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Docket Entry 293 - Filed Deposition of Herbert Fisher, Sr

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FILED
JUL 20 9 46 AM '73

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DWAR SCOFIELD, CLERK
DISTRICT COURT
WASHINGTON
BY: *eh* DEPUTY CLERK

UNITED STATES OF AMERICA, et al,)
Plaintiffs,)
vs.)
STATE OF WASHINGTON, et al,)
Defendants.)

CIVIL NO. 9213

DEPOSITION UPON ORAL EXAMINATION OF HERBERT FISHER, SR.

APPEARANCES:

FOR THE PLAINTIFF
HOH TRIBE:

LESTER STRITMATTER, ESQ.
210 Masonic Building
Hoquiam, Washington 98550

FOR THE DEFENDANT
DEPT. OF FISHERIES:

EARL R. MCGIMPSEY, ESQ.
Assistant Attorney General
Temple of Justice
Olympia, Washington 98504

Hoquiam, Washington
July 2, 1973

**DEAN MOBURG
& ASSOCIATES**
court reporters

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293

1 BE IT REMEMBERED that the deposition upon
2 oral examination of Herbert Fisher, Sr., was held on Monday,
3 July 2, 1973 at the hour of 1:30 o'clock p.m. at 210 Masonic
4 Building, Hoquiam, Washington, before Donald M. Beierle, a
5 Notary Public in and for the State of Washington.

6 WHEREUPON, the following proceedings were
7 had and testimony given, to-wit:

8
9
10 MR. MCGIMPSEY: Mr. Fisher, my name is Earl
11 McGimpsey and I'm an attorney that represents the Depart-
12 ment of Fisheries in this lawsuit in which the United
13 States and the Hoh Tribe and several other Indian tribes
14 have sued the State of Washington and the Department of
15 Fisheries. I'll be representing and speaking for all of
16 the defendants, but the Game Department is also a defendant
17 in addition to the Department of Fisheries and the State.

18 I'm asking these questions merely to learn information
19 about the Hoh Tribe and about its position in the lawsuit,
20 and if you don't understand any of the questions I ask you,
21 just indicated that to me and I'll try to re-ask the ques-
22 tion in a way that might be understandable. Also, if you
23 don't know the answer to a question, do not hesitate to
24 tell me that you don't know the answer because I'm not
25 trying to trick you or anything, I just want to know what

1 information you might have for me and if you don't know you
2 don't have to know the answers.

3 Let the record show that this deposition
4 is being taken pursuant to an agreement between Mr.
5 Stritmatter and myself and pursuant to notice and that
6 it's in accordance with the Federal Rules for Civil Pro-
7 cedure.

8 Is that sufficient?

9 MR. STRITMATTER: Yes, that's satisfactory.

10
11
12 HERBERT FISHER, SR.,

called as a witness in the above-
entitled cause, being duly sworn,
testified as follows:

13
14
15 EXAMINATION

16 BY MR. MCGIMPSEY:

17 Q Mr. Fisher, would you state your full name and spell your
18 last name, please.

19 A My name is Herbert Fisher, Sr., Chairman of the Hoh Tribe.

20 Q And where do you live, Mr. Fisher?

21 A Lower Hoh Indian Reservation.

22 Q On the Reservation?

23 A Yes.

24 Q How long have you lived on the Hoh Reservation?

25 A All my life, 60 years.

1 Q And are you an enrolled member of the Hoh Tribe?

2 A Yes.

3 Q How long have you been the Tribal Chairman?

4 A The last four, five years.

5 Q Is that an elected position?

6 A Yes.

7 Q And have you held any other offices in tribal government
8 other than Tribal Chairman?

9 A No, sir.

10 Q Are you yourself a fisherman?

11 A Yes.

12 Q And could you tell me, are you a full-time fisherman, or
13 is this a part-time occupation?

14 A Full time.

15 Q Full time. Could you tell me what methods the Hoh Tribe
16 uses to regulate its fishermen?

17 A We have tribal regulations, we have the tribal regulations
18 at the Lower Hoh Reservation. Is that the answer you want?

19 Q When you speak of the Lower Hoh Reservation, is that dis-
20 tinguished from the Upper Hoh Reservation, or is this just
21 the Hoh Reservation which is on the lower portion of the
22 Hoh River?

23 A Just the lower portion of the Hoh River, that's all it is.

24 Q There is just one reservation, is that correct?

25 A Yes.

1 Q These regulations that are used to regulate the tribe, are
2 they written regulations?

3 A Yes.

4 Q And were these the ones that were formally approved in
5 January and February of this year?

6 A Yes. In January, the month I believe it was, 1973.

7 Q Do you have a copy of these regulations with you?

8 A I believe I brought in a copy to you, did I? I believe
9 I did, to Lester Stritmatter.

10 MR. MCGIMPSEY: Can we go off the record?

11 (Discussion off the record.)

12 Q (By Mr. McGimpsey) Prior to the regulations that you have
13 just indicated, did the Hoh Tribe have any formal written
14 regulations for fishermen?

15 A Yes.

16 Q And when were they adopted?

17 A The new regulations?

18 Q No. The ones that existed prior to the ones that you
19 adopted in January of this year.

20 A We had a fishing regulations, but it wasn't signed. I
21 don't know how many years back it was, but just now we got
22 the final one in January of this year.

23 Q These ones that were not signed, they were in written form?

24 A Yes, they was in written form. But it wasn't signed,
25 that's all.

1 Q And were they enforced by enforcement officers?

2 A You mean now?

3 Q No. The ones before they were in this final approved
4 form.

5 A Not that I know of. But we have law enforcement now --
6 enforcement of our regulations.

7 Q The law enforcement that you have now, this is law enforce-
8 ment that's enforcing the regulations that were just
9 adopted in January?

10 A Yes.

11 Q Okay, did those same law enforcement people enforce regu-
12 lations prior to January?

13 A Before?

14 Q Before?

15 A No.

16 Q How were the regulations that were adopted before January
17 enforced?

18 A By the tribal members.

19 Q Well, if there was a violation, what would a tribal member
20 do?

21 A He'd have to make citations out from a police officer,
22 Indian police officer.

23 Q And does the Hoh Tribe have its own Indian police officer?

24 A We just got a police officer approved by the BIA from the
25 Queets area office controlling the whole area.

1 Q When did you get the police officer from the Queets area?
2 A Just recently. About a month ago I think we got approval
3 from the BIA and we got the police officer that comes down
4 there now.
5 Q Prior to that then I take it there was no formal law
6 enforcement officer on the reservation to enforce your
7 regulations, is that correct?
8 A No, except by tribal.
9 Q Members?
10 A Members, yes.
11 Q Now, these regulations that you had, did they control the
12 time and place of taking fish?
13 A Controlled --
14 Q The time when fishermen could take fish; for instance, did
15 they set certain days that you could fish and not on other
16 days, or --
17 A No, we don't have control of time on that when they set
18 their gear out.
19 Q What did the regulations do?
20 A Well, just what do you mean by that?
21 Q Well, how did the regulations regulate the fishing?
22 A Well, we have a, what you call about a set halfway in
23 the river and no more. We try to keep our stream open,
24 you know, for escapement of salmon going up. And our
25 locations are 250 feet apart on setting out locations.

1 Q So the regulations set the limitations on how long a set
2 net could be and how far apart?
3 A Yes. It was about half -- each fisherman don't go in
4 beyond halfways.
5 Q When the fish are running, do the fishermen fish every day
6 of the week?
7 A Yes.
8 Q And other than the restrictions on the length of the set
9 nets and their distance apart, are there any other
10 restrictions that the regulations impose on the fishermen?
11 A The regulations we have now we're allowing them only one
12 net and one drift net.
13 Q Only one?
14 A One set net and one drift net, that's what we're allowing
15 them now.
16 Q Are just Hoh fishermen allowed to fish on the reservation?
17 A Yes, members of the tribe.
18 Q And is membership determined by being an enrolled member?
19 A Yes.
20 Q And do the regulations just cover the south half of the
21 river, or do they cover the whole width of the river?
22 A We try to watch both sides now as well as outside.
23 Q Are there as many nets on the north side of the river as
24 there are on the south?
25 A Just about even I believe.

1 Q Now, is a set site allocated to a family and that family
2 keeps that site and passes it down from one generation to
3 the next, or how does that work?
4 A You mean each family has got their own grounds, is that
5 what you mean?
6 Q Yes.
7 A Operate by -- they operate by the same members of the
8 family that the one that's got the location, fishing
9 location.
10 Q And then that fishing location would stay with that
11 family and be passed down?
12 A Yes.
13 Q From the father to the son?
14 A Yes.
15 Q Do these regulations also apply to the usual and accustomed
16 fishing places off the reservation?
17 A I believe yes.
18 Q And could you tell us where those locations would be?
19 A I'd stick to the accustomed places from the headwaters of
20 the stream.
21 Q From the headwaters of the Hoh?
22 A Yes.
23 Q All the way downstream to the reservation?
24 A Yes, as well as tributaries, too.
25 Q As well as the tributaries on the river?

1 A Yes.

2 Q Are there any other rivers on the Olympic Peninsula that
3 the Hoh claim usual and customary places and that your
4 regulations would apply?

5 A Yes. We have the Quillayute tributaries and Quinault-
6 Queets tributaries.

7 Q Now, if your fishermen fish in the Quinault or the Queets
8 or the Quillayute, do they follow your regulations, or do
9 they follow the regulations of the Quinault or Queets or
10 Quillayute tribes?

11 A Each tribe's got their own fishing regulations now, both
12 tribes got to go by that.

13 Q So if a Hoh fisherman is fishing up on the Quinault River
14 River you would follow the Quinault regulations?

15 A I think I would, yes.

16 Q And likewise, if a Quinault or Quillayute fisherman were
17 fishing on the Hoh River he would follow your regulations,
18 is that your understanding?

19 A Yes.

20 Q If a Quinault or a Quillayute fisherman were fishing on
21 the Hoh River in violation of the Hoh Regulations, do you
22 know if your tribe would have the authority to prosecute
23 him?

24 A I believe you would, or the police officer would issue out
25 a citation on that.

1 Q Now, what is the reason for the requirement No. 5 in your
2 new fishing regulations that the nets be lifted out of the
3 water at least once every 24 hours?
4 A Well, more or less keep -- if you leave it in there too
5 long otherwise you're going to ruin the salmon, they've
6 got to lift it at least every 24 hours.
7 Q For the quality of the salmon?
8 A Yes.
9 Q Were you one of the members of your tribe who helped draft
10 these new regulations, helped write them?
11 A We get assistance from the BIA, too, on that.
12 Q From the Bureau of Indian Affairs?
13 A Yes.
14 Q Do you recall who helped you with this?
15 A I wouldn't know who fixed it in the BIA office, I wouldn't
16 remember that.
17 Q Do you know Jim Heckman?
18 A Yes.
19 Q Did he assist you in drafting these?
20 A Well, we get information from Jim Heckman.
21 Q Has he played a very active role in helping the Hoh Tribe
22 with these regulations of their fishing?
23 A Yes.
24 Q And what information has he provided you or what help has
25 he given you?

1 A Well, there are some conservations and escapements, he
2 helped us many ways on that, just how to go about it.
3 Q Was it his idea for instance to have the set nets halfway
4 out, or --
5 A No. We had that right from the beginning on our fishing
6 regulations at the Hoh.
7 Q Can you think of any specific things that he gave you about
8 conservation or --
9 A No, I don't.
10 Q How often would he come out to the reservation, do you
11 know?
12 A Not very -- I don't think so.
13 Q Has he been out this year, for example?
14 A Not down at the Hoh, but we did see him down at Tumwater,
15 Olympia.
16 Q You went to Tumwater one time?
17 A Yes.
18 Q Has that been mainly you have consulted him at Tumwater?
19 A Yes.
20 Q And how often would you have done that?
21 A Just once last year, I believe.
22 Q Once last year?
23 A Yes.
24 Q Can you tell me what fishing methods your people presently
25 use?

113 AND 12

Dean Moburg & Associates

1 A Just what do you mean?

2 Q Well, you have indicated set nets, so that must be one
3 method that your fishermen use?

4 A Yes.

5 Q And drift nets. Are there any other methods that they use
6 for catching fish?

7 A No, except dip nets, we use that when the river is high.

8 Q When you use a dip net, how do you up the dip net, do you
9 have a platform that you set in the river?

10 A No. Just walk along a bank just only a short piece, maybe
11 four or five feet wide, that's when the river is high.

12 Q What methods of fishing have your people historically used,
13 have they always used just the dip net, or the set net, or
14 the drift net, or have they used other means that you know
15 of?

16 A Well, that's all I know of except spears many years ago.

17 Q How long have you been fishing, Mr. Fisher?

18 A Well, I'd say about 40 years. I'm 60 now. It must be
19 about 40 years I have been fishing.

20 Q In the 40 years that you have been fishing, have you
21 always fished with either set nets, drift nets, spears or
22 dip nets?

23 A I use both of them, both kinds, I used the drift and set.
24 Now I just got hired fishermen because I can't get around
25 anymore.

1 Q But I mean these were the methods that you have always used

2 --

3 A Yes.

4 Q -- in those 40 years, and you have never used any other
5 type of methods?

6 A No. Well, I go out sport fishing once in awhile.

7 Q Do you recall your people ever building dams on the river
8 with hemlock logs or anything to stop fish to catch them?

9 A I never seen them, but my older people, my dad and my
10 uncle say there used to be some, oh, what do you call that?

11 Q Build a weir?

12 A Yes, many years ago different families up and down the
13 river. And they tell me when one family gets enough, well,
14 they get their supply for the winter, then another family
15 used it and their family. And another family that would be
16 up above they'd do the same thing.

17 Q What is the reason that you have never used the weir
18 method and you used the net method?

19 A What is the reason?

20 Q Yes. Why have you used the net method all of the 40 years
21 that you have fished rather than the weir method?

22 A Well, since I'm using the gillnet now, I never seen that
23 weir they used to use, I never seen that, but I hear
24 about it.

25 Q If you had a free choice of methods to use for fishing

1 today, what method would you use?

2 A I'd use gill nets.

3 Q Have your people ever used a fish trap?

4 A Not in my days, but the older peoples did.

5 Q Do you think that a fish trap would be a workable solution,
6 workable method of fishing today for your people?

7 A I wouldn't know because we would be covering the -- we
8 would be blocking the whole river.

9 Q If escapement were allowed for it, if you could provide
10 for the escapement, in other words, release the fish,
11 would your people prefer to use the gill nets, or would
12 they prefer to use the trap, do you know, or what would
13 you prefer?

14 A Well, probably the weir would be a good thing. You'd
15 have to limit your time on it for the next fisherman.

16 Q Would there be a problem of how to divide up the fish?

17 A It would be a problem, yes.

18 Q Right now each of the Indians fishes for his own family's
19 needs?

20 A Yes.

21 Q And for his own commercial sale of the fish?

22 A Yes.

23 Q From your experience over these 40 years, has that always
24 been the case that each fisherman fished for his own
25 family's needs and his own sale?

1 A As far as I know, yes.

2 Q How has your tribal fishing been affected by the fishing
3 of non Indians? Are there non Indians fishing on the Hoh
4 River?

5 A No.

6 Q The non Indians fishing in the commercial fisheries in the
7 ocean, have they decreased the run of fish to the Hoh River
8 do you think?

9 A That I wouldn't know what to answer on that.

10 Q Do you feel that the number of fish that are coming to the
11 Hoh River now are as much as when you started fishing 40
12 years ago?

13 A I'd say it's getting lesser.

14 Q It's less now?

15 A I think so.

16 Q Do you know what would cause it to be less?

17 A I wouldn't know on that -- answer on that.

18 Q How has State regulations affected your tribe's fishing?

19 A Well, probably it -- the State regulations?

20 Q The State regulations.

21 A Well, that causes a lot of arrests, you know, when you're
22 setting. It's a problem the State regulations.

23 Q Now, have there been many Hoh Indians arrested by the
24 State officers?

25 A I believe there's one case on that.

1 Q One case still pending?

2 A Pending.

3 Q And when did that happen, do you remember?

4 A 1972, I believe it was started.

5 Q Do you remember the circumstances under which that fisherman
6 was arrested?

7 A Setting off reservation.

8 Q He had a set net off the reservation?

9 A Yes.

10 Q Do you know what time of year it was, or --

11 A Wintertime steelhead fishing.

12 Q Steelhead?

13 A Yes.

14 Q And he was arrested by the Game Department?

15 A Yes, by the Game Department.

16 Q Do you know whether any of your people have ever been
17 arrested by any Fisheries Department officer?

18 A Not that I know of.

19 Q Do you find it difficult to abide by the State Regulations?

20 A I think so.

21 Q And how is it difficult?

22 A Well, the boys can't go out very much, you know, to set
23 outside, that's the difficult part on account of the
24 Fisheries Regulations, State Fisheries Regulations, that's
25 the difficult part.

- 1 Q When did the State begin regulating the Hoh River, do you
2 remember?
- 3 A About one year ago, a little over a year ago I believe.
- 4 Q Have the number of fish that your tribal members have
5 caught decreased in the years since the regulations have
6 gone into effect?
- 7 A I don't know, I don't know the answer to that whether it's
8 decreased by it or not.
- 9 Q Has it caused any economic hardship on the tribe to have
10 the State regulate the --
- 11 A I think so.
- 12 Q And does the economic hardship come because there are less
13 fish to be caught, or what?
- 14 A You mean the hardship?
- 15 Q What do you attribute the economic hardship that your
16 tribe experiences because of the State regulation?
- 17 A Well, you can't get out on a set where you should set, you
18 know, someplace that's a good setting up above and you
19 can't set up there on it, fishing regulations, State
20 regulations.
- 21 Q Do all of your tribe's fishermen have sites on the reser-
22 vation?
- 23 A All the fishermen?
- 24 Q Yes.
- 25 A Not all of them. That's how come some of them is on the

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1 north side. Some of us got permanent set net locations
2 on the south side.
3 Q On the north side is the National Park?
4 A Yes.
5 Q Okay, as far east as your reservation line is on the river
6 do all of your tribal fishermen have sites, fishing sites
7 either on the north or the south side of the river?
8 A All of the tribe fishermen's?
9 Q Yes.
10 A No, not permanent fishing sites.
11 Q Okay, are there any tribal fishermen that have sites east
12 of your reservation line off the reservation where they
13 don't have any site on the reservation either on the north
14 or south bank west of the reservation line?
15 A What do you mean on that?
16 Q Okay, maybe I'm not making myself clear. The Hoh Tribe
17 is at the mouth of the Hoh River, is that correct?
18 A Yes.
19 Q And it's on the southern bank of the Hoh River, right?
20 A South side.
21 Q South side. And across the river from the reservation is
22 the National Park?
23 A Yes.
24 Q How far from the mouth of the river up river does the
25 reservation run, do you have any idea how many miles?

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1 A One mile.
2 Q One mile. Now, are there any fishermen who have sites that
3 are up river of the mile boundary of the reservation who
4 don't have sites that are down river of that mile boundary?
5 A They, some of the boys sets up by the boundary sometimes
6 when it's permissible for them, those that ain't got
7 permanent ground down below.
8 Q Are there enough sites below for all of the fishermen?
9 A No, not on the south side.
10 Q How about on the south and north side?
11 A Well, the north side, they set when it's permissible for
12 them.
13 Q Who regulates their setting on the north side?
14 A We regulate, we try to regulate that now.
15 Q Before you regulated it, who regulated it?
16 A No one.
17 Q If you use all the sites on the north side and on the
18 south side, are there enough sites for all of the tribal
19 fishermen?
20 A I believe there would.
21 Q Now, I believe you indicated that there are five full-
22 time fishermen in your tribe?
23 A Yes.
24 Q And 15 part-time fishermen who earn more than 50 per cent
25 of their income from fishing?

1 A About 15 at the most I think just part-time.
2 Q How many other fishermen are there?
3 A Well, there are about five full-time fishermen that's
4 year-round. Then the rest is just part-time, when it gets
5 high water they use little short nets or use them little
6 hoop nets I call it.
7 Q Are there about 20 fishermen altogether in the whole tribe?
8 A I'd say about 15 at the most I believe it is.
9 Q Including the five full-time?
10 A Yes.
11 Q About 15 at the most?
12 A About 15 at the most.
13 Q And there are approximately 15 families, or how many
14 families are there, maybe I should --
15 A I think we've got about a hundred on our tribe.
16 Q A hundred on the tribal rolls?
17 A Yes, on the rolls.
18 Q Okay, how many families would that be?
19 A Well, we've only got about eight families I believe down
20 there, but lots of them are outside, you know, here and
21 there and different places.
22 Q How many families as units that live together are there on
23 the reservation?
24 A What was that?
25 Q How many families that live together as a unit, not

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necessarily just people who are related but who live together as a family unit, how many of those type of families are on the reservation?

A We've got about seven or eight families there now.

Q And then the other families who are members of the tribe live --

A Outside.

Q -- outside in Hoquiam and other places?

A Members of the tribe.

Q Then not all of the fishermen who fish in the Hoh are living on the reservation, is that correct?

A Yes.

Q You indicated in your answers to the depositions and in the request for admissions that the average gross income is between six and \$7,000 a year for your fishermen, is that approximately correct?

A That's very close, that's what I think myself, the average family.

Q Now, would this be for all of the 15 fishermen that you have talked about, the average for --

A Not all of them.

Q Okay, some of them wouldn't make as much, is that right?

A No. That the average I think about seven thousand at the most, six, seven thousand.

Q Would, for instance, the five fishermen who fish full time,

1 would they make more than that?
2 A More than seven thousand?
3 Q More than seven thousand?
4 A About seven thousand at the most.
5 Q Okay, for those who are full time?
6 A Because it drops one year, the next year it might be up
7 a little bit. I'd say about seven, seven thousand average.
8 Q But when we're talking about seven thousand, we're talking
9 about the full-time fishermen?
10 A Yes.
11 Q And then the part-time fishermen, do you have any idea
12 what they might be averaging?
13 A They're below five thousand I'd say myself.
14 Q Depending upon how much effort they put in?
15 A Yes.
16 Q And what would your expenses be for an average year, what
17 would your average expenses be?
18 A Average, you mean?
19 Q Right.
20 A You mean how much we make?
21 Q Well, when you say you make \$7,000, is that \$7,000 income
22 to you, or is that just \$7,000 in receipts from sales to
23 the fish buyer?
24 A That's what each fisherman makes on the full-time fishing.
25 Q Is that his gross income, or his net income? Do you know

1 the difference between the gross and the net?

2 A That's total about seven thousand.

3 Q Of the seven thousand does that include the costs, having
4 already paid out your costs for nets and gasoline or motor
5 repair on your boats?

6 A Yes, that would come out of your income.

7 Q Now, would those expenses come out before, or after the
8 seven thousand?

9 A Before.

10 Q Before. So what you end up with is a net income of seven
11 thousand?

12 A Yes, that's why I say between six and seven because you've
13 got to buy your gear and your gasoline.

14 Q So the seven thousand is a gross figure?

15 A Yes.

16 Q And then how much would those expenses for gasoline and
17 nets be on an average for a year?

18 A I never did figure that out just how much a year we spent
19 on gasoline.

20 Q Do you have any rough idea?

21 A On our gear it costs me \$100 for web alone, and then maybe
22 about \$50 for lead line and corks.

23 Q And then you'd have in addition to that your gasoline,
24 right?

25 A Yes.

1 Q And then repairs to your boats?

2 A Yes.

3 Q Would \$500 be approximately what your expenses might be,
4 or would that be high, or --

5 A Right around there, I believe it would be \$500.

6 Q That would be an average for the full-time fishermen each
7 year?

8 A Yes, on your gear and your gasoline expense.

9 Q Besides the commercial sale of fish by the fishermen, are
10 the fish used for subsistence or for the personal use of
11 the fishermen to feed their families?

12 A Yes, we use them quite a bit.

13 Q How many fish a year do you think you use for that purpose?

14 A We figured about -- I figured about two salmons a week; in
15 other words, it would be about a hundred altogether.

16 Q And do you smoke the fish?

17 A Well, me and my wife do, and some other families down there
18 smoke it. And we use it for parties and other things.

19 Q So you would catch, eat some fresh, then smoke and pre-
20 serve the remainder of the catch for use later?

21 A Yes, both fresh or eat it smoked.

22 Q And that hundred fish would be per family?

23 A Yes. That's a year.

24 Q A year?

25 A Yes.

1 Q Besides using it to sell it commercially or for your own
2 use, do the fish have any use as a ceremonial function?
3 A Yes. We use it for birthday parties, pow-wows you would
4 call it, we use lots of it there.
5 Q Do you have any ceremonies that the salmon themselves are
6 the center of the ceremony; in other words, it's not some
7 other occasion for which you use salmon as part of the food
8 of the ceremony but the ceremony centers around the salmon?
9 A Yes, mostly.
10 Q Now, you say "mostly." Do you mean that there are some
11 ceremonies in which the celebration is over the salmon;
12 like the first salmon, is there a first-salmon ceremony
13 when the first salmon comes in?
14 A Generally we do that down home, yes. For instance, like
15 springtime, well, if either one of us caught a king salmon
16 you fix it, it doesn't make any difference how big it is,
17 he still cooks it by the fire.
18 Q Do your people gather for traditional Indian ceremonies
19 frequently?
20 A Yes, sometimes we do.
21 Q How many times a year would the whole tribe get together
22 for a ceremony, this being a traditional ceremony other
23 than a wedding or a birthday?
24 A I'd say about twice a year, somewheres around there.
25 Q What species of fish do you have in the Hoh River, do you

1 know?

2 A Well, we've got the kings, silvers, steelhead, once in
3 awhile we have blueback. Our water is too cold over there,
4 it's glacial water.

5 Q Is it primarily the Chinnok or King and the Silvers?

6 A King and Silvers and steelhead, that's --

7 Q And steelhead?

8 A -- that's good on our river, on the Kings and Silvers and
9 steelhead.

10 Q Are there any religious ceremonies that use salmon or that
11 revolve around salmon?

12 A Other religious --

13 Q Are there any religious ceremonies that have to do with
14 salmon, that celebrate salmon in some way?

15 A I believe there's some others use that, they use salmon
16 almost every occasion.

17 Q Now, I'm thinking now in terms of traditional Indian
18 religious ceremonies other than just using the salmon as
19 a food for a ceremony, where the salmon themselves are the
20 center of the ceremony or what the ceremony is all about.
21 Do you have traditional Indian religious ceremonies?

22 A Yes. They use traditional Indian ceremonies I remember on
23 steelheads.

24 Q On the steelhead?

25 A Yes, on our reservation. Not only our reservation,

1 Quillayute and Queets they used to have that kind of
2 ceremonies, the steelhead.

3 Q Do you still have those ceremonies?

4 A Well, all the older peoples are gone that had the power,
5 you know, when they used the traditional Indian steelhead
6 ceremony.

7 Q So that the ceremonies aren't celebrated today because the
8 older people are gone?

9 A Yes, all the older peoples are gone now, but they still use
10 the steelhead.

11 Q Do they still have the ceremony?

12 A Once in awhile.

13 Q But not on a regular basis --

14 A No.

15 Q -- like they used to?

16 A No.

17 Q Are you finding that the younger Indians who are members
18 of your tribe are doing something else than fishing now?

19 A Doing --

20 Q Are the younger Indians following in their fathers' foot-
21 steps as far as the fishing goes, or do they do other
22 things to earn their livings?

23 A Well, I kind of think they are following in the olden ways
24 yet.

25 Q They are still following the ways of the people in their

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fishing?

A Yes, they are pretty well on fishing yet.

Q Is the whole process of catching fish and preserving that important to you culturally as an Indian, or do you just do it for food?

A Well, both.

Q Could you tell us just how it is important culturally?

A Culturally how --

Q Well, let me give you an example. I could go fishing and I could fish to get some food to take home to my family, and I could also fish because maybe fishing is relaxing for me, sports fishing. Now, when an Indian fishes for salmon, you have said that he fishes, one, for food for his family, and two, to sell some of the fish.

A Yes.

Q And is there any other reason why he might want to fish other than those two reasons?

A Other reasons. Well, as far as livelihood.

Q Is it important to you that you be allowed to fish?

A Yes.

Q Besides just the fact that you can catch fish for sale or for use?

A Yes, it's important to catch fish for a living, to sell.

Q If you had a choice of another occupation where you could earn the same amount of money as you could earn as you

1 could fishing or fishing, which would you choose?

2 A Well, probably I'd stick to fishing yet.

3 Q And why is that?

4 A Well, I can't become a logger if I don't know how to log
5 or anything.

6 Q If you did know how to log, let's say, and you could earn
7 just as much money logging, and let's say you're younger
8 than you are now and you could earn just as much money
9 logging as you could fishing, which would you be?

10 A I'd still stick to fishing I think.

11 Q Why is that?

12 A Well, being a fisherman all of my life, I have never been
13 a logger.

14 Q If you were a young man, do you know which you would choose?

15 A Yes, I know what you mean now, if I were a young man.

16 Q And hadn't fished before so that you didn't have a lifetime
17 of fishing to make your decision to base it on. What would
18 you recommend to your son if he had a choice between say
19 being a fisherman or being a logger or some other occupa-
20 tion where he could earn just as much money as he could
21 fishing, or perhaps even more money than fishing, would
22 you recommend that he be a fisherman, or would you
23 recommend that he be a logger or whatever the other job
24 would be?

25 A Well, I'd leave it to him whatever he wants to do, fishing

1 or whatever.

2 Q Is fishing then just a means by which you have been able
3 to earn a living and provide food for your family as
4 opposed to something that you would think it's very
5 important that you be allowed to do?

6 A I wouldn't know how to answer that.

7 Q I guess I'm not making myself clear. You indicated that
8 for example if your son had a choice of occupations you
9 would leave the choice up to him.

10 A Yes.

11 Q And you said that for yourself fishing was for two pur-
12 poses, to get food for your family and to sell fish so that
13 you could earn a living.

14 A Yes.

15 Q And I'm trying to find out if fishing has some other pur-
16 pose other than just earning a living or providing food
17 for your family; in other words, is it important to you
18 because you're an Indian that you be allowed to fish just
19 for the sake of fishing?

20 A Yes, I believe it's important for Indian people to fish.

21 Q Now, maybe you could explain why you think it is.

22 A Well, you have to keep the tradition alive of fishing,
23 that's what I would say.

24 Q You have a statement in the request for admissions that
25 says that your tribe has no distinct tribal use of fish

1 for religious or other ceremonial occasions but has various
2 social gatherings each year at which all types of fish
3 delicacies are prepared, is that true?

4 A That's different kinds?

5 Q This is a statement that has been prepared for this case,
6 perhaps by Mr. Stritmatter, I don't know, but it says that
7 the tribe has no distinct tribal use of the fish for
8 religious or other ceremonial occasions but that you use
9 the fish for various social gatherings, is that true?

10 A Yes.

11 Q If the State of Washington continues to regulate the salmon
12 fishing and steelhead fishing on your river, would your
13 tribe be able to make a living, will your tribal fishermen
14 be able to make a living and have fish to support their
15 families?

16 A Well, there will be kind of hardship, there will be kind
17 of hardship on the fisheries regulations.

18 Q The fishery regulations would be hard on you?

19 A Yes.

20 Q Now, you said that the State has been regulating you for
21 the last year?

22 A That's when on the outside Indian --

23 Q Outside, right. The State does not regulate you inside,
24 right?

25 A Yes.

1 Q During the last year did you experience any hardships
2 personally?

3 A Well, not really, because myself I stick down right by the
4 reservation myself.

5 Q Have you always fished on the reservation?

6 A Yes, myself.

7 Q Who are the fishermen that fish off the reservation?

8 A Who?

9 Q Yes.

10 A I'd say Alvin Penn and Howard Hudson are the only two that
11 goes out once in awhile, outside.

12 Q So you only have two fishermen that are fishing outside
13 the reservation, is that right?

14 A Yes, once in awhile.

15 Q And they only fish out there once in awhile?

16 A Yes.

17 Q And how long have those two men been fishermen?

18 A I can't say how long, but maybe 10, 15 years now.

19 Q And have they always fished the same way, mostly on the
20 reservation and occasionally going off the reservation?

21 A Yes; mostly on the reservation and occasionally they go out.

22 Q And they are the only two that go out of the reservation?

23 A Yes, that I know of.

24 Q And has that been the way it's been all the time that you
25 have been a fisherman?

- 1 A Well, not all the time, because they are only young men
2 just recently the last few years.
- 3 Q Okay, before them were there any other fishermen that have
4 fished outside the reservation?
- 5 A Yes. I know my dad used to fish way up above when I was
6 a young man, a young boy, and other -- other older peoples
7 that I know of, an uncle.
- 8 Q Did fish way up the river?
- 9 A Yes.
- 10 Q How long ago would that have been?
- 11 A Oh, it might have been 40, 45 years ago that I remember.
- 12 Q In the last 20 years do you know of any Hoh Indians besides
13 the two that you have mentioned who have fished off the
14 reservation upstream?
- 15 A In the last 20 years?
- 16 Q In the last 20 years other than the two that you have
17 already mentioned, have there been any other members of
18 your tribal fishermen that have fished off the reservation?
- 19 A My brother-in-law used to go up fishing once in awhile, not
20 all the time, way up above. That's a little over 20
21 years ago.
- 22 Q Do you know where they fished, would this be in the
23 spawning grounds right up at the headwater, or where?
- 24 A Oh, about -- I'd say about eight miles up.
- 25 Q Did they spear, or did they use set nets, or what?

1 A Drift nets.

2 Q Drift nets?

3 A Yes.

4 Q And they would drift down?

5 A Yes.

6 Q Okay, other than your brother-in-law and these two men
7 that you mentioned earlier, were there any other fishermen
8 to your knowledge that fished off the reservation?

9 A Now?

10 Q Well, in the last 20 years.

11 A They used to fish a long time ago, and I can't -- I know
12 my dad used to fish way up above.

13 Q Okay, you said that was about 40 years ago, right?

14 A Somewheres around there.

15 Q In the last 20 years then your brother-in-law and these two
16 other men that you have mentioned would be the only ones
17 that you know of that fished --

18 A Yes, the last two, yes.

19 Q And so the State regulations have really affected these
20 two men that you have talked about? Your brother-in-law
21 is deceased, right?

22 A Yes.

23 Q So the State regulations have affected these two men that
24 you talked about as far as fishing off reservation, it
25 really hasn't affected you, has it?

1 A Yes, it does. They don't know how to go out now on account
2 of a lot of expense, expense, you know, getting picked up
3 by the State Fisheries, Game Department.

4 Q As far as you know, though, the State regulations haven't
5 affected you, have they?

6 A Well, it don't bother me, but it does be --

7 Q It does these other two men?

8 A Yes, other men we have on the reservation.

9 MR. MCGIMPSEY: That's all the questions
10 that I have.

11 MR. STRITMATTER: I have none.

12 (Witness excused at 2:25 p.m.)
13

14 Herbert Fisher Sr
15 Herbert Fisher, Sr.

16 STATE OF WASHINGTON)
17) ss.
18 COUNTY OF)

19 Subscribed and sworn to before me this 19th day of
20 July, 1973.

21 Wilma Jane Delgado
22 Notary Public in and for the State of
23 Washington, residing at Forks



C E R T I F I C A T E

1
2 STATE OF WASHINGTON)
3 COUNTY OF KING) ss.

4 I, the undersigned Notary Public in and for the
5 State of Washington, do hereby certify:

6 That the annexed and foregoing deposition of each
7 witness named herein was taken stenographically before me and
8 reduced to typewriting under my direction;

9 I further certify that each said witness examined,
10 read and signed his deposition after the same was transcribed,
11 unless indicated in the record that the parties and each
12 witness waive the signing;

13 I further certify that all objections made at the
14 time of said examination to my qualifications or the manner of
15 taking each deposition, or to the conduct of any party, have
16 been noted by me upon each said deposition;

17 I further certify that I am not a relative or
18 employee or attorney or counsel of any of the parties to said
19 action, or a relative or employee of any such attorney or
20 counsel, and that I am not financially interested in the said
21 action or the outcome thereof;

22 I further certify that each witness before examina-
23 tion was by me duly sworn to testify the truth, the whole
24 truth and nothing but the truth;

25 I further certify that the deposition, as transcribed,

1 is a full, true and correct transcript of the testimony,
2 including questions and answers, and all objections, motions
3 and exceptions of counsel made and taken at the time of the
4 foregoing examination;

5 I further certify that I am sealing the deposition in
6 an envelope with the title of the above cause thereon, and
7 marked "Deposition" with the name of each witness, and promptly
8 delivering the same to the Clerk of the above entitled Court;

9 IN WITNESS WHEREOF, I have hereunto set my hand and
10 affixed my official seal this 5th day of July,
11 19 73.

12
13
14 *Walden Beverly*
15 Notary Public in and for the State
16 of Washington, residing at Seattle
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25

Dean Moburg & Associates
333 Hoge Building
Seattle, Washington 98104

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WESTERN DISTRICT OF WASHINGTON

JUL 20 1973

EDGAR SCOFIELD, CLERK
By _____ Deputy

(Signature here and on deposition)

See: Wash. Reports 34A, Rule 30(e)
USCA 28, Rule 30(e)