to sell fish. Those obtaining operator cards are only allowed to assist in fishing with an owner.

The usual and accustomed fishing grounds of the Suquamish Tribe, extending from the northern tip of Vashon Island to the Fraser River in Canada, are the largest of any recognized Tribe in the case area. It is therefore, felt that that some Tribal fleet expansion can be accommodated. However, an overall limit to the size of the fleet is desirable and should coincide with the size of the harvestable resource. We recommend that through 1985 the number of owner licenses issued to Suquamish members be fixed at 75. Each gear type will require a specific number of licenses depending upon its' efficiency. One possible fleet composition breakdown is as follows:

Number	Gear Type	License/Boat	Total
2	Purse Seine	10.0	20
	Gillnet		
14	a.) 32+ feet w/power reel	1.5	21
20	b.) 22-32 feet w/power reel	1.0	20
20	c.) 16-22 feet - no power reel	0.7	14

Based on past effort per area it is assumed that one third of the total gillnet fleet, primarily the skiffs, will fish in East Kitsap. Of the remaining gillnetters, one third will fish in inner Puget Sound, one sixth will fish in the San Juan Island, and one sixth will fish in Hood Canal. Purse seines will be restricted to the San Juan Islands and inner Puget Sound only. With a total gillnet fleet of 54 boats, the expected effort per area is divided into 18 boats in East Kitsap, 17 boats in inner Puget Sound, 9 in Hood Canal and 9 in the San Juans. The desired target income for East Kitsap fishermen is \$14,000 annually, based on the 1977 value of the U.S. dollar. Therefore, the production of East Kitsap must ultimately provide a total catch value of \$252,000 annually.

Reasearch Funding

A comprehensive analysis of the present production potential is a necessary first step toward the identification of enhancement sites for East Kitsap. Once this information is gathered, a computer model can be devised to access the impact of new enhancement programs within the constraints of present and potential natural production and harvest management strategies.

For each stream in question the following information will be necessary:

1. Physical survey - gradient, flow, stream bank cover and land utilization, pool-riffle ratio (spawning vs. rearing habitat), climatological data.
2. Productivity - quantity and quality of available spawning gravel, rearing capacity, present abundance of salmon fry.

For a particular stream the physical survey, with the exception of stream flow measurements, can be conducted by a technician within one to two days at a cost per man-day of roughly \$45. Flow measurements should be taken monthly over a period of one year and would cost approximately \$100 per measurement. The major cost of gravel quality analysis is in the man

hours required to collect and analyze samples and is assumed to be \$45 per man-day. One technician can collect about 15 samples per day with an additional man-day required for analysis. Abundance estimates are derived from samples taken in individual streams in the fall and in the spring. Two technicians will generally spend one day per index area sampled per stream and two samples per index area for both fall and spring are desirable for statistical significance. In addition to the man-days required, the cost of abundance surveys will also include an electroshocker (\$1200) and batteries (\$170), 2 block nets (\$200) and miscellaneous equipment (\$100). For those streams set aside for possible artificial propagation, water quality analysis at a cost of \$30 per sample will also be required.

For each stream in question the cost of developing the necessary information is as follows:

<u>CREEK</u>	<u>LABOR COST</u>					
	<i>Physical Survey</i>	<i>Flow</i>	<i>Gravel Quality</i>	<i>Water Quality</i>	<i>Abundance</i>	<i>Total</i>
Blackjack	45	1200	90		360	1695
Ross	45	1200	90		360	1695
Gorst	22	1200	90		360	1672
Chico	90	1200	360		1080	2730
Barker	45	1200	90		360	1695
Clear	45	1200	180		720	2145
Strawberry	45	1200	90			1335
Mosher	45	1200	90			1335
Steele	45	1200	180		720	2145
Dogfish	45	1200	90	360	360	2055
Grovers	45					45
0298	22.50					22.50
0298-A	22.50					22.50

Total Cost - Labor	\$18,600
Total Cost - Equipment	<u>1,670</u>
Total Research Cost	\$20,270

Production Funding

A more stable economic base from East Kitsap fisheries will be created if Tribal fishermen are not completely dependent on one salmon species for their source of income. Although chum salmon have been and will continue to be the major source of production, harvestable numbers of coho and chinook salmon should also be provided. The following table lists one possible production scheme which would satisfy the requirements for the combined target income.

	Minimum Smolt Production	Percent Return	Harvestable Return	Average Weight	Price Per Pound	Total Revenue
Chum	1,520,000	1.0%	15,200	9 lb	\$.95	\$130,000
Coho	360,000	1.5%	5,400	7 lb	\$ 1.05	\$ 40,000
Chinook	920,000	0.5%	4,600	15 lb	\$ 1.20	\$ 82,000

In constructing the above table, several assumptions were made. The percent return of each species to East Kitsap was assumed to be similar to the average returns to Puget Sound hatcheries. Average weights per fish reflect the normal size of each species caught in East Kitsap fisheries. By 1985 the average price per pound may be greater than that listed, but it was felt that recording prices as they now exist for East Kitsap would reflect an expected overall reduced value to the fishery caused by the combined effects of market saturation and deminishing quality of the fish.

Funding to be requested for the aforementioned production scheme is based on the following assumptions:

- 1.) the total production necessary will be supplied from artificial propagation only,
- 2.) a separate facility will be required for each species.

The funding therefore represents a maximum value which may be reduced depending upon both the harvest provided through natural production and whether one artificial propagation facility will be able to handle more than one species.

Capitalization cost of facilities and annual operation and maintenance costs were determined on a cost per smolt basis. The "Washington Salmon Study", prepared for the Department of Fisheries by the engineering firm of Kramer, Chin & Mayo, Inc., served as a guide in developing the following table:

Species	Cost/Smolt Produced	
	Capital	Annual O & M
Chum	.08	.015
Coho	.30	.10
Chinook	.12	.03

The total number of smolts required for each species is developed in Table 8. Category #7, Hatchery Harvest, was added to help defray the annual O & M costs. Total escapement for each species was calculated assuming a female to male spawner ratio of 2:1. A total smolt production of 4,000,000 chum, 496,800 coho and 1,512,000 chinook is listed. Therefore, the capital cost of separate facilities for each of the three species is as follows

Species	Capital Cost of Facilities
Chum	320,000 (.08 X 4,000,000)
Coho	149,040 (.30 X 496,800)
Chinook	181,440 (.12 X 1,512,000)
Total	650,480

Table 8
 Smolt Production, East Kitsap Harvest
 and Projected Hatchery Harvest for
 Chum, Coho and Chinook Salmon

CATEGORIES	<u>Numbers of Fish</u>		
	Chum	Coho	Chinook
1. East Kitsap Harvest	15,200	5,400	4,600
2. Escapement	3,000 (2000 ♀ , 1000 ♂)	405 (270 ♀ , 135 ♂)	630 (420 ♀ , 210 ♂)
3. Fecundity (eggs/female)	2,500	2,300	4,500
4. Total Egg Take	5,000,000	621,000	1,890,000
5. Total Smolt Production (80% Survival)	4,000,000	496,800	1,512,000
6. Total Return Expected	40,000 (1.0%)	7,452 (1.5%)	7,560 (0.5%)
7. Excess Hatchery Harvest	21,800	1,647	2,330

Funding for the annual operation and maintenance of each facility will be necessary until adult spawners return. On the average 50% of a chum salmon stock will return as 3 year fish and 50% will return as 4 year fish. Virtually all coho return as 3 year fish and all chinook return as 4 year fish. The total O & M funding requested for each species is therefore the annual O & M cost carried over the number of years necessary until the fish return.

Species	Annual O & M	Years Needed	Total
Chum	60,000 (4,000,000 X .015)	3½	210,000
Coho	49,680 (496,800 X .10)	3	149,040
Chinook	45,360 (1,512,000 X .03)	4	181,440
Total			540,480

Once spawners begin returning to the facility, the annual O & M cost will be covered by revenues from fish taken in the hatchery harvest and from fish taxes levied against the catches of all fishermen. Assuming that 15% of the total weight of all females is in eggs, the value of eggs is \$2.50/lb, and that the value of spawned out carcasses is \$.06/lb, a price per harvested female can be determined. Likewise, assuming all males will sell for \$.30/lb, a price per harvested male can be determined. Both prices will be dependent upon the average weights of returning adults and are summarized in the following table:

Species	Sex	Weight	Value
Chum	Female	9	((9 X .15) X 2.5) = 3.38 ((9 X .85) X .06) = .46
	Male	9	9 X .30 = 2.70
Coho	Female	7	((7 X .15) X .25) = 2.63 ((7 X .85) X .06) = .36
	Male	7	7 X .30 = 2.10
Chinook	Female	15	((15 X .15) X 2.5) = 5.63 ((15 X .85) X .06) = .77
	Male	15	15 X .30 = 4.50

Using the above figures and assuming a male to female return ratio of 1:1, a total value for the hatchery harvest of each species is produced in Table 9. The annual income from Chum, Coho and Chinook will be \$74,336, \$4,512 and \$13,767 respectively, for a total annual hatchery harvest value of \$92,615. To this will be added the tribal income from fish taxes, which should reach \$50,000 ($1,000,000 \times .05$) within 8 years. The remaining difference of \$12,425 in annual O&M costs can be made up through tribal funds if necessary.

As a final note, the water requirements necessary to sustain the required production of each species has been calculated in Appendix I. Assuming a constant water temperature of 55° F and a rearing phase in freshwater only, a constant flow of 2.08 c.f.s. would be required for Chum, 3.47 c.f.s. would be required for Coho, and 3.16 c.f.s. would be necessary for Chinook.

The time period for implementation of the suggested production schedule is as follows:

1. Conduct surveys of streams in Eastern Kitsap to access potential production - 12 months.
2. Evaluate production in terms of harvest management strategies and natural stock preservation - concurrently.
3. Select potential artificial propagation sites which will maximize production subject to the constraints in number 2. Conduct engineering studies for each site selected - 6 months.
4. Submit proposals for acceptable sites to necessary authorities for review and approval - 3 to 6 months.
5. Construct approved facilities - 18 to 21 months.

Facilities should be ready to receive eggs by the Fall of 1981. Stepped up production of natural stocks could be accomplished within a shorter time frame.

Table 9

Projected Value of Hatchery Harvested
Salmon by Species

Species	<u>Escapement</u>			<u>Hatchery Harvest</u>			Total Value
	No.	Unit Price	Value	No.	Unit Price	Value	
Chum							
Females	2,000	.46	920	10,400	3.84	39,936	40,856
Males	1,000	2.70	2,700	11,400	2.70	30,780	33,480
Coho							
Females	270	.36	97	756	2.99	2,260	2,357
Males	135	2.10	284	891	2.10	1,871	2,155
Chinook							
Females	420	.77	323	1,060	6.40	6,784	7,107
Males	210	4.50	945	1,270	4.50	5,715	6,660

Management

In the Fall of 1976 a tagging study was contracted with the Suquamish Indian Tribe and funded by the Bureau of Indian Affairs through the Small Tribes Organization of Western Washington. The primary objectives of this study were; (1) to identify stocks of Chum (Oncorhynchus keta) and Coho (Oncorhynchus kisutch) Salmon migrating through Agate and Rich Passages to the East Kitsap Peninsula; (2) to estimate the rates of migration through these areas to East Kitsap Peninsula watersheds; notably Dyes and Sinclair Inlets; (3) to survey the spawning grounds within these watersheds for enumeration of Chum and Coho Salmon, tag recoveries and general stream conditions. Observations of Chinook Salmon (Oncorhynchus tshawytscha) were also reported.

The results of the project were inconclusive. A total of 386 Petersen disc tags were applied to migrating salmon in the East Kitsap region (Chum - 273, Coho - 113). Recovery percentages were 17.0 and 28.0 for Chum and Coho Salmon respectively. Failure to recapture tagged fish and restrictions in the fishing schedule imposed by the experimental design precluded estimates of routes and rates of migration. Extensive stream surveys within designated watersheds of the study area yielded only 10 tag recoveries from the spawning grounds. The distribution of these tags showed no correlation with run timing and tagging or recovery location. Recovery source distribution for all tags not found on spawning grounds indicated the following:

- a. Chum Salmon may stray in their home stream migration to a greater extent than previously reported.
- b. Chum Salmon migrating through the East Kitsap Peninsula region distributed almost equally to Hood Canal, North Puget Sound and South Puget Sound streams.
- c. Coho Salmon showed a general tendency to contribute to South Puget Sound streams. This, exclusive of those fish caught in Clam Bay.
- d. Coho Salmon may stray less than Chum Salmon in their home stream migrations.

Juvenile Chum and Pink Salmon were captured in large numbers in Port Madison Bay and Salmon Management Area 10E, indicating the possible existence of a juvenile rearing area.

The data collected during this study indicates, unequivocally, a need for procedural modification and extended efforts for comprehensive completion. This, particularly in terms of fishing and tagging operations. It is essential that a greater number of tags be dispersed and subsequently recovered so as to provide data of migration rates and routes into East Kitsap Peninsula watersheds. The need for this modification was clearly demonstrated by the data collected in 1976. Extensive straying of Chum Salmon, southerly groupings of Coho Salmon and drought conditions prevented dynamics parameter estimates of salmon populations destined for East Kitsap Peninsula watersheds.

Information collected on Chinook Salmon and all juvenile salmonids also demonstrated the need for detailed continuation of this study. In addition, it is virtually essential that the information to be collected from the continuation of this study be available for incorporation into a sound management strategy for the East Kitsap Peninsula fishery.

Funding Proposal

The Suquamish Tribe requests that an annual tagging study be funded for a consecutive period of 4 years to cover the entire life cycle of one generation of Coho and Chum Salmon. Such an extended period will be necessary to account for the annual variability in run timing, migration rates and routes, and run size. The funding required is \$100,000 annually for a total of \$400,000 over the study period. Information generated from the study will be instrumental in the development of harvest management strategies for South Puget Sound Coho and Chum Salmon stocks. Such information will also aid in the equitable allocation of fish between the Treaty region of Pt. Elliott and Medicine Creek.

Although the present proposal concentrates on East Kitsap salmon stocks, particularly in the area of stream surveys, the study could easily be expanded to provide more detailed information on salmon stocks returning to the usual and accustomed fisheries of both the Muckleshoot Tribe and the Tribes of the Medicine Creek Treaty Region.

Tagging Study Proposal - Detailed Analysis

Objectives & Rationale

- (1) To tag approximately three thousand chum, coho and chinook salmon entering the Washington State Department of Fisheries management area 10. This would allow a greater opportunity for tag recapture, estimates of population structure, migration rates and general migration routes.
- (2) To monitor, as extensively as possible, the contribution of tagged fish to commercial and sport catches. Correlation of tagged fish to commercial and sport catch statistics would provide more accurate ratio estimates of population contributions to the harvest. This data would specifically aid in establishment of harvest management regulations.
- (3) To improve the methodology and expand the collection of tag recoveries from stream surveys. Development of methodology more consistent with that in use by the Washington State Department of Fisheries, United States Fish & Wildlife Service and other regulatory agencies would provide for a more extensive analysis of stream survey data. Inclusion of these methodologies and expansion of stream surveys would also permit collation of tag/recapture/recovery data into a more cohesive unit for management planning.

Procedures

Consistent with study objectives, the following procedures are outlined.

Organization & Planning

An experienced project leader will be hired to plan, organize, direct and supervise all phases of the study; to include responsibilities in the following general areas.

1. design and scheduling
2. vessel charter and moorage
3. hiring of project personnel
4. on-site supervision of all personnel
5. public information; tag recovery sources
6. liason with other fishery agencies
7. co-ordination of all tag recovery information
8. data analysis
9. permits, status reports, final documents.

Fishing & Tagging

The project leader will consult with competent biometricians in design and schedule of fishing & tagging operations. Modified from 1976, this procedure will follow a general strategy as detailed below.

1. establishment of a comprehensive grid network in Washington State Department of Fisheries management areas; 9 south, 10, 10A, 10B, 10E and 11 north
2. fishing effort to be in consort with commercial harvest whenever possible.
3. consecutive fishing days, as needed, to coincide with species, run and timing distribution
4. gear modification to optimize fishing efforts relative to bottom topgraphy of bays and inlets
5. elimination of anesthetizing agents during the tagging procedure
6. improved procedure and form style for data recording (write in in the rain paper).

Additional effort by the project leader will emphasize and provide for the following modifications:

1. more efficient publicity and communication with
 - a. stream side land owners
 - b. fish buyers and processors
 - c. sport fishermen
 - d. other recovery sources

2. improved methodology in collection, collation and analysis of recovery data
 - a. use of Washington State Department of Fisheries stream survey cards
 - b. standardization for reporting stream conditions, evidence of poaching and needs for stream improvements
3. design and schedule of stream surveys so as to improve and expand coverage
 - a. watershed assignments
 - b. inclusion of South Kitsap Peninsula streams.
4. improved safety procedures.

ANNUAL BUDGET

Purse Seine Vessel - 45 days @ 1100.00/day vessel, crew, fuel, food 5 Oct - 3 Dec	49,500.00
Project Leader - 8 mos @ 1600.00/mo 1 Sep - 1 May	12,800.00
Fish Taggers (2) - 2 mos @ 1000.00/mo 3 Oct - 3 Dec	4,000.00
Survey Technicians (3) - 5 mos @ 1000.00/mo 1 Oct - 10 Mar	15,000.00
Ferry Allowance (3) - 5 mos @ 100.00/mo 1 Oct - 1 Mar	1,500.00
Net Rental - 2 mos @ 500.00/mo 1 Oct - 1 Dec	1,000.00
Consulting Services - 5 days @ 400.00/day as needed	2,000.00
Computer Time - data analysis as needed	300.00
Travel and Phone Allowance - Project Leader, meetings, WDF, USF&W, etc.	2,000.00
Project Supplies and Equipment - list attached	5,540.00
Fringe Benefits - 20.00 % of salaries	6,360.00
TOTAL.....	<u>100,000.00</u>

ATTACHMENT

Project Supplies and Equipment

topographical maps (4 sets)
hand counters (8)
gaff/pew (4)
gear, boot repair kit (4)
dog repellent aerosol (4)
write in rain book (12)
official I.D. with picture (6)
flashlights (4)
colored safety vests (4)
hard hats (3)
machetes (4)
write in rain forms
printing/typing/illustrating reports

Appendix I

Water Requirements Necessary to Rear
4 Million Chum, .5 Million Coho and
1.5 Million Chinook.

Equations

$$O_2 = KT^n W^m$$

O = Oxygen uptake rates
in lbs. O /100 fish/day
K = rate constant = 4.9×10^{-4}
T = water temperature in
degrees Fahrenheit
W = fish size in lbs./fish
n & m = slopes, n = 2.120
m = -0.194

$$C_e = \frac{S \times 132}{T^{.625}} \times \frac{760}{760} \frac{E}{32.8}$$

C_e = D.O. in mg/l.
S = Saturation factor
of D.O. = .90
T = water temperature
E = altitude in feet
(assumed = 0)

$$Q = 1.2 \frac{(C_e - C)}{O_2}$$

Q = carrying capacity in
lbs. fish/gpm.
C = minimum D.O.
concentration in mg/l.

Calculations

Chum (4,000,000 smolts @ 500/lb.)

$$O_2 = (4.9 \times 10^{-4}) (55^{2.12}) (.002^{-.194}) = .801 \text{ lb. } O_2$$

$$C_e = \frac{.90 \times 132}{55^{.625}} = 9.72 \text{ mg./l. } O_2$$

$$Q = \frac{1.2 (9.72 - 4.0)}{.801} = 8.57 \text{ lb./gpm.}$$

$$Q_1 = \frac{8000 \text{ lb.}}{8.57} = 934 \text{ gpm. or } 2.08 \text{ c.f.s.}$$

Coho (500,000 smolts @ 20/lb.)

$$O_2 = (4.9 \times 10^{-4}) (55^{2.12}) (.05^{-.194}) = .429 \text{ lb. } O_2$$

$$C_e = \frac{.90 \times 132}{55^{.625}} = 9.72 \text{ mg/l } O_2$$

$$Q = 1.2 \frac{(9.72 - 4.0)}{.429} = 16.0 \text{ lb./gpm.}$$

$$Q_1 = \frac{25,000 \text{ lb.}}{16.0} = 1563 \text{ gpm. or } 3.47 \text{ c.f.s.}$$

Chinook (1,500,000 smolts @ 90/lb.)

$$O_2 = (4.9 \times 10^{-5}) (55^{2.72}) (.01^{-.174}) = .586 \text{ lb. } O_2$$

$$C_e = \frac{.90 \times 132}{55^{.25}} = 9.72 \text{ mg/l. } O_2$$

$$Q = \frac{1.2 (9.72 - 4.0)}{.586} = 11.71 \text{ lb./gpm.}$$

$$Q_1 = \frac{16,667 \text{ lb.}}{11.71} = 1423 \text{ gpm. or } 3.16 \text{ c.f.s.}$$

Source Liao, P.B., 1971, Water Requirements of Salmon,
Progressive Fish Culturalist, 33 (4): 210-15.

THE REPORT
OF
THE TULALIP TRIBES

INTRODUCTION

This report is intended to present the position of The Tulalip Tribes to the Regional Task Force of the Presidential Task Force on Treaty Fishing Rights of the Northwest. It is presented with the expectation that it will be received by the Task Force as a step toward meeting the four (4) guiding principals set forth when the Task Force was created.

Our Tribe stands ready to begin meaningful discussions towards finding solutions to the many concerns expressed by all parties. Further, we fully expect the United States of America to continue to honor its obligation that it voluntarily entered into, on the shores of Puget Sound over 122 years ago.

ENHANCEMENT:

The Tulalip Tribes has long been involved in fisheries enhancement. Since 1940 the Tribe has been involved intermittently in the rearing and release of salmon on the reservation in conjunction with the Washington State Fisheries Departments and The U.S. Fish and Wildlife Service. Since 1969 the Tribe has had an ongoing Cooperative rearing program with the State Department of Fisheries. Under this program the State supplies coho and chinook salmon fry, primarily from their Skykomish Salmon Hatchery. The salmon fry are placed in the Tulalip Ponds located on Tulalip Creek. They are then cared for and reared to smolt size by the Tribe and released into Puget Sound where they contribute to all sports and commercial fisheries in Puget Sound and Coastal Waters. The Tribe anticipates continuing this program and expanding it to include a third rearing pond on Mission Creek which is now in the planning stage. We anticipate that this new pond will be completed by November, 1978.

In 1976 the Tribe initiated a Tribal chum rearing program. A gravel incubation system and rearing pool were constructed and stocked with 600,000 eyed chum salmon eggs from the Federal Hatchery at Quilcene, Wash. The Tribe successfully reared these fish to release size with minimal mortality. Encouraged by this success, the Tribe is expanding its chum rearing facility to 5,000,000 capacity for the 1977-78 rearing season.

The Tulalip Tribes also has submitted a proposal to the U.S. Government for a full scale hatchery to be located on Tulalip Creek. The hatchery proposal has been previously presented to the Task Force who have

Enhancement Continued

recommended the project as a desirable enhancement program. The Washington State Department of Fisheries and the U.S. Fish and Wildlife Service have also recommended this project as one that would fit well into any conceivable Puget Sound enhancement plan.

OFF-RESERVATION SHARING:

The Tulalip Tribes off-reservation fishery is best discussed in three distinct segments; the fishery on stocks destined for Stillaguamish and Snohomish rivers and Tulalip Bay, the fishery on stocks destined for Puget Sound streams other than the Stillaguamish and Snohomish rivers and finally the fishery on Canadian destined Sockeye and Pink salmon stocks.

Stillaguamish, Snohomish and Tulalip Destined Stocks: These stocks are the backbone of the Tulalip Tribes' fishery. They contribute more than 50% of the Tribes total off-reservation catch and all of the Tribes on-reservation catch. These stocks are primarily fished in Tulalips' traditional "at home" fishing grounds which corresponds roughly to harvest management areas 8B and 8C.

The Tulalip Fishermen are capable of harvesting the full treaty share of salmon and steelhead stocks returning to these waters, and are doing so now. Any phase-in of the 50 - 50 allocation on these stocks would deprive Tulalip Fishermen of catches they are presently taking and which are needed to support a viable at home fishery.

Stocks Destined for Other Puget Sound Streams: The Tulalip Tribes have treaty fishing rights extending well out into North and Central Puget Sound, and fish extensively on stocks passing through these waters. Other treaty tribes also fish various portions of these areas. Therefore the harvest of fish passing through these waters are managed by in-common regulations adopted by these tribes through the Point Elliott Treaty Council. This combined Indian Fleet is well able to harvest it's full

Off-Reservation Sharing Continued:

treaty share of these stocks, and any phase-in would deprive Tulalip and other treaty tribes of catches they are presently taking.

I.P.S.F.C. Controlled Sockeye and Pink Salmon Stocks: The Tulalips and several other tribes have treaty fishing rights on International Pacific Salmon Fisheries Commission controlled stocks. At present the fishing power of these combined tribes is not sufficient to harvest its full treaty allocation of these stocks. The Tulalip Tribes would be willing to consider a phase-in of the 50 - 50 sharing allocation on these stocks, and suggest the following formula for discussion:

	<u>TREATY SHARE</u>	<u>NON-TREATY SHARE</u>
1978	30%	70%
1979	36%	64%
1980	42%	58%
1981	47%	53%
1982	50%	50%

Any such agreement would of course have to be agreed to by all tribes with fishing rights on these stocks.

Given the present small size of Indian fleet they should also be granted considerable extra fishing time over and above that given the all citizens fleet during this phase-in period.

ON-RESERVATION FISHERIES:

The Tulalip Tribes' claimed on-reservation catches of Coho and Chinook salmon are negotiated each year as part of a joint salmon rearing program between the Washington State Department of Fisheries and the Tribe. The Department of Fisheries, as a condition of their continuing participation in this program, insists that only a set number of these returning fish be claimed as a part of the Tribes on-reservation catch. The agreed upon numbers for the 1977 season are 1,500 Chinook and 10,000 Coho. The reason for this condition is that with the exception of prior interceptions all of the returns from this program reach on-reservation waters.

The Tribes' claimed on-reservation catch for Pinks, Chum salmon and Steelhead are based on past years catches and are as follows:

Pink Salmon-----50% of total Tribal catch in management areas 8B and 8C.

Chum Salmon-----33% of total Tribal catch in management areas 8B and 8C.

Steelhead-----50% of total Tribal catch in management areas 8B and 8C.

The Tulalip Tribes are willing to enter into negotiations regarding its' presently claimed on-reservation catches for some specified phase-in period of the U.S. v. Washington allocation formula. Any such agreement, however, must recognize the Tribes' treaty guaranteed right to a separate and distinct on-reservation fishery.

SUBSISTENCE AND CEREMONIAL FISHERIES POLICY:

The Ceremonial fish needs claimed by Tulalip Tribes are based on the actual use of fish for various Tribal ceremonies during the course of the year. The claimed subsistence catches are based on a poll of tribal members. Tribal members of different age groups were asked how many fish of each species they consumed during the year. The figures for each age group were then averaged and multiplied by the total number in each age group to get the total for each species. This total includes hatchery surplus fish used by the members of the Tribe.

The Tulalip Tribes estimated ceremonial and subsistence needs during the 1977 season are as follows:

	Chinook	Coho	Sockeye	Chum	Steelhead
Ceremonial	822	317	144	1352	.35
Subsistence	1199	1532	709	4035	107

As stated above, the Tulalip Tribes' claimed Ceremonial and Subsistence catches represent those fish actually needed and used, and any reduction would have negative social and economic impact on Tribal members.

The Tribe would however consider increased numbers of certain hatchery surplus salmon in lieu of a percentage of fish actually taken in ceremonial and subsistence catches, provided that such fish were in good edible condition.

STEELHEAD POLICY:

The Tulalip Tribes are willing to negotiate a reduction or possibly eliminate their winter steelhead fishery. Any agreement reached through such negotiations could not constitute giving up treaty rights to fish on this species. Rather, it must take the form of a management agreement, whereby the Tulalip Tribes would manage around Stillaguamish and Snohomish River destined Winter Steelhead stocks. It should also be emphasized that the Tribe intends to continue its involvement in the harvest management and enhancement of these stocks. Since these fish interact with and in some cases compete with salmon utilizing these rivers it is imperative that the Tribe continue to have a say in their management.

A major consideration in any such negotiations would be to provide an alternate income source for the fishermen economically impacted by the loss of the steelhead fishery. Such an income source could initially take the form of alternate work but ultimately should consist of an alternative winter fishery. This might be accomplished by establishing a late chum salmon run returning to Tulalip Bay.

The Tulalip Tribe realizes that the steelhead are considered by some to be a prized sports fish and that the commercial harvest by Treaty Tribes is the most controversial single element of Indian Fisheries. Accordingly the Tribe have entered into negotiations trying to find a way for the Tribe to cease fishing this species. The Tribe together with the Washington State Fisheries Department have drafted such an agreement, (See Appendix I), and both parties are seeking to honor its intent though it has not as yet been signed.

GEAR AND EFFORT PROPOSAL:

Based on the number of tribal fishing permits issued to date for the 1977-78 season the Tulalip Tribal fishery is now being conducted with the following types and numbers of gear:

Gillnet	50
Setnet	31
Beach Seine	8

The beach seines and setnets are presently used primarily in the on-reservation fishery.

As stated earlier, the present Tulalip Fleet is capable of harvesting its full treaty share in all but the I.P.S.F.C. controlled sockeye and pink salmon fisheries. Therefore the Tulalip Tribes' fishing fleet has the following gear needs:

- 1) Tribal members have a need of purse seine fishing boats and gear which would be fished primarily in the I.P.S.F.C. controlled sockeye and pink salmon fishery. Such boats could be tribally or individually owned and operated, and would also be useful in tagging studies, test fisheries and selective harvesting of Puget Sound stocks when not being used in the sockeye - pink fishery.
- 2) Tribal members need to replace and upgrade many of the existing gillnet and beach seine boats presently in the fleet. This needs to be done for both economic and safety reasons. Perhaps 50% of the Tulalip gillnet fleet consists of outmoded and overaged boats. These vessels are not reliable or seaworthy enough to safely handle rough weather, and are especially dangerous in the sockeye and pink fishery. They should be replaced as soon as possible with safe, efficient, modern diesel powered boats.

GEAR AND EFFORT PROPOSAL: (CONTINUED)

- 3) Tribal fishermen have a continuing need for a source of financing to replace and upgrade nets and other fishing gear. At present many of our fishermen must seek such financing from fish packing companies which obligates them to sell their fish to these firms for less than competitive prices.

- 4) A program should be instituted to convert all existing tribal vessels to diesel power. This would make these boats safer, more reliable, and more economically efficient.

The Tribe is presently considering a limitation on the number of marine gillnet licenses issued for the terminal area fishery. This number would of course be adjusted as enhancement programs capable of supporting a larger fleet coming into being. As a practical matter, however, most of the tribal members who are able and desire to be fishermen are already fishing. Thus we do not anticipate any great increase in the tribal fleet in the foreseeable future.

The Tulalip Tribe concurs in the widely held view that there must be a substantial reduction in the size of the Coastal and Puget Sound non-Indian fishing fleets. To accomplish this goal the Tribe believes that the following actions should be taken:

- 1) The number of part-time fishermen holding commercial licenses should be sharply reduced. To this end a realistically high minimum yearly catch quota should be instituted.

GEAR AND EFFORT PROPOSAL: (CONTINUED)

- 2) The number of licenses held by fish packing companies should be greatly reduced. We believe that no individual or corporate entity should be allowed to hold large numbers of licenses.

- 3) Interim federal help should be extended to full-time non-Indian fishermen until enhancement and buyback programs take effect.

CURRENT TRIBAL MANAGEMENT:

The Tulalip Tribes Board of Directors have the final authority over all tribal fishery activities, including the actions of the Tribal fisheries office. Sitting as the Board of Directors they pass on all fishing ordinances, regulations, and amendments thereof. They also approve all major fisheries related expenditures and set overall tribal fisheries policy. Sitting as the fisheries committee, a committee of the whole, the directors also approve all normal fishing regulations. The Director of Tribal Fisheries, or in his absence the Tribal Business Manager, are authorized to put emergency regulations into effect subject to ratification by the Fisheries Committee within 24 hours.

The permanent staff of the Tulalip Fisheries office presently consists of Director, Fisheries Biologist, Biologist Trainee, Office Administrator, Administrative Secretary and Fisheries Patrolmen. All of these people are presently paid through B.I.A. Fisheries Management Contract. The Tribal Lawyer and Planner are also at our disposal as needed and are paid from Tribal funds.

The fisheries office employs two security patrolmen who have the responsibility of protecting the fishing boats docked at tribal facilities during fishing season. These security personnel are paid out of tribal tax levied on all fish sold by tribal fishermen. These funds are also used to maintain and improve docks, piers and other fisheries related facilities. Finally the fisheries office has twelve people hired under a C.E.T.A. funded program. These people are presently working expanding the tribal chum salmon rearing program and on other fisheries related work.

TRIBAL ENFORCEMENT:

The Tulalip Tribes have one full time fisheries patrolman. The director, biologist and biologist trainee also assist him with his patrol and enforcement duties as necessary. The tribe has its own fully equipped fisheries patrol boat. We also have the use of a second patrol boat which is on permanent loan from the B.I.A.

The Tribe has a functioning tribal court system which tries all violations of tribal fishing regulations and ordinances.

The Tulalip Tribes are a member of the Point Elliott Treaty Council, one of the councils making up the Northwest Indian Fisheries Commission. The Tribes of the Point Elliott Treaty Council have adopted in-common regulations for many areas that lie within the usual and accustomed areas of more than one tribe. The regulations are enforced on Tulalip Fishermen by our patrolman when they are fishing such in-common waters. We do not presently enforce regulations on other than our tribal fishermen except for reporting any observed illegal fishing by non-tribal members to the appropriate authorities.

Given the anticipated expansion of the Tribal fisheries program we need three full-time fisheries patrolmen. We also feel that further training programs for our patrolmen are necessary. The Tribe also needs a larger, more seaworthy patrol boat for use in the I.P.S.F.C. controlled sockeye and pink salmon fisheries.

TRIBAL ENFORCEMENT: (CONTINUED)

Effective enforcement of State and Federal fishing regulations in all but the I.P.S.F.C. fishery is a farce and tokenism at best. If equitable agreements are to be reached through negotiations the State of Washington and the Federal Government must come up with effective enforcement and substantially increased penalties for fishing violations.

APPENDIX I
PROPOSED MEMORANDUM OF UNDERSTANDING BETWEEN
THE TULALIP TRIBES AND THE WASHINGTON STATE
DEPARTMENT OF FISHERIES
CONCERNING STEELHEAD MANAGEMENT

MEMORANDUM OF UNDERSTANDING BETWEEN
THE TULALIP TRIBES OF WASHINGTON AND THE
WASHINGTON STATE DEPARTMENT OF FISHERIES

The Tulalip Tribes of Washington and the Department of Fisheries of the State of Washington are sincerely concerned about the protection and enhancement of the fisheries resource, both parties are concerned that positive steps be taken to resolve some of the conflicts which surround the harvest of anadromous fish. To the end that some of that conflict would be reduced, the following will be done and is mutually agreed upon:

I. THE TULALIP TRIBES WILL:

1. Upon completion of a hatchery to be established on Tulalip Creek, Tulalip Indian Reservation, Snohomish County, Washington, or at any other site acceptable to the Tulalip Tribes, hatch, rear and release annually of a stock satisfactory to the Tulalip Tribes, 10 million chum salmon, 1 million coho salmon and 1 million chinook salmon.
2. All harvestable adult salmon destined to return to Tulalip Bay shall be shared equally between the Indian and Non-Indian fisheries.
3. No harvestable adult salmon shall be counted from said production for the Tulalip Tribal subsistence or ceremonial purposes either on or off reservation.
4. Prohibit all on-reservation gillnet or setnet fishing by members of the Tulalip Tribes in and upon all waters of Port Susan and Port Gardner Bay with the exception of Tulalip Bay during the months of December, January, February and March of each year. However, in the event that the chum salmon returning to Tulalip salmon rearing facilities do not enter Tulalip Bay in a timely fashion and it thus becomes necessary to harvest said fish outside Tulalip Bay during December, January, February or March, it is agreed that the Tulalip Tribes may cause a harvest of these fish outside Tulalip Bay. Such fishing shall be done only with

gear reasonably calculated to allow any incidental catch of steelhead to be released unharmed, and shall take place only within an area defined as follows:

" All marine water lying within the area created by the intersection of (a) a line projected southerly from Tulalip Shores on the Mainland just south of Tulare Point to its tangential intersection with the south end of Gedney Island; (b) a line projected northwesterly from its tangential intersection with Priest Point to its tangential intersection with the souther most projection of Camano Island; (c) a line projected northeasterly from its tangential intersection with the north end of Gedney Island to White Rock, the latter being a point on the mainland between Priest Point and Hermosa Point." (See Attached Map.)

5. Prohibit by Tribal ordinance as unlawful the commercial fishing for the sale of steelhead by Tribal members during the months of December, January, February and March of each year in marine waters.
6. Prohibit by Tribal ordinance as unlawful the taking of steelhead from waters of the Snohomish River System and all other river system waters that are subsequently determined to be usual and accustomed Tulalip Tribal fishing areas except by hook and line.
7. Expend all proceeds derived from the sale of hatchery bi-products solely to employ Tulalip Tribal fishermen economically damaged by the discontinuance of the Tribal steelhead fishery during December, January, February and March of each year. Said fishermen shall be employed solely for the purpose of enhancing the salmon resource of the area.
8. This agreement shall become effective only after satisfactory progress acceptable to the Tulalip Tribes has taken place in 1977 toward obtaining a hatchery on Tulalip Bay. This agreement shall then continue each year thereafter only so long as progress toward this end is made which is satisfactory to the Tulalip Tribes.

9. Manage the Tribal fishery in such a way as to protect viable native stocks of salmon and steelhead returning through Port Susan and Port Gardner Bays.

II THE DEPARTMENT OF FISHERIES WILL:

1. Provide the Tulalip Tribes with one million chum fry in the spring of 1977.
2. Maintain at 1977 levels and seek to increase the existing coho and chinook salmon joint enhancement program between the Tulalip Tribes and the Washington State Fisheries Department.
3. Provide needed technical support to the Tulalip Tribes including, but not limited to, the services of a Fisheries pathologist and any required medications. Such support shall continue through the 1981-82 season, and shall be extended thereafter under terms mutually agreeable to both parties.
4. Provide at the choice of The Tulalip Tribes 10 million chum eggs and/or fry in the spring of 1978 and each ensuing year thereafter, until viable runs have been established. It is agreed that in the event of unforeseen difficulties the State will provide the necessary eggs to re-establish the run. It is agreed, however, that if the numbers of chum salmon returning to the State's Hoodspout Hatchery are not sufficient to supply all eggs needed, the State will retain the first 15 million eggs taken at said hatchery. Thereafter all additional eggs taken at this facility will be shared equally between the State and the Tulalip Tribes until the Tribes goal of 10 million chum salmon is reached.
5. Actively work with the Tulalip Tribes to help assure the base to provide an operating hatchery by 1980, which will be located on a site of the Tulalip Tribes choice.
6. Actively work with the Tulalip Tribes to help assure the continued existence of the Tribes' fish rearing program. Such efforts shall include but not limited to assisting The Tulalip Tribes in securing hatchery construction and operational funds.

7. Manage and regulate the non-Indian fisheries in such a manner as to protect and preserve viable native stocks of salmon and steelhead returning to and through Port Susan and Port Gardner Bays.
8. Provide on request signed permits for all necessary phases of Tribal salmon rearing facilities, including; but not limited to release, research and test fishing permits.
9. Manage the non-Indian fishery on salmon stocks whose destination is Tulalip Bay and the Tulalip Hatchery or are the result of the joint enhancement program in a manner which will assure insofar as possible under the State of the art so that not more than one half of the harvestable fish are taken by said non-Indian fishery.
10. Provide all excess coho hatchery bi-products from the Skykomish salmon hatchery to the Tulalip Tribes. The proceeds from the sale of said bi-products shall be used solely to compensate tribal fishermen economically damaged by the discontinuance of the tribal/ commercial steelhead fishery during December, January, February and March of each year of said agreement. Compensation will be provided through employment of said fishermen in programs that will provide for the enhancement of the fishery within the area. Should said hatchery bi-products be of such a minimal amount as to not provide a just compensation to said Tulalip Steelhead fishermen in fishery enhancement related employment, assistance will be actively provided in securing funds to support said purpose. It is further agreed that these hatchery bi-products and any necessary compensatory fishery enhancement employment assistance will continue to be provided as set forth herein through the 1982-83 fishing season or until substantial viable runs of chum salmon have been established at the Tulalip Bay Hatchery.
11. Agree to prohibit all non-Indian commercial salmon and steelhead fishing in Port Susan and Port Gardner Bay during

the months of December, January, February and March of each year.

- 12.- Establish as a salmon preserve closed to all non-Indian commercial salmon fishing at all time those waters within the area described in paragraph I (4) hereinabove and illustrated on the attached map.

III ADDITION TO THE FOREGOING CONVENANTS, IT IS AGREED BY BOTH PARTIES AS FOLLOWS:

1. The term "harvestable", as it is applied herein to hatchery stocks, is hereby defined as the portion of the returning salmon which are in excess of those required for propagation purpose.
2. Both parties to this agreement further agree to cooperate in the taking of salmon eggs for propagation purposes. This cooperation shall include taking eggs at Tulalip Bay for propagation elsewhere and taking eggs elsewhere for propagation at Tulalip Bay, provided however, that runs destined for Tulalip Bay shall not be managed on the basis of egg requirements of other locations.
3. Both parties to this agreement shall meet during the last half of June of each year to re-evaluate, modify or terminate this agreement.
4. Agree that nothing herein contained shall be construed to constitute a waiver or abrogation of any treaty right now or hereafter held, defined or determined as vested in the Tulalip Tribes of Washington, nor constituting a legal precedent or admission against interest diminishing or changing the Boldt decision in U.S. v. Washington, nor be used by either party hereto to imply such purpose or intent, but, to the contrary, shall be and is an agreement to accomplish as far as may be the respective management problems of the parties in the exercise of their respective legal rights and duties as such are by law, treaty and decision defined.
5. Agree that in the event this agreement is breached by either party, the party claiming such breach may abrogate this agreement or by reason of the inadequacy of any legal

remedy may cause the same to be specifically performed by appropriate decree in a Court of equity.

6. Agree that the chum salmon hatchery created fishery herein addressed is a new and additional salmon fishery supplemental to presently existing fisheries which are upon existing natural and artificial salmon stocks and this newly created fishery shall be managed in accordance with the principals of this agreement separately from and without reference to presently existing natural and artificial salmon runs.

DATED this _____ day of _____, 1977

THE TULALIP TRIBES OF WASHINGTON

By _____
Chairman

ATTESTED _____
Secretary

THE DEPARTMENT OF FISHERIES OF THE
STATE OF WASHINGTON

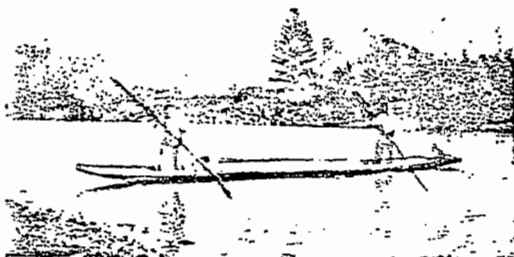
BY _____
Acting Director

TRIBAL REPORT
TO THE
PRESIDENTIAL TASK FORCE ON
TREATY FISHING RIGHTS IN THE NORTHWEST

Supplement 2 to Volume VII

Presented by
The Stillaguamish Tribe of the Point Elliott Treaty Area

November 29, 1977



STOLUCKQUAMISH
TRUE TO THEIR TRADITIONS AS "CANOE INDIANS"

TO: Federal Fisheries Task Force

FROM: Stillaguamish Indian Tribe

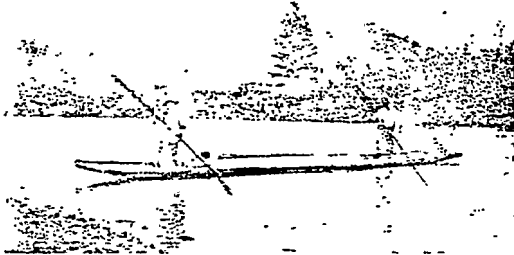
SUBJECT: Problem Solutions & Fisheries Needs

The Stillaguamish Indians have been deprived fully of all benefits and rights vested with us under the Treaty of Point Elliott for most of the past one hundred years. Our rights and standing as treaty Indians were reaffirmed by the Boldt Decision. We have sought the re-establishment of our rights continuously, year-by-year, through every decade of the Twentieth Century.

Our late success in the United States' court system came to us at a point when all of our tribal assets, except our remaining tribal population, had been reduced to nothing. Our fisheries had become non-existent. In renewing our exercise of rights, and looking toward the produce of our natural resources, we have had to begin at point zero and with few aids to assist our development.

We believe that compensatory measures are appropriate for the Federal Government to undertake in both assessing the present condition and future needs of the Stillaguamish Indians, while addressing the problems created by the deprivation of our treaty rights by both the United States and the State of Washington. In this regard, we propose that the Federal Government adopt a Ten-Year Plan for the Stillaguamish Indian Tribe to aid the restoration of our community and our utilization of fish resources. Because our primary reliance upon fisheries is for the generation of tribal, family and individual incomes and revenues, we would be willing to restrict the development of our fisheries and catch volumes, if some substitute income sources might be committed under a 10-year plan for these vital needs.

The basic components of this Plan would include the following, as discussed in part below:



STOLUCKQUAMISH
TRUE TO THEIR TRADITIONS AS "CANOE INDIANS"

1. The Federal Government commit itself to the immediate acquisition and purchase of not less than 360 acres of land for the Stillaguamish for purposes of community facilities, family housing, and related agricultural activities, under tribal ownership, assignments and management.

2. The Federal Government commit itself to providing an annual grant of \$100,000.00 to the Stillaguamish to aid in the development of its governmental functions and property rights management. These funds would not preclude the Tribe from securing program funds from other governmental sources for which it might be eligible for tribal and individual purposes, such as housing, community facilities, economic development and job opportunity creation.

With respect to fisheries, the Stillaguamish Tribe would develop and restrict its river and marine area fisheries and fishermen units--consistently with other area or regional plans of other Indian tribes and non-Indians for fishery management--in the possible following manners:

3. Over the next ten years, the marine area fishery of the Stillaguamish would not exceed five commercial gillnetters, owned either by the Tribe or individual tribal members, and possibly one tribally-owned purse seiner. These marine fishing units should be allowed to fish freely in the Port Susan tribal Indian fisheries at the same times as open to other treaty tribes, or at an equivalency of open fishing days in peak harvest or run periods; and, the Stillaguamish boats similarly should have access to sockeye and pink salmon harvests in IPSFC marine waters.

4. River fishing units would be restricted to not more than ten (10) licensed tribal fishermen. Other marine fishing activity likely would make the river steelhead fishery be the only feasible and productive river fishery. Depending upon the federal commitments to a 10-year Stillaguamish plan, or no commitments, the Tribe could find several options acceptable relating to steelhead. These would range from (1) insistence upon harvesting a full 50% of all steelhead reaching the Stillaguamish or harvestable in adjacent marine areas; (2) a weekly river fishery from November through April; (3) allowing for 50 fishing days during that same calendar period; and (4) limiting harvests to ten subsistence days of fishing in the months of peak steelhead runs at one day per week.



STOLUCKQUAMISH
TRUE TO THEIR TRADITIONS AS "CANOE INDIANS"

The Stillaguamish have been confronted by numerous problems involving both other tribes, non-Indians, and State agencies in attempting to re-establish itself within our treaty fishing areas. Resource reallocation and gear balancing (reduction and buildups in the various fleets) proposals could easily maintain our fishermen in their precarious, disadvantaged and unpromising position. The plan above would accommodate our needs and effect the changes in fishery patterns that would eliminate the problems facing tribal fishermen, whether in a large or small fleet in present circumstances.

On other matters, we support the following positions:

- A. Fisheries management should remain under tribal and inter-tribal regulation for the Tribes. The tribal rights and interests should not be surrendered to the dictates of exclusive State legislation, courts, administration, or agencies. The co-management principles embracing tribal rights, interests, powers and authorities should be maintained in any new scheme of overall fisheries management and planning which may be advocated by the Task Force.
- B. We favor the federal chartering of an Indian Fisheries Commission as the best means of consolidating multi-tribal authorities and representing the Indian interests in resources protection and utilization. Earlier we supported the proposal that the NWIFC be chartered by Presidential Executive Order when that proposal was being considered by the Richard Nixon White House in the summer of 1974. We would support that proposal again.
- C. The Stillaguamish situation reflects the need for a system that provides first for inter-tribal agreements and regional planning or coordination before the matter of agreements with State agencies can be properly framed or concluded. The Indian Commission-Regional Council (Treaty Council) system, with improvements, seems more satisfactory than any single agency system having full power over all areas, whether that single authority might be directed by Indians or non-Indians or a combination of both.

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