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Docket Entry 223 - Filed Plaintiff's Third Requests for Admissions (Anthropology)

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FILED IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

MAY 22 1973

EDGAR SCOFIELD, CLERK
By *[Signature]* Deputy

12 UNITED STATES DISTRICT COURT
13 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

14 UNITED STATES OF AMERICA,)
15 Plaintiff,)
16 QUINULT TRIBE OF INDIANS on its own behalf)
and on behalf of the QUEETS BAND OF INDIANS;)
17 MAKAH INDIAN TRIBE; LUMMI INDIAN TRIBE; HOH)
TRIBE OF INDIANS; MUCKLESHOOT INDIAN TRIBE;)
18 SQUAXIN ISLAND TRIBE OF INDIANS; SAUK-)
SUIATTLE INDIAN TRIBE; SKOKOMISH INDIAN)
19 TRIBE; CONFEDERATED TRIBES AND BANDS OF THE)
YAKIMA INDIAN NATION; UPPER SKAGIT RIVER)
20 TRIBE; STILLAGUAMISH TRIBE OF INDIANS; and)
QUILEUTE INDIAN TRIBE;)
21 Intervenor-Plaintiffs,)
22 v.)
23 STATE OF WASHINGTON,)
24 Defendant,)
25 THOR C. TOLLEFSON, Director, Washington)
26 State Department of Fisheries; CARL CROUSE,)
27 Director, Washington Department of Game;)
and WASHINGTON STATE GAME COMMISSION; and)
28 WASHINGTON REEF NET OWNERS ASSOCIATION,)
29 Intervenor-Defendants.)

CIVIL NO. 9213
PLAINTIFFS'
THIRD REQUESTS
FOR ADMISSIONS
[ANTHROPOLOGY]

30
31
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CERTIFICATE OF MAILING

I certify that I mailed a copy of the foregoing document to which this certificate is attached, to the attorneys of record of plaintiff, defendant, on the 21st day of MAY, 1973.

* GPO: 1971-0-210-000

UNITED STATES ATTORNEY

By C. Harrigan

CERTIFICATE OF SERVICE

I certify that in accordance with Local Rule 5, a copy of the foregoing document was delivered to Judge GEORGE H. BOLDT on MAY 21, 1973.

UNITED STATES ATTORNEY

By C. Harrigan

1 COME NOW all plaintiffs, herein, by Stuart F. Pierson,
2 plaintiffs' liaison counsel, acting on behalf of one or more of
3 the plaintiffs herein, and pursuant to Rule 36 of the Federal Rules
4 of Civil Procedure and paragraphs 10 and 16 of the Order of
5 April 24, 1973, herewith propound the following requests for
6 admissions with regard to anthropology, severally to the defendant
7 State of Washington, the intervenor-defendants Thor Tollefson,
8 Carl Crouse, the Washington State Game Commission, and the
9 Washington Reef Net Owners Association, through defendants'
10 liaison counsel.
11

12 PREFACE

13 The term "treaty times" used hereafter shall refer to the
14 period between 1852 and 1858.. Below each of the various requests
15 for admissions are bracketed references for the convenience of
16 the defendants. These references are intended to include the
17 context of the referred to portion as well as the particular
18 passage which is referred to. These references are not intended
19 to be the exclusive sources for the request for admission.
20

21 SUMMARY

- 22 [I. Indian Life at the Time of the Treaties;
23 A. General Structure of Indian Life.]
24

25 3.001 Aboriginally and during the time when the treaties were
26 negotiated, Indian settlements were widely dispersed throughout
27 western Washington. Population density was higher than almost
28 anywhere else in native North America north of Mexico. These
29 two conditions depended upon (a) the peculiar potentialities of
30 the habitat and (b) the successful sufficient utilization of
31

1 available resources by the native population. However, this was
2 not a "lotus land" in which the native fisherman in a few hours
3 time could obtain a year's supply of food for his family.

4 [Lane - Summary, 1]
5

6 3.002 The indigenous population occupied a series of ecologi-
7 cal niches with varied topographic and climatic characteristics.
8 There was considerable local diversity in the availability of
9 animal, plant, and mineral resources used for food and artifacts.
10 This variation in habitat is of critical importance in understanding
11 the native economy; nevertheless, it is still possible to make
12 some valid generalizations regarding Indian life west of the
13 Cascades during treaty times. [Lane - Summary, 1]
14

15 3.003 The rugged hills and mountains and dense forest cover
16 made communication by land exceedingly difficult. The terrain
17 and cover also set limits to the value of the land as a game and
18 plant food collecting area. All groups utilized land plants and
19 animals for food, but these were not nearly so important as salt-
20 water and freshwater resources. [Lane - Summary, 1]
21

22 3.004 If the land environment posed difficulties, that of
23 the sea and waterways provided major advantages to Indian exist-
24 ence. The Indians invariably lived next to waterways, traveled
25 upon them, and depended on the resources of the waters for their
26 major livelihood. [Lane - Summary, 1 and 2]
27

28 3.005 The water resources were rich, but again there was
29 tremendous local diversity. Types of marine life differed in
30 the open sea, in bays, rivers and lakes. Topographic features
31

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1 such as depth of water and nature of bottom or shoreline
2 predicated presence or absence of specific species in a given
3 locale. [Lane - Summary, 2]

4
5 3.006 Availability varied not only from area to area, but
6 also seasonally. This depended not only on presence or absence of
7 a given species in local waters at different times of the year,
8 but also on seasonal availability of suitable bait. Furthermore,
9 storms, rough seas, and fog made fishing impossible at certain
10 times. [Lane - Summary, 2]

11
12 3.007 In addition to areal and seasonal variations, there was
13 considerable fluctuation in abundance and availability from year
14 to year. Some of this was regular and predictable, as in the
15 case of runs of certain species and races of salmon. Other
16 causes were erratic, such as flooding and alterations in water-
17 courses. [Lane - Summary, 2]

18
19 3.008 Insofar as food was concerned, the native habitat
20 provided limited land resources and rich marine resources. The
21 latter were unevenly distributed over space and time. Their
22 successful and efficient utilization required an intimate know-
23 ledge of local environments and the locally available species
24 and a repertoire of specialized taking-techniques. In the case
25 of fishing, gear and techniques were specific not only as to
26 species but also to water conditions. [Lane - Summary, 2 and 3]

27
28 3.009 Throughout most of the area, salmon (including steel-
29 head where available) was the staple food. A great challenge
30 was posed by the fact that this species could be taken in vast
31

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quantities, but only at particular periods of limited duration. To harvest this resource efficiently, the following were needed: (a) large-scale equipment requiring cooperative effort (e.g., weirs, seines, reef-netting gear); (b) food-preservation techniques (e.g., sun drying, wind drying, smoking) and storage facilities (e.g., cedar boxes, baskets, bladders and kelp for fish oil, and smoke houses) so that the huge surpluses could be used later; and (c) an exchange system whereby local surpluses could be redistributed to people in other areas (e.g., ceremonial exchanges, trade). [Lane - Summary, 3]

3.010 The major food acquisition techniques in the area were fishing, hunting of land animals and sea-mammals, the collection of wild foods such as mollusks and other intertidal marine life, berries, and the digging of edible roots, shoots, and bulbs.

3.011 In order to take these foods as they became available at certain places and seasons, it was necessary for people to range over the country to be on hand when the camas bloomed or the berries ripened or the salmon began to run. These seasonal movements were reflected in native social organization. In the winter, when weather conditions generally made travel and fishing difficult, people remained in their winter villages and lived more or less on stored foods -- dried meat and berries and dried and smoked fish. Fresh fish and other foods were harvested during the winter. That season, however, was devoted primarily to intra- and intervillage ceremonies and manufacturing tasks. This was the time when people were congregated into the largest assemblages, occupying long multifamily houses made of

1 split cedar planks. Throughout the rest of the year individual
2 families dispersed in various directions to join families from
3 other winter villages in fishing, clam digging, harvesting camas,
4 berry picking, and other economic pursuits. People moved about to
5 resource areas where they had use rights based on kinship or
6 marriage. Such rights were clear cut and important in native
7 society, but were not readily discernible to outside observers
8 of Indian life. Ambiguity was compounded even for observant
9 resident settlers because families did not necessarily follow
10 the same particular pattern of seasonal movements every year.
11 This gave non-Indians the impression that there was no stable
12 political organization. The winter village had no "head chief"
13 or "village council". Leadership and authority tended to be task
14 oriented with the appropriate specialist taking over leadership
15 according to the occasion, e.g., hunting party, communal fish
16 drive, raiding party, life crisis ceremony. [Lane - Summary, 3
17 and 4]

18
19 3.012 Native society was hierarchical, in which upper-class
20 people, commoners, and slaves were recognized. In parts of the
21 region, stewardship rights and duties over resource-producing
22 areas such as clam beds, reef-net locations, cranberry bogs,
23 or camas beds was inherited. [Lane - Summary, 4]

24
25 3.013 The dense populations, stratified social organization,
26 and complex ceremonial life which characterized native culture in
27 western Washington was made possible because of the effective
28 utilization of available resources and the highly efficient means
29 of redistributing periodically available surpluses.
30 [Lane - Summary, 4 and 5]

31
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1 3.016 As the food staple, fish provided essential proteins,
2 fats, vitamins, and minerals in the native diet. [Lane -
3 Summary, 6]
4

5 3.017 Fishing methods varied according to the locale but
6 generally included trapping, dip-netting, gill-netting, reef-
7 netting, trolling, long-lining, jigging, set-lining, impounding,
8 gaffing, spearing, harpooning, raking, and so on.
9 [Lane - Summary, 6]
10

11 3.018 Species of fish taken, again varying according to
12 locale, included salmon and steelhead, halibut, cod, flounder,
13 ling cod, rockfish, herring, smelt, eulachon, dogfish, trout,
14 and many others. [Lane - Summary, 6]
15

16 3.019 The initial effect of the influx of non-Indians into
17 western Washington was to increase the demand for fish both for
18 local consumption and for export. Almost all of this demand,
19 including that for export, relied on Indians to supply the fish.
20 Non-Indians did not engage as fishing competitors on any scale
21 until the late 1870's. [Lane - Summary, 6]
22

23 3.020 Available evidence suggests that Indian fishing increased
24 in the pretreaty decade for three major reasons: (1) to accomodate
25 increased demands for local non-Indian consumption and for export;
26 (2) to provide money for the purchase of introduced commodities
27 like calico, flour, and molasses; and (3) to obtain substitute
28 non-Indian goods for native products no longer available because
29 of non-Indian movement into the area. [Lane - Summary, 6]
30
31

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[B. Function of Fishing in Indian Life.]

3.014 The first-salmon ceremony, which was general through most of the area, differed in detail and was celebrated over different species from community to community. This was essentially a religious rite to ensure the continued return of salmon to the area. The symbolic acts, attitudes of respect and reverence, and concern for the salmon reflected a wider conception of the interdependence and relatedness of all living things which was a dominant feature of native Indian world view. Such attitudes and rites insured that salmon were never wantonly wasted and that water pollution was not permitted. Refuse was never deposited in streams during the salmon season and the Twana (Skokomish) even bleached their canoes to bail them.

[Lane - Summary, 5]

3.015 In native society, surplus food could be converted into wealth (canoes, blankets, slaves, shell ornaments). Dried or smoked salmon was easily stored and transported. At the same time, keeping qualities were limited so that surplus preserved salmon had either to be consumed or distributed usually within the year. Distribution was effected through complex exchange systems involving voluntary gift giving to kin and friends, reciprocal gifting to specified affinal kin which sometimes became competitive, intercommunity feasting, potlatching, and outright sale and trade beyond the local community and sometimes over great distances. Salmon was traded for commodities unavailable locally and also for other salmon with different keeping qualities or flavor. [Lane - Summary, 5 and 6]

1 [C. Non-Indians' Understanding of Indian Fishing.]

2
3 3.021 Available evidence suggests that despite superficial
4 awareness on the part of some of the treaty commissioners that
5 there were special rites, ceremonies, and observances concerning
6 fish and fishing, there was little real understanding of native
7 belief systems. They were regarded at best as interesting, at
8 worst as examples of heathen superstition. [Lane - Summary,
9 6 and 7]

10
11 3.022 The importance of the role of fishing in native liveli-
12 hood was more clearly recognized and the contribution of native
13 fishermen to the Territorial economy was both appreciated and
14 valued. [Lane - Summary, 7]

15
16 3.023 There was clear misunderstanding of Indian concepts of
17 fishing "rights"; and there was evidently no perception of Indian
18 self-regulation. It was incorrectly assumed that the Indians
19 recognized no private rights in taking fish. [Lane - Summary, 7]

20
21 [D. Indians' Fishing "Rights" among Themselves.]

22
23 3.024 The nature of "rights" varied from individual inheritance
24 of privately owned fishing locations to shared access to specific
25 trolling areas. Such rights were respected by Indians who did
26 not share them. The latter might ask permission to use specific
27 locations and/or gear and this would generally be granted, but
28 trespass was rare and usually led to friction. [Lane - Summary, 7]

[E. Controls over Indian Fishing.]

3.025 Indian control was by accepted, customary codes of conduct rather than by formal regulation in the Western sense. Controls varied according to the group and the circumstances. The construction of a weir was usually a cooperative effort, a number of men working under the direction of a leader. The entire community usually had access to the weir, the leader regulating the order of use and the times at which the weir was opened to allow upstream escapement for spawning and/or supply of up-river fishermen. Techniques such as spearing or trolling in salt water which involved individual effort were not regulated or controlled by anyone else. [Lane - Summary, 8 and 9].

3.026 Generally, individual Indians had primary use rights to locations in the territory where they resided and secondary use rights in the natal territory (if this was different) or in territories where they had consanguineal kin. Subject to such individual claims most groups claimed exclusive fall fishing rights in the waters near to their winter villages. Spring and summer fishing areas were often more distantly located and often were shared with other groups. [Lane - Summary, 8]

3.027 There is no evidence of any attempt by the settlers to impose regulatory controls over Indian fishing during this period. [Lane - Summary, 8]

[F. Location of Indian Fisheries.]

3.028 Indian fishing was not confined to certain types of locations. The Indians developed and utilized a wide variety of fishing methods which enabled them to take fish from nearly every type of location at which fish were present. The Indians with whom we are concerned harvested fish from the high seas, inland salt waters, rivers and lakes. They took fish at river mouths as well as at accessible points or stretches along the rivers all the way to the headwaters. Some locations were more heavily utilized than others. [Lane - Summary, 8]

3.029 Although there are extensive records and oral history from which many specific fishing locations can be pinpointed, it would be impossible to compile a complete inventory of any tribe's usual and accustomed grounds and stations. Such an inventory is possible only by designating entire water systems. [Lane - Summary, 9]

3.030 There are four principal reasons why any list of usual and accustomed fishing places for treaty tribes is necessarily incomplete; those reasons are:

a. Fishing stations which were also the site of weirs and permanent villages are more easily documented through archaeological evidence, historical records, and ethnographic studies than are riffles where fish were speared. The nature of gear used has tended to influence the recording of sites.

b. Indian fishermen, like all fishermen, shifted to those locales which seemed most productive at any given time. The productivity of local sites varied with (1) volume of water

1 in a stream at a particular season of year, (2) amount of mud
2 or silt present at a given time, and (3) alteration in the water
3 course due to flooding, log jams, and other natural causes. The
4 use of particular sites varied over time. There were traditional
5 fishing locations which were used for as long as people could
6 remember, but these were not fixed and unchanging because the
7 water courses themselves were not immutable or unalterable.

8 c. A number of important fishing sites recorded in
9 treaty times are no longer extant because of post-treaty man-made
10 alterations in the watershed. Diversion of water for power
11 purposes has lowered the carrying power of some streams and dried
12 up others; engineering for flood control has altered the course of
13 rivers; canal-cutting has lowered lake levels; and land fill
14 operations have obliterated still other fishing stations. When
15 sites are demolished, their existence is eventually forgotten.

16 d. Other fishing sites are still extant, but are no
17 longer used by Indian fishermen because the appropriate Indian
18 gear for those particular sites has been outlawed or because of
19 competing users, not necessarily fishermen, have made utilization
20 of these sites by Indian fishermen unfeasible. In still other
21 instances extant usual and accustomed sites are no longer fished
22 because the species taken in treaty times have been destroyed by
23 post-treaty events. Alteration of water temperature and water
24 level, industrial pollution, and the fencing of spawning creeks
25 by private land owners are some of the causes. When use of these
26 sites are discontinued, their former importance is gradually
27 forgotten. [Lane - Summary, 9; Lane - Muckleshoot, 1-3]

28
29 3.031 Documentation as to which Indians used specific fishing
30 sites is incomplete. Many fisheries can be documented in the

31
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1 historical record for which user groups are unspecified.
2 Conversely, mention of user groups, where it occurs, is not
3 necessarily complete or exclusive. George Gibbs, drawing on
4 information gathered during treaty times, stated in 1877:

5 As regards the fisheries, they are held in common,
6 and no tribe pretends to claim from another, or from
7 individuals, seigniorage for the right of taking.
8 In fact, such a claim would be inconvenient to all
9 parties, as the Indians move about, on the sound
10 particularly, from one to another locality, according
11 to the season. [Lane - Muckleshoot, 3]

12 [II. Negotiation and Execution of the Treaties;

13 A. Purpose of Treaty as a Whole.]

14 3.032 The Indians had received constant assurances from white
15 settlers and from government representatives that they would be
16 compensated for lands which were being settled on and for loss or
17 destruction of native property incident to white settlement. The
18 Indians were concerned that these things be done by mutual
19 agreement. [Lane - Summary, 9]

20 3.033 The United States was concerned to extinguish Indian
21 title to the land in Washington Territory legally, in order to
22 forestall friction between Indians and settlers and between
23 settlers and the government. The Act creating Oregon Territory
24 provided that Indian land title should be extinguished by treaties.
25 Before Indian title had been extinguished, the Donation Act had
26 thrown open land to settlement and induced non-Indians to migrate
27 and take up land claims. Further, until treaties were concluded
28 and reservations were established, it was impossible to enforce
29 the trade and intercourse laws regulating traffic in liquor and
30 commercial relations in Indian country. [Lane - Summary, 9]

31
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1 [B. Meaning of "The right of taking fish, at all usual
2 and accustomed grounds and stations, is further secured".]
3

4 3.034 Apparently this language originated with George Gibbs,
5 who drafted the treaties in western Washington, although the
6 suggestion itself was made earlier by at least one other party.

7 [Lane - Summary, 10]
8

9 3.035 There is no record of the Chinook jargon phrase actually
10 used in the treaty negotiation. It would have been possible to
11 convey the meaning of the above language adequately through the
12 medium of Chinook jargon. The English word fish is "pish" in
13 Chinook jargon. Presumably this generic term was used in the
14 treaty talks and it is likely that it would have been understood
15 by the Indians in the same sense as the whites. [Lane - Summary, 10]
16

17 3.036 There is no mention of restrictions as to purpose, time,
18 or method of taking either in the treaties themselves or in the
19 official records relating to treaty proceedings. No such restric-
20 tions were indicated by the commissioners or contemplated by the
21 Indians. The treaty commissioners knew that fish was important
22 to the Indians, not only from the standpoint of their food supply
23 and culture but also as a significant element of trade with the
24 settlers. Both parties wanted these aspects to continue -- the
25 Indians in order to sustain their prosperity and the government
26 in order to promote the propriety of the Territory. Both parties
27 intended the Indians to continue full use of their fishing
28 places, even though most lands adjacent to fishing waters were
29 ceded. [Lane - Summary, 10]
30
31

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1 [C. Meaning of "in common with all citizens of the Territory".]

2
3 3.037 This language appears to have been introduced by Gibbs.
4 There is no record of the Chinook jargon translation which was
5 used in the treaty negotiations. There is nothing in the official
6 record to suggest that the United States intended "in common" to
7 connote future control by "citizens" over Indians. Based partly
8 on evidence in the official record and partly on inference from
9 ethnographic data, it is evident that at least some of the
10 Indian parties expected to exercise control over "citizens" fishing
11 at usual and accustomed Indian fishing sites. [Lane - Summary, 11]
12

13 3.038 There is no clear evidence as to whether "in common"
14 was intended to connote fishing at the same place, or on the same
15 run, or at the same place on the same run, or something else.
16 Stevens asserted that Indian and non-Indian fishing techniques
17 were so different as to preclude competition, but this information
18 was incorrect. [Lane - Summary, 11]
19

20 3.039 The most likely Indian interpretation of that language
21 would be that non-Indians were to be allowed to fish without
22 interfering with continued pursuit of traditional Indian fishing.
23 It is most likely that the government intended to provide for
24 non-Indian participation in fishing with no thought that this
25 would require any restriction of Indian fishing.
26 [Lane - Summary, 11]
27
28
29
30
31

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1 [D. Signing the Treaties.]

2
3 3.040 Generally, Indian signatories were individuals who had
4 some sort of friendly contact with non-Indians. A few spoke
5 Chinook jargon and probably most were men of importance in their
6 communities, although they were not necessarily the most important
7 men. The "head chiefs" were chosen by Simmons and Stevens. The
8 "sub-chiefs" and "leading men" were selected by Simmons and Stevens,
9 sometimes with the aid of the "head chiefs". The bases for choice
10 were friendliness to Americans, real or apparent status in their
11 communities, and ability to communicate in Chinook jargon. The
12 "sub-chiefs" and "leading men" were intended by the United States
13 to represent the bands to which they were thought to belong.
14 Various "bands" and "fragments of tribes" were arbitrarily assigned
15 a subordinate status to other "tribes", each of which had been
16 assigned a "head chief". The latter were taken to represent not
17 only the group to which they belonged, but all other groups which
18 had been declared subordinate to it. The signatories, in the
19 United States view, had the capacity to alienate land belonging
20 to such groups. On the Indian side, there was no precedent for
21 signing legal documents, nor was there any culturally sanctioned
22 method of formally alienating land. [Lane - Summary, 11 and 12]

23
24 [E. Communication.]

25
26 3.041 It is hazardous to judge the extent of communication of
27 either specific terms or of underlying purposes and effect without
28 a transcript of the actual Chinook jargon used to interpret the
29 treaties. There is no evidence that any Indian present at any
30 of the treaties understood English. It is a matter of record that

31
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1 many, if not most of those present, did not even understand
2 Chinook jargon. It is also a matter of record that the official
3 interpreter, Shaw, spoke no Indian language and had to use
4 Chinook jargon to interpret the treaties, which were then re-
5 interpreted into the various Indian languages by Indians who
6 understood the jargon. The double translation resulted in the
7 Indians receiving the information at third hand and increased the
8 potential for confusion. [Lane - Summary, 12 and 13]

9
10 3.042 Chinook jargon, a trade medium of limited vocabulary
11 and simple grammar, is inadequate to express precisely the legal
12 language embodied in the treaties. Its inadequacy was commented
13 upon by both Indian and non-Indian witnesses to the treaty
14 negotiations. [Lane - Summary, 13]

15
16 [IV. Post-treaty Actions;

17 A. Comparison of Current Function of Fishing in
18 Indian Life with the Same at Treaty Times.]

19
20 3.043 Western Washington Indians appear to have discontinued
21 most outward religious forms such as the first-salmon ceremony
22 and some associated beliefs, while retaining other beliefs and
23 certain traditional attitudes and feelings regarding salmon and
24 their environment. An analogy might be drawn with those Christians
25 who do not attend church or pray, but who nonetheless feel bound
26 to the Christian faith and whose lives are much influenced by it.
27 It is clear that many Indians continue to regard salmon in a
28 light which is quite different from that of non-Indians.

29 [Lane - Summary, 18]

C-
1 3.044 Trade in fish was a vital component of aboriginal life
2 in western Washington. During the 1850's, 1860's, and 1870's,
3 Indian fishing and Indian trade in fish formed an integral part
4 of the pioneer economy. As non-Indians began to compete in the
5 fisheries, laws and regulations were promulgated which made it
6 increasingly difficult for Indians to participate as entrepreneurs
7 or even as fishermen. As they have been forced out of the fisher-
8 ies, fewer Indians and smaller quantities of fish are involved.
9 [Lane - Summary, 18 and 19]

10
11 3.045 For many Indians, fish continue to provide a vital
12 component in their diet. For others, fish is not a necessary
13 dietary item although it remains an important food in a symbolic
14 sense. (Thanksgiving turkey is not essential for physical survival,
15 but contributes to our spiritual well-being because it provides an
16 emotional link with our past.) Few habits of human beings are
17 stronger than dietary habits and their persistence is usually a
18 matter of emotional preference rather than a nutritional need.
19 For many Indians, salmon remains important in an economic, nutri-
20 tional, and symbolic sense. [Lane - Summary, 19]

21
22 3.046 Historically and to the present day, taking, preparing,
23 eating and trading fish have been important functions in Indian
24 communities. As such, fishing provides a basis for cultural
25 identity and a cohesive force in Indian society.
26 [Lane - Summary, 19]

27
28 3.047 Traditional Indian fishing methods were highly
29 efficient. These methods survived where Indians were allowed to
30 maintain them; that is, where they were not outlawed or where
31

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1 Indians were not prevented access to areas where the methods were...
2 feasible. When necessary, or appropriate, Indians have adopted
3 new techniques and gear. Indians no longer fish from dugouts,
4 just as non-Indians no longer fish from wooden sailboats. Indians
5 no longer use bark nets and whites no longer use cotton or linen
6 nets. [Lane - Summary, 19 and 20]

7
8 3.048 Indians of western Washington continue to fish for
9 most of the species for which they have always fished. A few are
10 no longer utilized because they are now rare (e.g., eulachon) or
11 because they are no longer in demand (e.g., dogfish for oil).
12 Salmon and halibut remain today, as in pre-European times, the
13 fish of major interest both for consumption and for exchange.
14 [Lane - Summary, 20]

15
16 [B. Tribal Identity.]
17

18 3.049 Continued existence of viable Indian communities,
19 "tribes", "bands", and so on, is not dependent upon nor coter-
20 minous with federal recognition. There may be biological,
21 cultural, and geographic continuity since pre-treaty times, as
22 in the case of the Sauk-Suiattle, for example, without federal
23 recognition.

24
25 3.050 Continuing Indian identity is evidenced by (a) overt
26 traits of aboriginal Indian culture which continue into the
27 present (e.g., language, food preservation methods, games such as
28 lahal, the "bone game", winter dances with the associated spiritual
29 beliefs, art forms, kinship and social links); (b) aboriginal
30 forms which have been melded with introduced ideas to create new,
31

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1 but uniquely Indian features (e.g., the Shaker Church, Indian
2 sweaters, and the modern invention, the Coast Salish spinning
3 device); and (c) persistence of traditional knowledge and belief
4 in the importance of that knowledge (e.g., community histories,
5 location of fishing sites, myths, tales, and songs). This know-
6 ledge is as relevant to Indian identity as the knowledge of
7 American history is to the "Americanism" of all of us.

8 [Lane - Summary, 20 and 21]

9
10 [C. Attitudes Toward Rights and Powers Secured and
11 Established by the Treaties within the 25 Years Post-Treaty.]
12

13 3.051 Throughout the area Indians consistently attempted to
14 assert their treaty protected fishing rights as evidenced by efforts
15 to maintain control of their fishing sites and by litigation con-
16 cerning these issues. Non-Indian activity over the years has
17 served to erode the value of Indian fisheries. River fisheries
18 have been destroyed because of power development and use of
19 rivers for navigation and transport. In-shore fisheries have been
20 destroyed through building of breakwaters and harbor development.
21 In addition, these and offshore fisheries have been depleted by
22 over-fishing by non-Indians. These activities evidence an unaware-
23 ness of or lack of concern with treaty provisions. In the first
24 two decades after the treaty making, the Indians were able to enjoy
25 their treaty-protected fishing rights without much difficulty.
26 Later, the State actively opposed treaty fishing provisions and
27 sought to curtail Indian rights for the benefit of non-Indian
28 citizens. [Lane - Summary, 21]
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1 [V. Specific Conclusions;

2 A. Interpreting the Treaty.]

3
4 3.052 It was the clear and unequivocal intent and understanding
5 on the part of both Indians and whites at the treaty-signing that
6 the reservations were to be residential bases from which the
7 Indians were to continue to utilize the total environment,
8 including specifically all of their fishing locations, in order
9 to maintain themselves and to contribute to the economy of the
10 entire population. Also it was clear that there was no intention
11 of creating a class society with Indians on the bottom economic
12 rung. The treaty commission clearly undertook to provide the
13 Indians the means of participating and prospering in the economy
14 of the Territory. The contribution was seen to be primarily in
15 the fisheries. Indian understandings were similar.

16 [Lane - Summary, 21 and 22]

17
18 3.053 No post-treaty regulations as to time, place, manner or
19 purpose of their taking fish were anticipated by the Indians, nor
20 is it likely that this was envisaged by the treaty commission.
21 Indians did not anticipate a requirement that they permit non-
22 Indians to fish at their usual and accustomed places, such as
23 weirs, reef-net locations, and privately-owned halibut banks,
24 while the Indians fished there. The "in common with" language
25 must have been understood and intended by both parties to assure
26 non-Indians an opportunity to engage in fishing, but not at the
27 expense of existing Indian claims and rights. Undoubtedly the
28 Indians understood that the non-Indians would share access to
29 salt water seine and troll fisheries. Indians had no reason to
30 anticipate a prohibition of their net fishing for steelhead at
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1 any usual and accustomed place. Similarly, there was no reason
2 to expect that it would become necessary for the State to limit
3 non-Indians' harvest to provide an Indian harvest.

4 [Lane - Summary, 22]

5
6 3.054 The very fact that the United States made treaties
7 indicates that the Federal Government was concerned to integrate
8 Indians into the new order by peaceful and legal means. Legal
9 recognition of pre-existing Indian tenure and use rights is
10 evidenced in the alienation of Indian lands by treaty-arranged
11 compensation. Indian fishing rights were specifically exempted
12 from such alienation, and this is further attested by the fact
13 that no compensation was arranged for their extinguishment.

14 [Lane - Summary, 22 and 23]

15
16 3.055 The "in common" language was intended to allow non-
17 Indians to fish subject to prior Indian rights specifically
18 assured by treaty. [Lane - Summary, 23]

19
20 If defendants agree with one or more sentences in the
21 requests for admissions above, but do not agree with the entire
22 requests for admissions, plaintiffs' request that defendants
23 indicate which sentences they agree with and which they do not.

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PUYALLUP TRIBE

3.100 At the time that the Treaty of Medicine Creek was negotiated George H. Gibbs, who assisted Governor Stevens in the treaty preparation and negotiation and who prepared reports on and made estimates of the populations of Indian groups in western Washington with whom treaties were sought to be negotiated, designated the Puyallup peoples by two names only -- Puyallup, evidently meant to encompass those on all of the river drainage, and S'Homamish, referring to those on Vashon Island.

[Lane - Puyallup, 3]

3.101 At the time of the Medicine Creek Treaty communication between upriver Puyallups and people of the Green River - White River - Stuck River area and upriver Nisqually was relatively easy. In addition, there was considerable intermarriage and trade contact with Sahapatin-speaking peoples from east of the Cascades. [Lane - Puyallup, 3]

3.102 Reliable information concerning pre-treaty activities of the Indians who inhabited the Puyallup River valley and Vashon Island is given in reports by George H. Gibbs and Ezra Meeker. [Lane - Puyallup, 1-20]

3.103 Reliable information concerning shortly post-treaty activities of the Indians who were brought to the Puyallup Reservation is given in reports by George H. Gibbs, Byron Barlow, Indian Agent Michael T. Simmons, M. W. Smith, G. Suckley, T. T. Waterman and Richard Lane. [Lane - Puyallup, 1-20]

1 3.104 The reference in the Preamble to the Treaty of Medicine
2 Creek to Puyallup and S'Homamish Bands of Indians was intended to
3 encompass all those groups of Indians living on the Puyallup
4 River, its tributary creeks, and neighboring Vashon Island.
5 [Lane - Puyallup, 4]
6

7 3.105 After the treaty all the people referred to in the
8 above paragraph, as well as any others who removed to the Puyallup
9 Reservation, were all subsumed under the single name "Puyallup".
10 [Lane - Puyallup, 4]
11

12 3.106 Within a week after execution of the Treaty of Medicine
13 Creek George H. Gibbs stated that those Indians who were brought
14 to the Puyallup Reservation were "exclusively fishing Indians."
15 [Lane - Puyallup, 7]
16

17 3.107 Early accounts by settlers and others both prior to and
18 at the time of the negotiation of the Treaty of Medicine Creek
19 attest to both the abundance of fish in the waters utilized by the
20 Indians who were subsumed under the name of Puyallup and to the
21 variety of techniques employed by those Indians in taking fish.
22 [Lane - Puyallup, 8-13]
23

24 3.108 During treaty times, the Indians who lived in the
25 Puyallup River valley and on Vashon Island fished for four species
26 of salmon and steelhead in saltwater and in freshwater creeks and
27 rivers throughout those areas. [Lane - Puyallup, 8-21]
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1 3.109 For the Indians who lived in the Puyallup River valley
2 and on Vashon Island during treaty times, salmon and steelhead
3 were important as an item of trade, as a medium of exchange,
4 and as a base for such manufactured commodities as glue.
5 [Lane - Puyallup, 8-16, 20]

6
7 3.110 In 1856, in connection with the transmittal to the
8 Commissioner of Indian Affairs of his recommendation for the
9 relocation of the Puyallup Reservation from the original location
10 specified in the treaty to the location at the mouth of the
11 Puyallup River, Governor Stevens forwarded a map which showed
12 salmon fisheries located on the north and south sides of
13 Commencement Bay. [Lane - Puyallup, 18]

14
15 3.111 One of the earliest white settlers of the Puyallup
16 Valley, Ezra Meeker, who first visited the Puyallup River in June
17 of 1853 later commented on the abundance of salmon in a tributary
18 creek of that river. He stated that he had seen salmon "so
19 numerous in the shoal water of the channel as to literally touch
20 each other. It was utterly impossible to wade across without
21 touching the fish." [Lane - Puyallup, 9-10]

22
23 3.112 On September 18, 1871, Byron Barlow, farmer in charge
24 of the Puyallup Indian Reservation, reported to his superiors that
25 "This being the fishing season for the Indians, there are many of
26 them temporarily absent securing their winter supply of salmon
27 * * * There will be a large catch of salmon this year, probably
28 over 400 barrels." [Lane - Puyallup, 10]

1 3.113 During treaty times the Indians who inhabited the
2 Puyallup River valley and Vashon Island fished for salmon in
3 saltwater by such techniques as seining, trolling, spearing and
4 harpooning. In the rivers the bulk of the salmon and steelhead
5 were taken in lift nets associated with weirs, but other important
6 taking techniques included gaffing, falls traps, river seines,
7 and spearing. [Lane - Puyallup, 11-12, 21]
8

9 3.114 On January 6, 1861, Richard Lane, in charge of the
10 Puyallup Reservation, reported to his superiors that a number of
11 the upper Puyallup Indians came down to the forks of the Puyallup
12 River "to fish salmon, as has been their custom hitherto at this
13 season of the year -- * * *. These Indians had been fishing for
14 about five or six days with success * * *." [Lane - Puyallup, 17]
15

16 3.115 The treaty record for the day of the execution of the
17 Treaty of Medicine Creek shows that the treaty negotiators for
18 the United States deemed it necessary to allow the Indians to
19 fish at all accustomed places to enable them to obtain a
20 subsistence. [Lane - Puyallup, 13]
21

22 3.116 It is no longer possible to document and pinpoint all
23 of the usual and accustomed fishing places of the Puyallup
24 Indians. However, such usual and accustomed places were located
25 partly on lands ceded by these Indians under the Treaty of
26 Medicine Creek and partly on land reserved to them under the same
27 treaty. [Lane -, Puyallup, 18-19]
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1 3.117 At the time of the treaty, fishing constituted a
2 principal economic activity of the Puyallup Indians. Salmon and
3 steelhead served as the principal food, as an important item of
4 trade, and as a medium of exchange. Cured salmon and steelhead
5 could be converted into wealth in the native economic system.
6 [Lane - Puyallup, 20-21]

7
8 3.118 The land set apart as the Puyallup Reservation following
9 the Treaty of Medicine Creek was intended to encompass usual and
10 accustomed freshwater fishing sites and to provide access to
11 traditional fisheries in Commencement Bay for those Indians who
12 were brought to the reservation. [Lane - Puyallup, 18-21]

13
14 3.119 Fishing for salmon and steelhead continues to be
15 important to the "Puyallup Indians of the Puyallup Reservation."
16 [Lane - Puyallup, 21; numerous court cases]

17
18 3.120 In addition to its importance as food, as a trade
19 commodity, and as a medium of exchange, salmon products were
20 crucial to other parts of the native economy. [Lane - Puyallup,
21 15-16]

22
23 3.121 Despite Governor Stevens assertion in his letter of
24 December 30, 1854, that Indians "catch the salmon with spears in
25 deep water and not with seines or weirs", there is considerable
26 evidence from the observation of others contemporary at the time
27 that the Indians in fact did use seines and weirs for taking
28 salmon and steelhead. [Lane - Puyallup, 12-14]

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32 Page 27 - PLAINTIFFS' THIRD REQUESTS FOR ADMISSIONS

1 3.122 Among those who noted the use of nets or weirs by
2 Indians for taking salmon were Ezra Meeker, who mentioned net
3 fishing in Commencement Bay in 1853, Dr. George Suckley, who
4 noted net fishing for steelhead in the rivers of Puget Sound in
5 1853-1855, George Gibbs, who mentioned weirs on the Nisqually
6 River in 1853 and 1854 and who commented in 1856 that the
7 Indian nets and seines "manufactured from the grass imported from
8 beyond the Cascade Mountains, deserve mention as very well made,
9 the twine being perfectly even and well twisted." He also
10 mentioned that spring salmon were taken on the rivers with a
11 seine and that on some of the rivers where the depth permits
12 weirs were built to stop their ascent. [Lane - Puyallup, 12]
13

14 3.123 Certain types of fishing gear requires cooperative
15 effort in their construction and/or handling. Ownership, control
16 and use rights varied according to the nature of the gear. Weirs
17 were classed as cooperative property but the component fishing
18 stations on the weir were individually owned. [Lane - Puyallup,
19 13-14]
20

21 3.124 In the late nineteenth century the Puyallup Indians
22 fished for salmon with seines on many waters of the Puget Sound
23 area, including the north side of Commencement Bay and the shore
24 line north of Brown's Point. One end of these seines was held by
25 a person standing on the shore while the other end was taken in a
26 semi-circle by Indians in a canoe, generally five persons in the
27 canoe. [Testimony, Mrs. Lena Hillaire]
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1 3.125 In the latter part of the nineteenth century the
2 Indians of the Puyallup Reservation fished for salmon and steel-
3 head on the Puyallup River with traps. [Testimony of
4 Mrs. Lena Hillaire]

5
6 3.126 During the lifetime of some present members of the
7 Puyallup Tribe fishing in Commencement Bay was mostly in the fall.
8 In the winter months the Indians fished on the river.
9 [Testimony of Mrs. Lena Hillaire]

10
11 3.127 When fishing on the river the Indians made a distinction
12 between male and female fish.. They had a person watching on the ,
13 traps and he released female fish to continue on to the spawning
14 grounds. [Testimony of Mrs. Lena Hillaire]

NISQUALLY TRIBE

3.150 Governor Isaac I. Stevens relied in part on George H. Gibbs, a lawyer-ethnologist who drafted the treaties for western Washington, and upon Benjamin F. Shaw and Michael T. Simmons for information and recommendations regarding the Nisqually Indians during negotiation and execution of the Treaty of Medicine Creek. [Lane - Nisqually, 3]

3.151 During treaty times the Nisqually Indians held salmon in special esteem and were concerned to insure that the supply should never fail. In pursuit of this they followed a complex of special rites and observances such as the First Salmon Ceremony and prohibitions of certain activities during the runs. They also identified several constellations by reference to fish and fisheries. [Lane - Nisqually, 10, 13-14]

3.152 In an unpublished manuscript dated in 1853 (NAA ms #714) George Gibbs noted the existence of a Nisqually Indian village "at the fish dam" on the Nisqually River. [Lane - Nisqually, 4]

3.153 T. T. Waterman was an anthropologist who conducted field research in 1917 to 1920 on native names for geographic locations in the Puget Sound area. [Lane - Nisqually, 4]

3.154 T. T. Waterman recorded information concerning an old Indian village site at the mouth of the Nisqually River which was called Tu SqwE le, meaning "late." He recorded that the run of salmon was said to be later in the Nisqually than in any other stream and that the people at that village would be engaged in taking and curing salmon after they were gone from the other rivers. [Lane - Nisqually, 4]

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1 3.155 Dr. George Suckley wrote fisheries reports and conducted
2 zoological investigations as part of the scientific record of the
3 Pacific Railroad Reports and was based at Fort Steilacoom inter-
4 mittently between 1853 and 1856. He tentatively identified
5 sixteen species of salmon and salmon-trout taken from the Columbia
6 River and Puget Sound rivers. Some of his data relates specifi-
7 cally to the Indians living around Steilacoom and the Nisqually
8 watershed. [Lane - Nisqually, 15]

9
10 3.156 Dr. George Suckley reported information respecting
11 salmon which he recorded from the Indians while he resided at
12 Puget Sound. Some of this information is recorded in the 1854
13 Reports of Explorations and Surveys, to Ascertain the Most
14 Practical and Economical Route for a Railroad from the
15 Mississippi River to the Pacific Ocean, Made Under the Direction
16 of the Secretary of War, in 1853-4, According to Acts of Congress
17 of March 3, 1853, and May 31, and August 5, 1854, which was
18 published as Executive Document 91, House of Representatives for
19 the Second Sess. of the 33d Cong. [Lane - Nisqually, 15, 31]

20
21 3.157 Dr. George Suckley reported that:

22 * * *

23 the salmon known to the Nisquallies as the skwowl,
24 which I consider identical with the Klutchin of the
25 Clallums, . . . arrives in the bays and estuaries of
26 Puget Sound about the middle of autumn, and towards
27 the first of December commences to run up the larger
28 rivers emptying into the sound. Their ascent of these
29 streams continue through December and January. This
30 arrival of the species in fresh water is not as
31 simultaneous neither do they arrive in such great
32 numbers at any one time or in 'schools,' as is the
case with the Skourtz and several other species, but
the 'run' being somewhat more 'drawn out' affords a
steady moderate supply to the Indians during its
continuance.

[Lane - Nisqually, 16-21a and 27-30]

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1 3.158 Dr. George Suckley recorded that after the skwowl entered
2 the rivers it is taken by the Indians in nets, traps, baskets,
3 etc., and also by spearing. [Lane - Nisqually, 16]

4
5 3.159 During treaty times the Nisqually Indians recognized
6 separately and harvested the following species or races of
7 anadromous fish:

- 8 a. Tl'hwai (chum or dog salmon),
- 9 b. Skowitz (coho salmon),
- 10 c. Huddo (humpback salmon),
- 11 d. Satsup (Chinook salmon),
- 12 e. To-walt Satsup (king or tyee salmon),
- 13 f. Skwowl (steelhead).

14 [Lane - Nisqually, 16-21a and 27-30]

15
16 3.160 Dr. George Suckley reported on some of the uses which the
17 Indians made of different species of salmon in 1853 and 1854.

18 Quoting George Gibbs, Suckley reported that the dog salmon is
19 preferred by the Indians for drying because there is but little
20 fat upon it. The Indians do not dry them until they have been
21 in the fresh water some time and have lost what little fat they
22 had. They arrive about October first and last until late in the
23 winter. Suckley further noted that the Indians say that the
24 Huddoh, i.e. pink or humpback salmon, is usually quite fat and
25 that they like it as food very much. He said that the skowitz
26 or coho is a very abundant species and affords the principal
27 salmon harvest to the natives who dry vast quantities for winter
28 consumption. He said that the Puget Sound Indians take a salmon
29 in summer which is known to the Skadgetts as the Yoo-mitch and
30

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32 Page 29C - PLAINTIFFS' THIRD REQUESTS FOR ADMISSIONS

1 to the Nisqually as the satsup which the Indians considered to be
2 the best of all kinds of salmon. It commences to run up the
3 freshwater streams about June 15 and continues until about the
4 middle or end of August. [Lane - Nisqually, 17-20]

5
6 3.161 During treaty times the various species of anadromous
7 fish listed in request for admission 3.159 above, were eaten,
8 smoked, preserved and used for non-food purposes such as glue
9 base by the Nisqually Indians. They were the Nisqually Indians
10 most important single food. [Lane - Nisqually, 16-21a, 26]

11
12 3.162 During treaty times the fishing techniques used by
13 the Nisqually Indians for taking salmon and steelhead were trolling
14 and spearing in saltwater, and nets, traps, weirs, gaffs, spears
15 and hook and line in freshwater. [Lane - Nisqually, 21, 26-30]

16
17 3.163 In 1858 Special United States Indian Agent Gosnell
18 held strong hopes that the Nisqually Indians would harvest and
19 preserve sufficient amounts of salmon to be independent of federal
20 subsistence assistance during the winter. [Lane - Nisqually,
21 21-21a]

22
23 3.164 It is not possible to document or to pinpoint every
24 location where Nisqually Indians took fish during treaty times.
25 [Lane - Nisqually, 21a]

26
27 3.165 Prior to and during treaty times the Nisqually Indians
28 intermarried with the Steilacoom, Puyallup and Duwamish Indians
29 and with other Indians from various inlets of southwestern
30 Puget Sound. [Lane - Nisqually, 21a]

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32 Page 29D - PLAINTIFFS' THIRD REQUESTS FOR ADMISSIONS

1 3.166 At the time of the Medicine Creek Treaty upriver
2 fisheries in the Nisqually area were normally used by the locally
3 resident group. Saltwater fisheries and fisheries at the mouth
4 of the Nisqually River traditionally were used by visitors as
5 well as the local residents. Visitors might use them because they
6 held claims to them by virtue of kin ties with the local people
7 or that might be accorded guest privileges by virtue of
8 friendship. [Lane - Nisqually, 21a]

10 3.167 The unpublished works of George Gibbs contain at least
11 three notations of a fish trap or fish dam on the Nisqually River
12 involving at least two separate locations. [Lane - Nisqually, 22]

14 3.168 Dr. W. F. Tolmie, who was in charge of the Puget Sound
15 Agricultural Company operation at Nisqually at the time of the
16 Medicine Creek Treaty, noted in his unpublished history of Puget
17 Sound and the Northwest Coast that at the time of the treaty
18 negotiations the Nisqually Indians had sought to retain their
19 traditional salmon fishing rights on the Nisqually River.
20 [Lane - Nisqually, 24]

22 3.169 During treaty times the Nisqually Indians' principal
23 fishing places included at least the saltwater areas at the mouth
24 of the Nisqually River and the surrounding bay and the freshwater
25 courses of the Nisqually River and its tributaries, McAllister
26 (Medicine or Shenahnam) Creek, Sequalitcu Creek, Chambers Creek
27 and the lakes between Steilacoom and McAllister Creeks. The
28 saltwater fisheries were shared with other Indians.

29 [Lane - Nisqually, 21a-30]

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1 3.170 The various types of fish listed in request for
2 admission 3.159 above continue to be important to Nisqually
3 Indians. [Lane - Nisqually, 26]
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SQUAXIN TRIBE

3.200 During negotiation and execution of the Treaty of Medicine Creek Governor Isaac I. Stevens relied in part on George H. Gibbs and Michael T. Simmons for information and recommendations regarding the Indians who were thereafter brought to the reservation established at Squaxin Island.

[Lane - Squaxin, 3-7]

3.201 Following their relocation on the Squaxin Island Reservation following the Treaty of Medicine Creek, members of the Squawksin, Steh-chass, T'Peeksin, Squi-aitle and Sa-heh-wamish Indian bands (who had lived respectively in the vicinity of Case, Budd, Totten, Eld and Hammersley Inlets) became known collectively as the "Squaxin" (spelled variously).

(Lane - Squaxin, 1-9, 18]

3.202 The Indian Claims Commission decision in Docket No. 206 regarding the group there designated as the "Squaxin" Tribe of Indians" was confined to those people who were known prior to the Treaty of Medicine Creek as "Squawksin" and who were inhabitants of the area surrounding Case Inlet. [Lane - Squaxin, 2]

3.203 Reliable information regarding those Indians who became known as "Squaxin" following their relocation on the Squaxin Island Reservation is supplied by the works of George H. Gibbs, Michael T. Simmons, T. T. Waterman, W. W. Elmendorf, Ezra Meeker, H. H. Bancroft and H. G. Barnett. [Lane - Squaxin]

1 3.204 During treaty times those Indians who became known as
2 "Squaxin" following their relocation on the Squaxin Island
3 Reservation fished for coho, chum, chinook, and sockeye salmon
4 in three water areas in southern Puget Sound: (1) freshwater
5 streams and creeks draining into the various inlets, (2) shallow
6 bays and estuaries, and (3) inlets and the open Sound.

7 The "Squaxin" Indians intended to continue to fish during the 50
8 years following the relocation on the Sauk-Suiattle Reservation
9 and they continued to rely on fishing for subsistence and to
10 derive a monetary income. [Lane - Squaxin, 12, 15-17]
11

12 3.205 With respect to the fishing activities during treaty
13 times of those Indians who became known as "Squaxin" following
14 their relocation on the Squaxin Island Reservation, customary
15 rights of use varied according to the types of water areas being
16 used; such that freshwater fisheries were controlled by the
17 residents while the deeper saltwater areas were open to use by
18 anyone who travelled thereon. [Lane - Squaxin, 15-16]
19

20 3.206 It is impossible to compile a complete inventory of
21 the specific fishing places of those Indians who became known as
22 the "Squaxin" following their relocation on the Squaxin
23 Island Reservation. [Lane - Squaxin, 16]
24

25 3.207 During treaty times the fishing techniques of those
26 Indians who became known as the "Squaxin" following their
27 relocation on the Squaxin Island Reservation included trolling,
28 stream weirs, spearing and tidal traps. [Lane - Squaxin, 13]
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1 3.208 During the latter part of the nineteenth century a dam
2 built by a non-Indian named Sherwood on a creek in southern Puget
3 Sound contributed to the destruction of the sockeye salmon run in
4 that creek which creek had (before construction of the dam) been
5 a sockeye fishing area of some of the Indians who later became
6 known as "Squaxin" following their relocation on the Squaxin
7 Island Reservation. [Lane - Squaxin, 13-15]
8

9 3.209 During treaty times salmon played a vital role in the
10 economic, social and religious life of those Indians who became
11 known as "Squaxin" following their relocation on the Squaxin
12 Island Reservation. [Lane - Squaxin, 19]
13

14 3.210 Salmon fishing and the fishing areas used by those
15 Indians who became known as the "Squaxin" following their reloca-
16 tion on the Squaxin Island Reservation continue to be important to
17 members of the Squaxin Island Tribe of Indians.
18 [Lane - Squaxin, 11, 19]
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SKOKOMISH TRIBE

3.250 The Indians named in the Treaty of Point No Point as the "Too-an-ooch" and the "Skokomish" were different segments of the Too-an-ooch or Twana group which shared a common drainage system, a common language not spoken elsewhere and common customs. [Lane - Skokomish, 1-4]

3.251 Fishing was the most important food acquisition technique of the Twana Indians during treaty times. [Lane - Skokomish, 11]

3.252 Salmonid fish (king, silver, humpback and dog salmon and steelhead) was the most important source of food for the Twana during treaty times. These fish were eaten fresh, were dried and were smoked for winter use. [Lane - Skokomish, 15, 22]

3.253 Prior to and during treaty times the Twana Indians accumulated vast food surpluses with which they supplied feasts of invited guests from as far away as Carr Inlet and Vashon Island on Puget Sound to the east and Satsop country to the southwest. [Lane - Skokomish, 20]

3.254 Among the various types of techniques and places for fishing which they utilized, the Twana Indians maintained three important weir sites on the Skokomish River during the 1850's. [Lane - Skokomish, 8]

3.255 The Twana Indians who operated weir sites during treaty times periodically removed lattice sections of the weir to permit

1 fish to escape upstream to spawn and to be caught in upstream
2 weirs: [Lane - Skokomish, 9]

3
4 3.256 During treaty times the Twana Indians marked the
5 arrival of the king salmon by a first salmon ceremony, and
6 forbade any human waste disposal into the rivers immediately
7 prior to the run's arrival. [Lane - Skokomish, 16]
8

9 3.257 The principal fisheries of the Twana Indians before,
10 during and after treaty times included at least all watercourses
11 emptying into Hood Canal and Hood Canal itself.

12 [Lane - Skokomish, 22, 52]
13

14 3.258 Prior to and during treaty times the Twana Indians
15 located villages for easy access to fishing stations.

16 [Lane - Skokomish, 4]
17

18 3.259 Prior to and during treaty times the Twana Indians
19 took salmon and steelhead in saltwater areas by trolling,
20 spearing and netting, and in freshwater areas by single dam and
21 double dam weirs and similar types of traps. [Lane - Skokomish, 4]
22

23 3.260 One of the Indian signatories of the Treaty of Point No
24 Point was in charge of an important weir on the Skokomish River.

25 [Lane - Skokomish, 4]
26

27 3.261 Prior to 1897, after the Skokomish Reservation had been
28 established pursuant to the Treaty of Point No Point and Indians
29 of the Twana groups had been removed thereto, non-Indians came
30 onto the Indian's reservation fishing sites and interfered with
31

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1 Indian fishing by placing non-Indian nets in the Skokomish
2 River from reservation locations. [Lane - Skokomish, 21]

3
4 3.262 Construction of a power dam at Lake Cushman has caused
5 the inundation of a usual and accustomed Twana Indian river
6 fishing site. [Lane - Skokomish, 21, 52]

7
8 3.263 Reliable information regarding the activities of the
9 Twana Indians before, during and after the Treaty of Point No
10 Point is provided in the works of Agent M. T. Simmons,
11 W. W. Elmendorf, Edward S. Curtis, E. G. Swindell, T. T. Waterman,
12 J. E. Youngblood and W. B. Gosnell. [Lane - Skokomish]

13
14 3.264 In view of the importance of weir sites to the Skokomish
15 and the fact that one of the treaty signatories was a Skokomish
16 weir operator, it is reasonable to conclude that the Skokomish
17 would not knowingly have given away their right to fish at their
18 usual and accustomed sites. [Lane - Skokomish, 11 and 22]

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MUCKLESHOOT TRIBE

3.300 Reliable information concerning the activities, prior to and during treaty times, of the Indians who inhabited the areas from which were drawn those Indian bands who were resettled on the Muckleshoot Reservation is given in the reports and writings of the Pioneer and Democrat, G. Suckley, Denny and George H. Gibbs. [Lane - Muckleshoot Fishing Report (hereinafter simply "Muckleshoot") 3, 7, 9, 13, 14]

3.301 Reliable information concerning the activities in post-treaty times of the Indians who inhabited the Muckleshoot Reservation and the areas from which were drawn those Indian bands who were resettled on the Muckleshoot reservation, is given in the reports and writings of Arthur C. Ballard; T. T. Waterman; Muckleshoot Indian Louis Starr; M. W. Smith; Muckleshoot Indians Philip Starr, John Sam and Alex Morris; Muckleshoot Indians Sherman Dominic, Annie Garrison, Levi Hamilton, Olive Hungary, Donald Jerry, Laurence Jerry, Laurence Jerry, Jr., Bertha McJoe, Bert Moses, Cecil Moses, Harold Moses, Herman Moses and Bernice White; Elmer Patton; Ezra Meeker; Morda C. Slauson; and M. T. Simmons. [Lane - Muckleshoot, 4-6, 8-9, 15]

3.302 The Indian bands who were resettled on the Muckleshoot Reservation, and who are the ancestors of the present-day Muckleshoot Indians, inhabited the upper portions of the Duwamish River and Puyallup River drainages. [Lane - Muckleshoot, 6]

1 3.303 During treaty times the Indian ancestors of the present-
2 day Muckleshoot Indians caught coho, kokanee, sockeye, chum and
3 pink salmon and steelhead. [Lane - Muckleshoot, 17]
4

5 3.304 During treaty times the Indian ancestors of the present-
6 day Muckleshoot Indians used the following techniques to harvest
7 various species of salmon and steelhead: weirs, funnel, snares,
8 grills, set nets and spears. [Lane - Muckleshoot, 7-8]
9

10 3.305 Prior to, during and after treaty times, the Indian
11 ancestors of the present-day Muckleshoot Indians made use of
12 the various species of salmon and steelhead in the following
13 ways: smoking, curing for winter stores, exchange, trade and
14 immediate eating. [Lane - Muckleshoot, 8-17]
15

16 3.306 Prior to and during treaty times there were disputes
17 between the Indian ancestors of the present-day Muckleshoot
18 Indians and non-Indians, which disputes arose from the Indians'
19 fishing techniques at their usual and accustomed places and the
20 non-Indians competing usage of the same locations.
21 [Lane - Muckleshoot, 14]
22

23 3.307 In 1869, thirty-one non-Indian residents requested that
24 the Superintendent of Indian Affairs for the Washington Territory
25 remove to a reservation some of the ancestors of the present-day
26 Muckleshoot Indians, giving as a reason therefor, "That Black
27 river is now and is likely to be used for purposes of navigation
28 thus destroying their fisheries thereon."
29 [Lane - Muckleshoot, 14-15]
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1 3.308 Prior to, during and after treaty times the Indian
2 ancestors of the present-day Muckleshoot Indians operated their
3 weir sites so as to periodically permit the salmon to escape the
4 weir and continue upstream to spawning grounds and other weir
5 sites. [Lane - Muckleshoot, 7; Ballard, 44]

6
7 3.309 In 1860, when speaking of the Muckleshoot Reservation
8 as a place for resettlement of Indians inhabiting the Duwamish
9 and Puyallup drainages, Agent M. T. Simmons stated:

10 Here [at the Reservation], with a fine range for stock
11 summer and winter, warm bottoms for vegetables, and a
12 fertile prairie for grain and grass, besides a river
13 on each side of them teeming with salmon in the proper
14 season, they must surely be self-supporting in a short
15 time.

16 [Lane - Muckleshoot, 16]

17 3.310 Although it is impossible to compile a complete
18 inventory of the fishing locations used by the Indian ancestors
19 of the present-day Muckleshoot Indians, various reports and
20 studies have recorded some fishing locations which are, or were
21 of economic, historic or religious significance to those Indians
22 and their ancestors. [Lane - Muckleshoot, 2, 5]

23 3.311 Prior to and during treaty times, the Indian ancestors
24 of the present-day Muckleshoot Indians fished primarily at
25 locations on the upper Puyallup, the Carbon, Stuck, White, Green,
26 Cedar and Black Rivers, the tributaries to these rivers (including
27 Soos Creek, Burns Creek and Newaukum Creek) and Lake Washington,
28 and secondarily in the saltwater of Puget Sound. Villages and
29 weir sites were often located together.

30 [Lane - Muckleshoot, 7-17, maps in Appendices 1 and 2]

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1 3.312 The cutting of a canal from Puget Sound through to
2 Lake Washington lowered the level of the lake and thereby created
3 the following alterations relating to fishing by Indians in the
4 area:

5 a. The Black River, which flowed southerly from
6 Lake Washington to join the Cedar and White Rivers, dried up.

7 b. The Cedar River changed course and began to flow
8 northerly over the bed of the old Black River into Lake Washington.

9 c. At least three groups of important Indian weir
10 sites were destroyed by the changes wrought by the elimination of
11 the Black River and the new flow patterns of the Cedar and White
12 Rivers.

13 d. The Black River silver salmon run was destroyed,
14 as were some of the other spawning areas around Lake Washington.
15 [Lane - Muckleshoot, 7-12; maps in Appendices 1 and 2]
16

17 3.313 A flood of the White River in 1906, a barrier dam
18 separating the White-Stuck Rivers from the Green-Duwamish Rivers
19 and water diversion for power purposes from the White River
20 have reduced the number of fish available at locations on those
21 rivers which were usual and accustomed fishing places to the
22 Indian ancestors of the present-day Muckleshoot Indians.

23 [Lane - Muckleshoot, 12]
24

25 3.314 Fishing for anadromous species continues to be of
26 major interest to the Muckleshoot Indians, both as a source of
27 income and as a source of food. [Lane - Muckleshoot, 16]
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3.315 In recent years the Washington Department of Fisheries has erected a weir for hatchery use in Suise Creek at almost precisely the same location as where the Indian ancestors to the present-day Muckleshoot Indians maintained one of their own salmon weirs. [Lane - Muckleshoot; Ballard, 46]

STILLAGUAMISH TRIBE

3.350 Governor Isaac I. Stevens relied in part upon Edward Starling, Michael T. Simmons and George H. Gibbs for information and recommendations regarding the Stoluck-wha-mish Indians during the negotiation and execution of the Treaty of Point Elliott. [Lane - Stillaguamish, 4-7]

3.351 In addition to those sources named in request for admission 3.350 above, there is reliable information regarding the pretreaty Indians inhabiting the area embracing the Stillaguamish River and its south fork in the works of Samuel Hancock, who visited the area in 1850 and 1851, and of George O. Wilson who visited the area in February, 1851. [Lane - Stillaguamish, 1-4]

3.352 There is reliable information regarding the post-treaty Indian inhabitants of the area embracing the Stillaguamish River and its south fork in the works of W. W. DeLacy (information circa 1857), Indian Agent Nathan D. Hill (information circa 1856), sub-Indian Agent Father Chirouse (information circa 1871) and Stillaguamish Indian James Dorsey (Quil-Que-Kadam) (information circa 1855-1926). [Lane - Stillaguamish, 8-15; Appendix, 1-4]

3.353 During treaty times the Indians inhabiting the area embracing the Stillaguamish River and its south fork had names for four or five species of salmon, steelhead and other indigenous fish. [Lane - Stillaguamish, 21, 23]

1 3.354 During treaty times the salmon and steelhead taken by
2 the Indians inhabiting the area embracing the Stillaguamish
3 River and its south fork were eaten in both fresh and cured form.
4 [Lane - Stillaguamish, 20, 23]

5
6 3.355 During treaty times and for many years following the
7 Treaty of Point Elliott, fishing constituted the principal means
8 of subsistence for the Indians inhabiting the area embracing the
9 Stillaguamish River and its south fork.
10 [Lane - Stillaguamish, 19-23]

11
12 3.356 During treaty times and for years following the Treaty
13 of Point Elliott, the Indians inhabiting the area embracing
14 the Stillaguamish River and its south fork took salmon and steel-
15 head by spearing, harpooning, traps and weirs (with dip nets)
16 at various places in those watercourses.
17 [Lane - Stillaguamish, 21-23]

18
19 3.357 The Stillaguamish Indians still consider fishing
20 of major concern today. [Lane - Stillaguamish, 23]

QUILEUTE AND HOH TRIBES

3.400 Linguistically, culturally and historically the Quileute and Hoh Tribes appear to be one people.

[Lane - Quileute-Hoh, 1]

3.401 In 1855 the Quileute and Hoh people lived along the Quillayute River and the rivers and creeks which are tributary to it, and along the Hoh River and its tributary creeks. The Hoh people were a geographic subdivision of the Quileute.

[Lane - Quileute-Hoh, 3]

3.402 The Quileute and Hoh spoke a language which was peculiar to themselves and distinct from any of those spoken by their neighbors. [Lane - Quileute-Hoh, 3]

3.403 Today some of the descendants of those groups live on the Quileute Reservation and some live on the Hoh Reservation. The identification of Quileute and Hoh as two separate tribes is a relatively recent artifact of government administration.

[Lane - Quileute-Hoh, 1]

3.404 At the time of the treaty (circa 1855) the basic economy of the Quileute (including the Hoh) relied primarily on salmon and steelhead taken in their long and extensive river systems. These Indians were able to take canoes far up into the foothills country by following the river system not only to take salmon and steelhead but also to hunt land game in the foothills. [Lane - Quileute-Hoh, 4]

1 3.405 The existence of a village at the mouth of the Hoh
2 River as well as settlements on the upper reaches of the Hoh
3 are documented in the narrative of a Russian named Tarakanov
4 who visited the area as one of seventeen survivors of a
5 shipwreck in 1808. [Lane - Quileute-Hoh, 5]
6

7 3.406 After the Makah Treaty had been concluded, Governor
8 Stevens attempted unsuccessfully to negotiate a treaty with all
9 of the Indians along the coast south of the Makah to Grays Harbor.
10 Representatives of some of those Indians met with the Stevens
11 Party in February 1855. At the council the treaty negotiators
12 discovered that the Quinaults did not occupy the entire terri-
13 tory north to the Makah territory but that another distinct
14 tribe, the Quileutes, occupied the intermediate area. Because of
15 the language difference the Quileutes had not been notified of
16 the council. [Lane - Quileute-Hoh, 6 and 7; Proceedings of the
17 Treaty Council, USA-12 and USA-13]
18

19 3.407 After the adjournment of the council without the
20 conclusion of a treaty, Governor Stevens left the western
21 Washington area to negotiate other treaties and instructed
22 Michael T. Simmons to explore the country between the Makah and
23 the Quinault in order to ascertain the numbers of the intervening
24 people. Simmons met with the Quileute and Quinault on their
25 home ground and on July 1, 1855, concluded a treaty with them.
26

27 3.408 The preamble to the treaty thus submitted by Simmons
28 recited that it is an agreement and convention concluded between
29 Governor Isaac I. Stevens on the part of the United States and
30

1 "the undersigned chiefs, headmen and delegates of the different
2 tribes and bands of the Qui-nai-elt and Quill-leh-ute Indians,
3 on the part of said tribes and bands." [Lane - Quileute-Hoh,
4 7 and 8].

5
6 3.409 In a report to Governor Stevens dated December 30,
7 1855, Michael Simmons stated:

8 July 1st Made a treaty with the Kwillehyute and
9 Kwinaiatl tribes and Huh- and Qui-elts band of
10 the latter. Commissioned How-Yak's head chief
11 of the Quill-ly Tatn & Kal-laps and Tah-ah-hah-
white-subchiefs, Also Kler-say s hum Subchief
of the Qui-nete-ls, proceedings of Treaty you
will please find attached to my report.

12
13 3.410 While it is not clear why Simmons identified the Huh
14 or Hoh band as being a band of the Quinault Tribe rather than the
15 Quileute, it is clear that he considered that he had made a
16 treaty with the Hoh Band along with the Quileute and Quinault
17 Tribes. [Lane - Quileute-Hoh, 8 and 9]

18
19 3.411 During their trek between the Quillayute and Hoh Rivers
20 the Russian party referred to in request for admission 3.405
21 above came to a watercourse along which they discovered a large
22 building with a lot of dried coho (Kisuch) located near a fish
23 weir. The Russians took 25 dried fish, left some trade items in
24 exchange, and the next day were met by some Hoh Indians who
25 provided them with some more dried fish.

26 [Lane - Quileute-Hoh, 9 and 10]

27
28 3.412 During the winter of 1808-1809 the Tarakanov party
29 went up the Hoh River a distance of at least 13.2 miles. They
30 encountered natives who refused to sell them fish explaining

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1 that high water had covered their fish trap allowing the fish to
2 escape. The Russians, nevertheless, took some fish by force and
3 at one time got 400 salmon and 10 bladders of fish roe from the
4 Indians. The Russians also found stored winter salmon in houses
5 further upstream. [Lane - Quileute-Hoh, 10 and 11]

6
7 3.413 On August 1, 1861, James G. Swan made an exploratory
8 trip up the Quillayute River in company with Howelat1, head chief
9 of the Quileutes, and Wackamus, a chief of the Quinaults. He
10 wrote an account of that trip in which he described the river
11 and stated that about a mile up from the bend of the river near
12 its mouth there was a strong weir for taking salmon. About a
13 mile further up the stream the party encountered another fish
14 weir. There was an Indian lodge at each weir. In describing the
15 fish in the river Swan reported that the same variety of salmon
16 are taken as run up the Que-nai-ult, spring and fall -- "short,
17 thick and very fat." He stated that the Indians were expecting a
18 run to commence in a couple of weeks. He also stated that in
19 addition to the salmon there was at the mouth of the river "the
20 greatest abundance of smelts I have ever seen, and plenty of tom
21 cod, just like those taken in Boston harbor." The Indians took
22 the smelt by means of large hand nets. [Lane - Quileute-Hoh,
23 11-13]

24
25 3.414 Quileute Indian names for some months are related to
26 fish or fishing activities. Translated into English these names
27 and their approximate period of our calendar include the
28 following: "Beginning of the spawning of the steelhead salmon",
29
30

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32

1 approximately January (32 days); "regular or strong spawning
2 time of salmon", about February (32 days); "time for black
3 (chinook) salmon", September; "time for silver salmon", October.
4 [Lane - Quileute-Hoh, 13-14]

5
6 3.415 The Quileute Indians ate steelhead eggs raw but either
7 boiled or baked salmon eggs. Steelhead eggs were sometimes dried
8 but never smoked. [Lane - Quileute-Hoh, 14]

9
10 3.416 An account of Quileute fishing given September 1, 1916,
11 by Arthur Howeattle, a Quileute Indian, stated that the Quileutes
12 used to fish in rivers, lakes and the ocean and that the fishing,
13 grounds in the river were the property of individual families,
14 those in the lakes and ocean common property. He stated further
15 that fish were caught with drag nets, scoop nets and fish-trap,
16 fish baskets, dip nets, spears, hooks, and lines.
17 [Lane - Quileute-Hoh, 14 and 15]

18
19 3.417 Quileute fishing gear included a stake trap stretching
20 across a stream with open spaces at intervals in which dip nets
21 were suspended; triangular fish traps which often could catch
22 a canoe load of fish at a time; and sloping dams across a river
23 along which dip or bag nets were suspended from the downstream
24 side into which the fish would jump in their attempts to get over
25 the dam. [Lane - Quileute-Hoh, 15]

26
27 3.418 The Hoh Indians sometimes constructed artificial falls
28 in the smaller streams by placing hemlock logs across the water-
29 course. During periods of high water they would catch salmon below
30 the falls with special falls nets. [Lane - Quileute-Hoh, 15]

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1 3.419 Historical usual and accustomed fishing sites on the
2 Quileute and Hoh River systems existed at locations shown on maps
3 and described as accompanying tables that were entered as
4 Plaintiffs' Exhibits 72-74 in Indian Claims Commission Docket
5 No. 155. [Exhibit to Affidavit of George D. Dysart dated
6 January 18, 1972, filed in this case on or about January 19, 1972.]
7

8 3.420 The principal fisheries of the Quileute and Hoh Indian
9 people included the Hoh River from its mouth to the uppermost
10 reaches, as well as the numerous tributary creeks; the Quileute
11 River and the rivers tributary to it, Dickey River, Bogachiel
12 River, Calawah River, and numerous other tributary streams and
13 creeks. Additional fisheries were located in the lakes of the
14 area, such as Lake Ozette and Lake Dickey, Pleasant Lake and
15 others. Further, important fisheries existed in the tidewaters
16 and adjacent saltwater. [Lane - Quileute-Hoh, 17]
17

18 3.421 Dr. George Gibbs in a comprehensive report on
19 Washington Indians which he made in 1856 and which was published
20 in 1877, described the Quileute Indians as follows:
21

21 * * *

22 There are two bands of this tribe, the Kwilla'-huit,
23 of Kive-dee-tut and the Huch, of Kwaat-sat.

24 [*Quileute Tribe of Indians on its own behalf and on behalf of*
25 *the Hoh Tribe or Band of Indians, et al. v. United States, Indian*
26 *Claims Commission Docket No. 155, evidentiary facts supporting*
27 *ultimate Findings Nos. 2 and 3, paragraph b, 7 Ind.Cls.Comm. at*
28 *35; USA-1 herein.*]
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1 3.422 In aboriginal times the Quileute Indians very largely
2 subsisted on fish and seafood. They utilized fishing weirs where
3 salmon were caught along the Quillayute River. Quileute Indians
4 also fished on the Bogachiel, Calawah and Soleduck Rivers.
5 Along the adjacent Pacific Coast Quileutes caught smelt, bass,
6 puggy, codfish, rock, red, ling-cod, halibut, flatfish, bullheads,
7 devilfish shark, herring sardines, sturgeons, seal, sea lion,
8 porpoise and whale. The Hoh Indians fished along the river bearing
9 their name. [*Quileute Tribe of Indians, et al. v. United States,*
10 *Indian Claims Commission Docket No. 155, Finding of Fact No. 12,*
11 *7 Ind.Cls.Comm. at 45; USA-1 to Plaintiffs' First Requests for*
12 *Admissions.*]

13
14 3.423 In the years following the treaty the Quileute Indians
15 caught fish in the Quillayute River near La Push by using nets
16 attached to two canoes which were floated downstream in the river.
17 They also used spears and hooks similar to gaff hooks. They
18 caught smelt along the ocean beach in front of La Push and north
19 and south of the Quillayute River. [*Lane - Quileute-Hoh Appendix,*
20 *1941 Statement of Benjamin H. Sailto.*]

21
22 3.424 In the years following the treaty the Quileute villages
23 were located where the conditions of the river were best for
24 catching fish and, consequently, each village obtained its
25 principal supply from a trap located nearby. The traps were
26 built in shallow water although not necessarily at the mouths
27 of small streams. [*Lane - Quileute-Hoh Appendix, Sailto testimony.*]

1 3.425 In the years following the treaty there was a permanent
2 Quilleute village located opposite the creek entering the Bogachiel
3 River about one mile above the junction of the Bogachiel and
4 Soleduck Rivers. There were two big smokehouses in this village
5 and about thirty or more people lived there. There was another
6 permanent village located about one mile above the entrance of
7 Mayfield's Creek into the Bogachiel River. There were three
8 smokehouses at that place with about 35 people. There was another
9 village located on the Bogachiel River about six miles below the
10 mouth of the Calawah River in which about thirty people lived.
11 There was a fish trap there from which they obtained their princi-
12 pal supply of food. There was a permanent village on the south
13 bank of the Bogachiel about a mile below where the Calawah and
14 the Bogachiel meet. This village had about twenty-five or thirty
15 people. There was also a permanent village on the Bogachiel
16 River about one-half mile above its junction with the Calawah
17 at which about forty people lived. There was a permanent Indian
18 village located just above where the present U. S. Highway 101
19 crosses the river. [Lane - Quilleute-Hoh Appendix, 1941 testimony
20 of B. H. Sailto and Stanley Gray and Daniel White.]
21

22 3.426 There were small Indian villages located at the mouths
23 of the Quillayute and Dickey Rivers and also one at Dickey Lake.
24 There were several villages on the Soleduck River. There was a
25 village known as Shu-a-wah on the headwater of the Soleduck on
26 Beaver Prairie. The Indians who lived there in the years
27 following the treaty obtained the principal part of their food
28 supply from a fish trap located near the village. These people
29 would also go to the coast to catch smelt. The fish traps or
30 weirs used by the Quilleutes were made of fine maple bows laced
31

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1 by spruce limbs. They entirely closed the streams in which they
2 were built. When the Indians had enough fish for their own
3 immediate needs and to dry for their year's supply, they would
4 remove the weir from the river so that the fish could go up the
5 stream to spawn. There was at least one smokehouse at Shu-a-wah.
6 [Lane - Quileute-Hoh Appendix, Testimony of Sextas Ward,
7 October 15, 1941.]
8

9 3.427 In the years shortly following the treaty the Indians
10 who lived along the ocean would exchange dried whale, clam and
11 seal meat with the Indians who lived in the villages upstream
12 for dried fish. After the white man came the Indians traded
13 fresh fish for potatoes, sugar, coffee and molasses.
14 [Lane - Quileute-Hoh Appendix, Statement of Sextas Ward.]
15

16 3.428 In the years shortly after the treaty there was a
17 Quileute village at the mouth of the Dickey River at which approxi-
18 mately 75 Indians lived. They caught fish in the Dickey River
19 with four fish traps which stretched all the way across the
20 river. There was also a small village where the Soleduck and
21 Bogachiel Rivers joined and another on the north bank of the
22 Bogachiel south of the Soleduck. About 25 people lived in each
23 and fish were caught at both places, one trap at each place.
24 These places were abandoned when the white people homesteaded the
25 land in the latter part of the 19th century. There was another
26 village on the Soleduck about two miles above the junction with
27 the Bogachiel. It was also a suitable fishing place. There was
28 a third village two or two and a half miles above this latter
29
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1 one which was used by the Indians to fish long before the white
2 men came to the country. About twelve miles above this, or just
3 a little below the junction of the creek that comes from Lake
4 Pleasant and the Soleduck River, there was a village at which the
5 Indians would fish.

6 [Lane - Quileute-Hoh Appendix, Testimony of Sextas Ward.]
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MAKAH TRIBE

3.450 Reliable information concerning the activities of the Indian parties to the treaty with the Makah is provided in the works of a shipwrecked Russian crew member who lived with the Makah in 1809; Samuel Hancock who resided at Neah Bay in 1852; George H. Gibbs who was one of the treaty negotiators; Captain William Webster who wrote a letter in 1853; contemporary newspapers during treaty time; Boit's log from the "Columbia", September 30, 1792; and Governor Isaac I. Stevens.

[Lane - Makah, 2-3, 35]

3.451 Reliable information concerning the shortly post-treaty activities of the Indian parties to the treaty with the Makah is given in the reports and writings of George H. Gibbs, one of the treaty negotiators; James G. Swan (1862-1866); T. T. Waterman; Elizabeth Colson; Jose Mariano Mozino; Phillip Drucker; Frances Densmore; Michael T. Simmons; Henry A. Webster (1863); the Superintendent of Indian Affairs for the Washington Territory in 1863, E. M. Gibson (1873); C. A. Huntington (1875); Superintendent of Indian Affairs for the Washington Territory R. H. Milroy (1872); Indian Agent Charles Willoughby (1881); John P. McGlinn (1891); and Samuel Morse (1901).

[Lane - Makah, 2-3, 13, 15, 18, 40, 42, 44]

3.452 The Indian parties to the treaty with the Makah held wealth and power and maintained Northwest Coast cultural patterns. These were achieved by and dependant upon a thriving commercial maritime economy which was well-established prior to the execution of the treaty. [Lane - Makah, 30-33]

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1 parties to the treaty with the Makah had already been furnished
2 with fishhooks and spears, but yet required the government to
3 supply them further with salmon and seine twines for making nets.
4 [Lane - Makah, 39-40]

5
6 3.459 In the annual report of Indian Agent H. A. Webster in
7 1867, Agent Webster referred to the government's promise to aid
8 the Makah Indians in the development of their fishery as "treaty
9 stipulations". [Lane - Makah, 41-42]

10
11 3.460 Prior, during and subsequent to treaty times the
12 Indian parties to the treaty with the Makah maintained several
13 kinds of distinct property rights to territories on the freshwater
14 and saltwater areas in their inhabited area. [Lane - Makah, 44-47]

15
16 3.461 Prior to the treaty with the Makah, the Indian parties
17 thereto, had, like their Nootkan relatives to the north, marked-
18 off specific ocean tracts in the Straits of Juan de Fuca and
19 off Cape Flattery, some of which tracts extended many miles off-
20 shore, as private property areas belonging to particular Makah
21 Indian chiefs. [Lane - Makah, 46]

22
23 3.462 Some of the leaders of the Indian parties to the treaty
24 with the Makah asserted their ownership rights on saltwater and
25 freshwater courses at the time of the negotiation in execution
26 of the treaty; but the treaty commission was unaware of the
27 property right aspects of Makah Indian law, specifically that law
28 which divided into privately-owned parcels specific areas of salt-
29 water and freshwater. [Lane - Makah, 46]

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31
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1 3.453 The Indian parties to the treaty with the Makah were
2 able to sustain their wealth, power and Northwest Coast culture
3 because of their access to and ownership of the unique and
4 valuable resource of the halibut banks which were peculiar to
5 their territory. [Lane - Makah, 32]

6
7 3.454 Prior to the treaty with the Makah, the Indian parties
8 thereto had been exporting vast amounts of processed halibut,
9 and from the proceeds thereof imported both the necessities and
10 luxuries of aboriginal Nootkan culture. [Lane - Makah, 33]

11
12 3.455 The members of the treaty commission at the treaty
13 with the Makah (Stevens, Gibbs, Shaw and Simmons) were aware
14 of the commercial nature and value of the Makah maritime economy
15 and they promised the Makah that the government would assist the
16 Makah in developing their maritime industry. [Lane - Makah, 33-39]

17
18 3.456 By his promise of kettles and fishing apparatus to
19 the Indian parties to the treaty with the Makah, Governor Stevens
20 clearly indicates that there was no intent on the part of the
21 treaty commissioners that the Indians be restricted to aboriginal
22 equipment or techniques. [Lane - Makah, 38]

23
24 3.457 The United States Government's intent to aid the Indian
25 parties to the treaty with the Makah in their whaling, sealing
26 and other fisheries continued for at least 40 years following
27 the treaty. [Lane - Makah, 39-44]

28
29 3.458 Writing in 1858, James G. Swan stated to the Acting
30 Commissioner of Indian Affairs Charles E. Mix that the Indian

31
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1 3.463 Ownership of the halibut banks, salmon trolling areas,
2 salmon streams and whaling grounds were the most important hold-
3 ings of the Makah Indians prior to, during and after treaty times,
4 and these holdings formed the basis of the Makah Indian economy.
5 [Lane - Makah, 47]

6
7 3.464 The Makah Indians have continued to assert their
8 property rights to areas of saltwater and freshwater after the
9 execution and ratification of the treaty with the Makah.
10 [Lane - Makah, 47-48]

11
12 3.465 The Indian parties to the treaty with the Makah main-
13 tained separate winter and summer villages, such that residents
14 of one winter village (e.g. Baadah) summered at a specific
15 summer village (e.g. Kiddecubbut). [Lane - Makah, 5-11]

16
17 3.466 The treaty commissioners at the treaty with the Makah
18 did not fully understand the network of summer and winter villages
19 maintained by the Indian parties to that treaty. [Lane - Makah,
20 5-11]

21
22 3.467 The staple food and basic economic element of the
23 Indians who were parties to the treaty with the Makah was, and
24 continued for a period after the treaty, to be halibut.
25 [Lane - Makah, 12]

26
27 3.468 Prior to, during and after treaty times the Indian
28 parties to the treaty with the Makah were emphatically a trading,
29 as well as a producing people, who traded with the Chinook,
30 Kwinault and Kwilleute Indians to the south and other Indians
31 north of Cape Flattery. [Lane - Makah, 14]

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1 3.469 James G. Swan recorded that between 1859 and 1866 the
2 Indian parties to the treaty with the Makah imported from
3 Vancouver Island Nootkin Indians such things as ocean-going
4 canoes, cedar house planks, medicine and wooden chests; and the
5 Makah Indians exported to Nootkin Indians on Vancouver Island
6 such things as dried halibut and whale oil and exported to whites
7 such things as dried halibut, smoked salmon and furs.

8 [Lane - Makah, 16]
9

10 3.470 James G. Swan recorded that between 1859 and 1866 the
11 Indian parties to the treaty with the Makah imported from their
12 Indian neighbors to the south and east, such things as camas,
13 pipe clay, ockre, sleeping mats and ash baskets. They also
14 imported from Europeans such things as blankets, guns, beads,
15 kettles and pans. [Lane - Makah, 16]
16

17 3.471 Some of the Indian parties to the treaty with the
18 Makah, prior to, during and after the treaty, travelled from
19 their summer village and in the fall moved camps which provided
20 access to places for taking fish from the salmon runs in the
21 streams and rivers straiting into the Strait of Juan de Fuca.

22 [Lane - Makah, 19]
23

24 3.472 The Indian parties to the treaty with the Makah took
25 at their usual and accustomed fishing sites, sockeye, chum,
26 and coho salmon. [Lane - Makah, 20]
27

28 3.473 Within the Makah Indian culture prior to, during and
29 after the treaty with the Makah, people from Pacific coast
30 villages who did not own fishing rights in the area of the
31

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1 Strait of Juan de Fuca would trade halibut for salmon; and
2 people who owned rights in different salmon streams traded one
3 type of salmon for another type of salmon in order to obtain
4 several varieties. [Lane - Makah, 20]

5
6 3.474 The fishing techniques of the Indian parties to
7 the treaty with the Makah included at treaty times, seining,
8 spearing, and trolling. [Lane - Makah, 22]

9
10 3.475 Beginning in about the 1870's the following factors
11 contributed to a diminution or loss of maritime resources formally
12 available to the Indian parties to the treaty with the Makah:
13 The loss ocean fisheries through international commercial compe-
14 tition, over-fishing, and subsequent regulation of time and
15 method of harvest through international conventions and state
16 regulations; alteration of inshore fisheries through harbor
17 development and construction of breakwaters; and lumbering,
18 pollution, and man-made alteration in freshwater streams and
19 rivers. [Lane - Makah, 30]

20
21 3.476 The Indian Claims Commission in Docket No. 60,
22 *Makah Indian Tribe v. United States*, decided April 15, 1969,
23 was wrong when in finding No. 21 it stated:

24 (3) The reserving of Makah fishing rights at
25 usual and accustomed places during the 1855 treaty
26 was founded upon the need of the petitioner tribe
27 to maintain its then subsistence economy which was
based primarily upon the immediate products of the
sea, and in no sense was this treaty provision a
guarantee of future commercial fishing rights.

28 [Lane - Makah, 2]
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1 3.477 The usual and accustomed fishing sites of the Indian
2 parties to the treaty with the Makah include the saltwater
3 fisheries off-shore stretching from the eastern boundary of the
4 Makah Indian Reservation around Cape Flattery down to and
5 including Cape Alava and the freshwater fisheries on the Ozette
6 River, the Big River, the Hoko River, the Sooes River, and the
7 Sekieu River. [Lane - Makah, 11; Appendices 1 and 2]
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SAUK-SUIATTLE TRIBE

3.550 . The Sauk-Suiattle Indian Tribe is composed primarily of the descendants of the Sakhumehu and other Indians who lived on the upper reaches of the Skagit River system in 1855. [Lane - Sauk-Suiattle, 1-9, 12]

3.551 Reliable information concerning the pre-treaty activities of the Indians known as Sock-a-muke, Sakhumehu and Sock a bute is given in the reports and writings of Edward A. Starling and George Gibbs. [Lane - Sauk-Suiattle, 1-3]

3.552 The separate identity of the Indians known variously as Sock-a-muke, Sakhumehu and Sock a bute was consistently recognized in reports referring to them before, during and after the Treaty of Point Elliott. [Lane - Sauk-Suiattle, 1-9]

3.553 The group of Indians who lived in the upper reaches of the Skagit River system during treaty times were referred to as a distinct group, variously designated as Sock-a-muke, Sakhumehu and Sock a bute; they were accustomed to a different diet than that obtainable in saltwater. Travel to the upriver country where they lived was difficult, if not impossible, during the winter months. [Lane - Sauk-Suiattle, 6]

3.554 During treaty times, salmon and steelhead were the food staple of the Indians referred to as Sock-a-muke, Sakhumehu and Sock a bute, although their diet contained other items not generally eaten by downriver Indians in the Puget Sound area. [Lane - Sauk-Suiattle, 7]

1 3.555 Prior to and during treaty times, the Indians referred
2 to as Sock-a-muke, Sakhumehu and Sock a bute intermarried to a
3 considerable extent with the Upper Skagit and Stillaguamish
4 Indians. [Lane - Sauk-Suiattle, 7]
5

6 3.556 Prior to, during and after treaty times, the Indians
7 known as Sock-a-muke, Sakhumehu and Sock a bute, who occupied
8 areas in the upper Skagit River system, were different in social
9 structure and their world view from their downriver neighbors;
10 and their ecology was considerably different.
11 [Lane - Sauk-Suiattle, 8]
12

13 3.557 Prior to, during and after treaty times, the Indians
14 known as Sock-a-muke, Sakhumehu and Sock a bute contrasted with
15 Indians living on the coast of Puget Sound in that (a) they spent
16 the winter in their own territory and appeared to have been much
17 influenced by their plateau Indian neighbors with whom they shared
18 a number of specific traits; (b) they did not old slaves; and
19 (c) they placed a premium on maintaining peaceful relations and
20 a non-aggressive attitude. [Lane - Sauk-Suiattle, 8]
21

22 3.558 The Sakhumehu Indians are named in the preamble to
23 the Treaty of Point Elliott; and one of the signatories of that
24 treaty is identified as a Sakhumehu. [Lane - Sauk-Suiattle, 9]
25

26 3.559. Reliable information concerning the activity during
27 and after treaty times of the Indians from the groups known as
28 Sock-a-muke, Sakhumehu and Sock a bute is given in the reports
29 and writings of R. C. Fay, Dr. Sally Snyder, present members of
30 the Sauk-Suiattle Indian Tribe and Agent N. D. Hill.
31 [Lane - Sauk-Suiattle, 5, 10-12]
32

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1 3.560 At least some of the Indians from the groups known as
2 Sock-a-muke, Sakhumehu and Sock a bute continued after treaty
3 times to live along the Sauk and Suiattle Rivers where their
4 descendants still reside. [Lane - Sauk-Suiattle, 9]

5
6 3.561 During treaty times Indians from the groups known as
7 Sock-a-muke, Sakhumehu and Sock a bute took fish by means of
8 spearing, dipnets, traps and weirs. [Lane - Sauk-Suiattle, 10]

9
10 3.562 During treaty times, Indians from the groups known as
11 Sock-a-muke, Sakhumehu and Sock a bute procured salmon and
12 steelhead in their upriver region and also traveled to the salt-
13 water to procure marine life unavailable in their own territory.
14 [Lane - Sauk-Suiattle, 11]

15
16 3.563 During treaty times Indians from the groups known as
17 Sock-a-muke, Sakhumehu and Sock a bute ate salmon and steelhead
18 in both fresh and cured forms. Curing was by smoking and drying
19 only; and there were two methods used for preparing steelhead
20 livers. [Lane - Sauk-Suiattle, 11-12]

21
22 3.564 The Indians known as Sock-a-muke, Sakhumehu and
23 Sock a bute, have always regarded themselves as a distinct and
24 separate group and have been so regarded by other Indians and
25 historically by non-Indians. [Lane - Sauk-Suiattle, 13]

26
27 3.565 The principal fisheries of the Sock-a-muke, Sakhumehu
28 and Sock a bute included the Sauk, Cascade and Suiattle
29 Rivers and Big, Tenas, Buck, Lime, Sulphur, Downey, Straight,
30 Milk and Bedal Creeks. [Lane - Sauk-Suiattle, 13]

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LUMMI TRIBE

3.500(a) The answers of the plaintiff Lummi Tribe of Indians to the interrogatories of the defendant Washington Reef Net Owners Association are accurate and truthful as therein set forth.

(b) Those answers are admissible without objection from defendants in the trial of this case.

3.501 The Lummi Indian Tribe is composed primarily of descendants of Indians who in 1855 were known as Lummi or Nook-Lummi and who lived in the area of Bellingham Bay and near the mouths of the river emptying into it. The present Lummi Indian Tribe also includes descendants of the Semiahmoo and Samish Indians of 1855. [Lane - Lummi, 1-4, 26]

3.502 Prior to, during and after treaty times, the Lummi Semiahmoo and Samish Indians shared two differentiating characteristics: (a) They spoke a common language called Straits Salish which was distinct from the Nooksack language spoken by the Nooksack Indians to the east and unlike the Puget Sound language spoken by the rest of the Point Elliott treaty Indians to the south; and (b) they utilized a specialized fishing technique called reef netting. [Lane - Lummi, 2]

3.503 The reef net fishing technique utilized by the Lummi, Semiahmoo and Samish Indians was an invention of local Indians. [Lane - Lummi, 2, 11-21]

1 3.504 Reliable information concerning the pre-treaty
2 activities of the Lummi, Semiahmoo and Samish Indians is given
3 in the reports and writings of George Gibbs and Theodore Winthrop.
4 [Lane - Lummi, 3, 13]

5
6 3.505 Reliable information concerning the activities of the
7 Lummi, Semiahmoo and Samish Indians during and after treaty times
8 is given in the reports of George Gibbs (1854), Indian Agent
9 Fitzhugh (1856), C. C. Finkboner (1865), John McGlinn (1874),
10 B. N. McDonough (1871-1883), Franz Boas (1889-1890), J. W. Collins
11 (1892), D. J. Stern (1934) and W. P. Suttles (1951).
12 [Lane - Lummi, 10, 14, 21-22]

13
14 3.506 The Lummi Indians, and the Semiahmoo and Samish Indians
15 who were subsumed under the Lummi designation, were party to the
16 Treaty of Point Elliott. Fourteen of the signatories to the
17 Treaty of Point Elliott are identified as Lummi Indians.
18 [Lane - Lummi, 1-6, 26]

19
20 3.507 Lummi Indians who were present at the negotiation and
21 signing of the Treaty of Point Elliott later asserted that those
22 signatories identified as Lummi Indians had received assurances
23 that they would continue to hold the rights to their fishing
24 grounds and stations, including their rights to their reef net
25 locations which were private property. It is highly probable that
26 these assertions are accurate. [Lane - Lummi, 6-7]

27
28 3.508 Prior to the Treaty of Point Elliott, the Lummi,
29 Semiahmoo and Samish Indians had been engaged in commercial
30 trade in salmon, halibut and shellfish both with other Indians
31 and with non-Indians. [Lane - Lummi, 6]

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1 3.509 At the time of the Treaty of Point Elliott the Lummi,
2 Semiahmoo and Samish Indians maintained prosperous communities by
3 virtue of their ownership of lucrative saltwater fisheries.

4 [Lane - Lummi, 8]

5
6 3.510 Some of the Lummi Indian signatories to the Treaty of
7 Point Elliott were owners of reef net locations.

8 [Lane - Lummi, 9]

9
10 3.511 In 1791, Spanish ships in Boundary Bay observed Indians
11 fishing at reef net locations. These Indians possessed iron,
12 copper and blue beads which the Spaniards learned had been procured
13 from interior Indians in exchange for dried fish.

14 [Lane - Lummi, 10-11]

15
16 3.512 The following facts all indicate an Indian origin
17 for the technique of reef netting: (a) Native materials were
18 used initially for all parts of the gear; (b) each detail of
19 gear and construction had a native name in each of the several
20 dialects used by Indian groups participating in the fishery;
21 (c) a unique and specialized set of ritual observances was asso-
22 ciated with the reef net fishery, which observances were similar
23 to other salmon rites of the general area but peculiar to reef
24 netters; and (d) the reef netting technique was employed from
25 the Straits of Juan de Fuca to Point Roberts, apparently to all
26 feasible locations, and this necessarily implies an intimate
27 local knowledge of salmon migration routes and the underwater
28 topography of the region, coupled with close observance of salmon
29 behavior. [Lane - Lummi, 12-21]

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1 3.513 The economic aspects of the reef net fisheries used
2 during treaty times by Lummi, Semiahmoo and Samish Indians cannot
3 be understood without reference to kinship ties among the Indians
4 of those groups. [Lane - Lummi, 20]

5
6 3.514(a) The late summer to early fall reef net fishery of the
7 Lummi, Semiahmoo and Samish Indians during treaty times was mainly
8 for sockeye.

9
10 (b) Before the sockeye run, the Lummi trolled the waters
11 of the San Juan Islands for spring salmon.
12 [Lane - Lummi, 22]

13
14 3.515 The Lummi, Semiahmoo and Samish Indians took spring,
15 silver and humpback salmon by gillnets and harpoons near the mouth
16 of the Nooksack River, and steelhead by harpoons and basketry
17 traps on Whatcom Creek. The bulk of salmon and steelhead taken
18 in the fall and cured for winter stores were dog salmon and
19 steelhead taken at a weir on Lummi (Red) River.
20 [Lane - Lummi, 22-23]

21
22 3.516 The traditional fisheries of the post-treaty Lummi
23 included reef net sites in the San Juan Islands, off Point Roberts,
24 Birch Point, Cherry Point, and off Lummi Island and Fidalgo
25 Island. Other fisheries in the Straits and bays from the Fraser
26 River south to the present environs of Seattle were utilized.
27 Freshwater fisheries included the river drainage systems emptying
28 into the bays from Boundary Bay south to Fidalgo Bay.
29 [Lane - Lummi, 23-26]

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1 3.517 The Lummi Indians continued after the Treaty of
2 Point Elliott to use their reef net locations until approximately
3 1894, when fish traps owned by non-Indians were located so as to
4 render valueless most of the Lummi's reef net locations.

5 [Lane - Lummi, 26-27]
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YAKIMA INDIAN NATION

3.700 Plaintiff-Intervenor, Confederated Tribes and Bands of the Yakima Indian Nation also known as the Yakima Tribe is a recognized tribe of American Indians. Said tribe was created by the Treaty of June 9, 1855, ratified March 8, 1859 (12 Stat. 951, 2 Kapp. 698] and occupies a reservation known as the Yakima Indian Reservation, located in the south central part of the State of Washington. [Yakima tribal witness, supporting documents.]

3.701 The Yakima Treaty of June 9, 1855, (12 Stat. 951, 2 Kapp. 698) ratified on March 8, 1859, merged the confederated tribes or bands named in the preamble to said treaty into the newly formed Yakima Nation and that confederated Yakima Nation became the successor in interest to the formerly separate tribal entities and all the rights of the formal tribal entities were merged as of March 8, 1859. The preamble of the Treaty reads as follows:

Articles of agreement and convention made and concluded at the treaty ground, Camp Stevens, Walla Walla Valley, this ninth day of June, in the year one thousand eight hundred and fifty five, by and between Isaac I. Stevens, governor and superintendent of Indian Affairs for the Territory of Washington, on the part of the United States, and the undersigned head chief, chiefs, headmen and delegates of the Yakama, Palouse, Piquouse, Wenatshapam, Klikatat, Klinkuit, Kow-Was-say-ee, Li-ay-was, Skin-pah, Wish-ham, Shyiks, Oche-chotes, Kah-milt-pah, and Se-ap-cat, confederated tribes and bands of Indians, occupying lands hereinafter bounded and described and lying in Washington Territory, who for the purposes of this treaty are to be considered as one nation, under the name of "Yakama", with Kamiakun as its head chief, on behalf of and acting for said tribes and bands, and being duly authorized thereto by them.

[Yakima tribal witnesses, supporting documents.]

1 3.702 The readily identifiable treaty tribes and bands
2 confederated into the Yakima Indian Nation have the following
3 modern names and are classified as follows:

4 A. The Salish speaking tribes:

- 5 1. Chelan
- 6 2. Entiat
- 7 3. Wenatchee
- 8 4. Columbia

9 B. The Sahaptin speaking tribes:

- 10 5. Kittitas
- 11 6. Yakima
- 12 7. Klickitat
- 13 8. Wanapam
- 14 9. Palus (Palouse)
- 15 10. Skeen

16 C. Chinookan speaking tribe:

- 17 11. Wishram

18 [Yakima tribal witnesses, supporting documents.]
19

20 3.703 In the main, the Indians referred to in request for
21 admission 3.702 above, at the time of the treaty, lived in a
22 food gathering culture. They existed on game, fish, roots,
23 berries and some cultivated vegetables. Of these foods fish was
24 the principal food and they landed salmon, steelhead, trout,
25 mussels, eel, and other miscellaneous fish. Salmon, however,
26 both fresh and cured was the great staple in the food supply of
27 these Indians. It was annually consumed by these Indians in the
28 neighborhood of 500 pounds per capita. Circumstances necessitated
29 that large quantities of fish, fish oil, roots and berries be
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1 cured in adequate quantities to insure a sufficient and balanced
2 diet for those periods of the year when the fresh supply of these
3 commodities was not available. Quantities of fish in considerable
4 numbers were preserved for future use through smoking or drying.
5 The choice of the method depended on the climatic conditions and
6 the availability of firewood. It was customary for these Indians
7 to manufacture pemican. This was accomplished by pounding the
8 dried strips of fish until quite fine and packing the resultant
9 mass in containers lined with fish skin. In this process oil was
10 used where available and the oil from male steelhead was used for
11 this purpose. Because of the monotony of this fish diet, variety
12 in the kind of salmon and other fish caught was a desired goal. In
13 particular it was desired that as many fish as possible be landed
14 at areas where they would be leaving the saltwater so they would be
15 in prime condition. [Yakima tribal witnesses, supporting documents.]

16
17 3.704 With the exception of the spear, gaff and like gear
18 which to a great extent depended on the skill and dexterity of
19 the individual operator, methods used by these Indians to land
20 salmon and steelhead was very efficient. These Indians used
21 traps, wiers, nets, gillnets, baskets, seins to land salmon and
22 steelhead. They were proficient in the manufacture of strong
23 twine from native materials. The number of Indians who were from
24 the tribes and bands merged into the Yakima Nation by the Yakima
25 Treaty of 1855 was in the neighborhood of 5,000 Indians.

26
27 3.705 Indians from the Yakima Indian Nation and particularly
28 those from the Yakima, Klickitat, Wenatchee, Columbia, Chelan,
29 Entiat, and Kittitas aboriginal groups communicated continually
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31

1 with the tribes on Puget Sound by the use of the Snoqualmie,
2 Naches and Stevens Passes as weather permitted. Of the aboriginal
3 tribes only the Klickitats exercised dominion and control over
4 land and area to the west of the Cascade Range. This area was
5 south of the area with which this lawsuit is concerned and with
6 which the Yakima Indian Nation's intervention is permitted.
7 [Yakima tribal witnesses, supporting documents.]

8
9 3.706 This continual communication created bilingualism,
10 custom interchange, intermarriage, and cross-utilization of the
11 economic resources in the Puget Sound area. In the main this
12 communication and intermarriage was with the tribes now considered
13 Nisqually, Puyallup, Muckleshoot and Snoqualmie.
14 [Yakima tribal witnesses, supporting documents.]

15
16 3.707 These Indians of the Yakima Nation used in common with
17 the Indians of the Puget Sound area fisheries located therein for
18 the purpose of obtaining salmon and steelhead for their use.
19 The fish from these fisheries was in demand not only because it
20 provided variety but because of its prime condition. Contrary to
21 most fisheries on the east side of the Cascades where dominion
22 and control of fisheries was exercised, the Puget Sound fisheries
23 were generally used in common, with no tribe excluding other
24 friendly tribes or individual Indians from these fisheries.
25 [Yakima tribal witnesses, supporting documents.]

26
27 3.708 Since there was more intermarriage and communication
28 with those Indians now called Nisqually, Puyallup, Muckleshoot,
29 and Snoqualmie, fisheries in their area of residence were more
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1 commonly used by members of the Yakima Indian Nation. These
2 fisheries in the area of this case's inquiry included the waters
3 of the Snoqualmie, Snohomish, Green, Puyallup, Nisqually, Stuck,
4 Duwamish, White, Carbon, and Black Rivers and their tributaries.

5
6 3.709 Isaac I. Stevens was appointed governor, and *ex-officio*,
7 Superintendent of Indian Affairs of the territory of Washington
8 shortly after it was organized by the Act of March 2, 1853
9 (10 Stat. 172). He had been in charge of the federal surveys for
10 a railroad to the Pacific on the Northern route. Stevens had
11 selected Captain George B. McClellan as commander of the Western
12 Division of the Northern Pacific Railroad exploration party and
13 George Gibbs, as secretary for this party, recorded information
14 about the Indian tribes in this area in preparation for the
15 execution of treaties with the Indians in the area of the tribes
16 which later formed the Yakima Nation under the Treaty of June 9,
17 1855. This report which is dated March 4, 1854 clearly indicated
18 that the tribes of the Yakima Treaty ceded area were friendly to
19 the Indians of the Puget Sound, bilingual, and largely inter-
20 married with one another, and communicated regularly to this Puget
21 Sound area. It was recommended by these agents that rather than
22 setting aside extensive reserves for the Indians in Washington
23 that provision be made for liberty of motion for the purpose
24 of allowing these Indians to seek in their proper season, roots,
25 berries and fish where those articles may be found and of grazing
26 horses and cattle at large. It was contemplated that a large
27 portion of their territory presently used to provide for their
28 livelihood would never be occupied by white men. It was further
29 contemplated that the white man should never be permitted to
30 monopolize the fisheries. [Yakima tribal witnesses, supporting
31 documents.]

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1 3.710 Thereafter on August 30, 1854, the Acting Commissioner
2 of Indian Affairs gave written instructions to Governor Isaac I.
3 Stevens directing him to negotiate treaties with the Indian
4 tribes, bands, groups of Washington territory for the extinguish-
5 ment of their title to land in their territory conveying his
6 principal concern that this be done as economically as possible.
7 [Yakima tribal witnesses, supporting documents.]

8
9 3.711 Agents of Governor Isaac I. Stevens made preliminary
10 contact with the Indians to comprise the Yakima Indian Nation
11 on May 29, 1855. The Yakima Chiefs attended at council and
12 listened to an explanation of the treaty terms. This discussion
13 continued from day to day until June 9, 1855 while Governor
14 Stevens explained to the tribes that the Indians were to cede
15 their vast land holdings and move to a reservation of about 10%
16 in size of the area they were using exclusively and less than 5%
17 of the lands they were using in common with others. Much of the
18 time during this treaty council was spent by Governor Stevens in
19 explaining to these Indians that there would be no interference
20 with their food gathering practices or grazing outside these
21 reservations and how the government was going to provide facili-
22 ties, annuities and education so they would be on an economic
23 and material parity with white citizens.
24 [Yakima tribal witnesses, supporting documents.]

25
26 3.712 Based on these promises the Yakima Treaty was executed
27 on June 9, 1855 and provisions for this off-reservation treaty
28 food gathering and grazing was written into the Treaty in
29 Article III which provides:

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* * *

The exclusive right of taking fish in all the streams, where running through or bordering said reservation, is further secured to said confederated tribes and bands of Indians, as also the right of taking fish at all usual and accustomed places, in common with citizens of the Territory, and of erecting temporary buildings for curing them; together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.

This treaty as submitted was ratified and the President there-
after proclaimed it on March 8, 1859.

[Yakima tribal witnesses, supporting documents.]

3.713 In this reservation of off-reservation food gathering there was no limitation placed on this right by the treaty. The Indians of the Yakima Nation had covered large areas of land in search of food. Most all travel was for this principal goal. If they were to be limited to any appreciable extent they would have to limit their already meager existence. These Indians understood and this was confirmed by the statements of Governor Stevens that they were to be able to fish at all of the places that existed at the time of the Treaty. These Indians were familiar with the location of all such places as well as the times of the year when fish would be available for the taking. The numbers of these locations was large as in those days the salmon frequented practically all of the main and tributary streams within the various watersheds in Washington and there was little off-shore fishing.

[Yakima tribal witnesses, supporting documents.]

3.714 For several years after the treaty with the Indians of the Yakima Nation continued to take fish at all their usual and accustomed places and there was little fishing by whites.

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1 This period of fishing like that of pre-treaty and treaty times
2 was without regulation by other than those tribes who exercised
3 dominion and control over particular fisheries. Before the
4 invention of vacuum packing in 1861 there was little fishing done
5 by the whites. Sometime after 1861 commercial canneries were
6 established in the Puget Sound area and non-Indians began to
7 fish for salmon. This expansion of the landing of salmon made
8 it necessary to regulate these non-Indian fisheries and in 1871
9 the Territory of Washington limited stream fishing by providing
10 limited fixed gear to no more than two-thirds of the way across
11 the width of a freshwater stream. In 1890 the limitation was
12 fixed at a half by the State of Washington. There was no troll
13 fishery until 1912. [Yakima tribal witnesses, supporting documents.]

14
15 3.715 Though many members of the Yakima Nation continued to
16 fish off-reservation for many years after the treaty and to
17 exercise their rights in the Puget Sound area, the pressure of
18 non-Indian fisheries, the destruction of the run and the harrass-
19 ment by the State of Washington has caused most members to present-
20 ly limit their off-reservation fishery efforts to the Columbia,
21 Klickitat and Yakima Rivers. The Yakima Indian Nation regulations
22 therefore concern themselves only with these three rivers. At
23 the present time the fishing efforts of the members of the
24 Yakima Nation in the Puget Sound are intermittent and minimal.
25 [Yakima tribal witnesses, supporting documents.]

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27 3.716 Plaintiff-intervenor Yakima Indian Nation presently
28 has a membership of 6,040, enrolled under the Yakima Enrollment
29 Act (Public Law 706 - 79th Congress) approved August 9, 1946.

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1 Tribal affairs are handled by a 14-member Tribal Council elected
2 by a General Council open to the adult members of the entire
3 tribe in assembly. This meets every November, or on call, to
4 act on matters pertaining to the tribe. Although lacking a
5 constitution, the tribe does operate in a formal manner under
6 tribally prescribed rules of procedure set out in a resolution
7 enacted by the General Council, resolution T-38-56. The Tribal
8 Council works through the committee system and the important
9 committees are as follows:

- 10 1. Timber, grazing, overall economic development and
11 fire suppression committee.
- 12 2. Health, employment, welfare, recreation and
13 youth activities committee.
- 14 3. Loan extension, education and housing committee.
- 15 4. Roads, irrigation and land committee.
- 16 5. Fish, wildlife and law and order committee.
- 17 6. Enrollment committee.
- 18 7. Legislative committee.
- 19 8. Finance committee.

20 In addition to these committees, the executive committee,
21 consisting of the chairman, vice chairmaand secretary, handle
22 matters to be ratified by the Tribal Council. This government
23 controls the governmental expenditures of approximately 5 to 6
24 million dollars. This is for maintenance and capital expenditure
25 programs. The General Council has adopted a law and order code
26 approved by the Secretary of Interior and under that code the
27 Tribal Council and the Fish, Wildlife and Law and Order Committees
28 thereof regulate and promulgate regulations governing fishing
29 of members at both non-reservation and reservation fisheries.
30
31

1 As the fishing by members in the Puget Sound area has been minimal
2 no tribal regulations for this area has been promulgated. The
3 Yakima Tribe regulates fishing for anadromous fish in rivers with-
4 in its reservation so as to provide closed areas where such fish
5 spawn. Some of the anadromous fish which spawn in Yakima
6 Reservation waters are taken by non-Indians in commercial and
7 sports fisheries outside reservation boundaries.
8 [Yakima tribal witnesses, supporting documents.]
9

10 3.717 The annual median family income of Yakima members is
11 \$4,940.00 with 23% of these families living on less than \$2,000.00.
12 The average per capita income is \$1,100.00. This compares
13 unfavorably with the median family income for all families in the
14 State of Washington over \$10,000.00 and the per capita incomes
15 state wide of \$4,148.00 and nationally of \$4,156.00. Unemploy-
16 ment is 28% which compares unfavorably with the state figure of
17 8.9%. The median education level for those over 25 years is
18 10.1 years in comparison with the state median average of over
19 12 years. [Yakima tribal witnesses, supporting documents.]
20

21 3.718 A survey of Yakima members in 1942 indicated that the
22 annual family consumption of salmon was 1,611 pounds. Later
23 data in 1957 indicated that 78% of the on-reservation male
24 members and 32% on-reservation female members fished off-reserva-
25 tion and landed approximately 1.7 million dollars at 1957 prices.
26 At least 65 Yakima fishermen and 250 helpers continue to fish
27 off-reservation for a livelihood. This does not take place in
28 the Puget Sound area however.

29 [Yakima tribal witnesses, supporting documents.]
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1 3.800 Dr. Carroll Riley, who has been retained by some of
2 the State defendants in this case, has given testimony at the
3 Indian Claims Commission proceedings regarding the claims of the
4 Muckleshoot, Squaxin, Lummi, San Juan, Nooksack, Steilacoom,
5 Samish, Puyallup and Nisqually Indian Tribes.

6
7 3.801 If called to testify in this case, Dr. Riley will
8 testify to content of, and in conformity with those written
9 reports of his which have been submitted in proceedings before
10 the Indian Claims Commission.

11
12 [Plaintiffs will forward to defendants under separate cover,
13 copies of at least the following reports of Dr. Carroll Riley:
14 Muckleshoot (USA-58), Nooksack (USA-59), San Juan and Lummi
15 (USA-60), Samish (USA-61), Puyallup (USA-62), Nisqually (USA-63),
16 Steilacoom (USA-64), and Squaxin with two additional background
17 sections (USA-65).]

1 3.850 If called to testify in this case Dr. Barbara Lane,
2 whose background is set forth in her affidavit filed with the
3 plaintiffs' opposition to the motion for summary judgment which
4 background is incorporated herein by reference, will testify
5 on direct examination to the content of, and in conformity with
6 her anthropological reports which have been forwarded to
7 defendants under separate cover and which are for convenience
8 listed here below:


- 9 a. Puyallup Tribe,
10 b. Nisqually Tribe,
11 c. Squaxin Island Tribe,
12 d. Skokomish Tribe,
13 e. Muckleshoot Tribe,
14 f. Stillaguamish Tribe,
15 g. Quileute and Hoh Tribes,
16 h. Makah Tribe,
17 i. Lummi Tribe,
18 j. Sauk-Suiattle Tribe, and
19 k. General Anthropological Summary.
20

21 3.851 If Dr. Barbara Lane is called to testify in this case
22 by the plaintiffs, her testimony, as set forth in the 11 anthropo-
23 logical reports described in request for admission 3.850 above,
24 will be admissible without objection from defendants.

25 DATED this 21st day of May, 1973.

26 Respectfully submitted,

27 STAN PITKIN
28 United States Attorney

29 
30 STUART F. PIERSON, Special Assistant
31 to the United States Attorney
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