

7-30-1973

## **Docket Entry 310 - Filed Deposition of Thor Tollefson on behalf of Plaintiff**

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U. S. -vs- STATE OF WASHINGTON  
U. S. Western District Court #9213

DEPOSITION OF THOR TOLLEFSON

Olympia, WA  
March 29, 1973 (Original)

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF WASHINGTON  
3 AT TACOMA

4 U. S. OF AMERICA, et al.,

5 Plaintiff,

6 -vs-

NO. 9 2 1 3

7 STATE OF WASHINGTON, et al.,

8 Defendants.

9 DEPOSITION UPON ORAL EXAMINATION OF THOR TOLLEFSON  
10

11 BE IT REMEMBERED That the oral examina-  
12 tion of THOR TOLLEFSON was taken herein in the above-entitled  
13 and numbered Cause on the 29th day of March, 1973, at Olympia,  
14 Washington, before Eugene E. Barker, a Court Reporter and a  
15 Notary Public in and for the State of Washington.

16 Counsel present were:

17 STUART S. PIERSON, Special Assistant  
to the U.S. Attorney;

18 GEORGE D. DYSART, Assistant Reg.  
19 Solicitor, U.S. Department of  
Interior;

20 DAVID GETCHES, Attorney at Law;

21 ALVIN J. ZIONTZ, Attorney at Law;

22 JAMES B. HOVIS, Attorney at Law;

23 EARL R. MCGIMPSEY, Assistant Attorney  
24 General, State of Washington;

25 FILED IN THE  
WESTERN DISTRICT OF WASHINGTON  
STATES DISTRICT COURT

JUL 30 1973

EDGAR SCHEFFEL, CLERK  
By *eh* Deputy

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WILLIAM M. GINGERY, Assistant Attorney  
General, State of Washington;

JOSEPH L. CONIFF, Assistant Attorney  
General, State of Washington.

WHEREUPON, the following  
proceedings were had and  
done and testimony taken,  
to-wit:

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I N D E X

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THOR TOLLEFSON

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1 MR. PIERSON: Let the record show  
2 that this is a deposition taken pursuant to notice of  
3 Mr. Thor Tollefson in the case of United States versus  
4 Washington, No. 9213, in the Western District of Wash-  
5 ington at Tacoma.  
6  
7  
8

9 THOR TOLLEFSON,

being first duly sworn to  
testify the truth, the  
whole truth and nothing  
but the truth, deposed  
and said as follows:

12 EXAMINATION  
13

14 BY MR. PIERSON:

15 Q Beginning, Mr. Tollefson, you are Director of the Depart-  
16 ment of Fisheries?

17 A Yes.

18 Q How long have you been in that position?

19 A Since May 1, 1965.

20 Q And before that, had you any connection with the Depart-  
21 ment of Fisheries?

22 A No.

23 Q Prior to that, had you any experience in the fisheries  
24 management or biological aspects of fisheries management  
25 in the State of Washington?

1 A No.

2 Q Since that time continually you have been the Director  
3 of the Department?

4 A Correct.

5 Q Could you describe for us generally what the duties of  
6 your office are with respect to fisheries management in  
7 the State?

8 A If I had the code I'd read the paragraph out of the code  
9 which outlines the duties of the Director of the Depart-  
10 ment of Fisheries; generally to manage the food fish and  
11 shellfish resources of the State in such a manner that  
12 they are not taken or disposed of or sold in such a way  
13 as to impair the supply thereof.

14 Q Are all of your food fish anadromous?

15 A No.

16 Q And in what ways generally speaking would the sale of  
17 the fish impair the supply?

18 A Well, the sale would have to be connected with the  
19 taking, and the taking is the key word in my opinion.  
20 If too many fish are taken then the conservation aspects  
21 are impaired. I expect, and I am guessing here, that  
22 when the Legislature drafted this law they threw in  
23 everything so that if you caught a man selling fish out  
24 of season he could be penalized.

25 Q The Department manages both sport and commercial fisheries,

1 is that correct?

2 A On the fish under our jurisdiction, yes.

3 Q For example, with the various - is it races of salmon,  
4 or species?

5 A Species and races and runs.

6 Q Okay.

7 (Continuing) various species of salmon, do you  
8 regulate both the commercial and the sport fishery on  
9 any one species?

10 A I am not sure that I understand what you say. We manage  
11 the sport fisheries on all the species, but the two  
12 main species as far as sports are concerned are Coho  
13 and Chinook, but for Sockeye and Chum there isn't much  
14 need for much regulation because they are not sports  
15 fish really.

16 Q Now, for example the Coho, is there also a commercial  
17 fishery on the Coho?

18 A Yes. On all the species I mentioned.

19 Q Are the sports fisheries confined to the river systems,  
20 or are they in the marine environment as well?

21 A They are in the marine environment also. As a matter  
22 of fact the bulk of the sports fisheries is in the marine  
23 environment as far as salmon are concerned.

24 Q In regulating the commercial taking of anadromous fish  
25 within the jurisdiction of the Department of Fisheries,



1 does the manner of sale or marketing of a fish influence  
2 the volume of the take?

3 A Does the manner of the sale of --

4 Q Let me be more specific, and I will give you exactly  
5 what I am driving at.

6 Yesterday and the day before when we spoke with the  
7 Director of the Department of Game I understood him to  
8 indicate that when you permit a commercial fishery you  
9 increase the potential pressure, that is, you increase  
10 the potential volume of taking of the fish, and I am  
11 just inquiring whether in your experience in regulating  
12 the fish within the Fisheries jurisdiction this also  
13 holds true?

14 A Well, if there is a good price say for Chinook you will  
15 find more effort in taking them, and when I say "effort"  
16 that could mean additional gear.

17 Q Greater effort usually results in a larger take?

18 A Normally (witness nods affirmatively.)

19 Q Now, as Director of the Department of Fisheries, do you  
20 represent the Department at the Legislative hearings  
21 and meetings concerning legislation which would affect  
22 the Department?

23 A Yes. I don't attend all the hearings, sometimes physi-  
24 cally it is impossible to do that, so I have other  
25 people do it, but I also appear. I am going to appear

1 this afternoon as a matter of fact.

2 Q And your legislative program so to speak is designed to  
3 express the Departmental position on all legislation  
4 affecting the Department of Fisheries?

5 A Yes. We don't necessarily sponsor legislation; for  
6 instance, in this session I think we sponsored only two  
7 pieces of fishery legislation, but there were more than  
8 a score of bills introduced by individual Legislators  
9 in which we're interested and upon which we're expected  
10 to testify and give our views.

11 Q The bills which you did sponsor are initiated entirely  
12 within the Department?

13 A Not necessarily. I mean, we can get the idea from  
14 fishery groups as far as that goes. When I say "sponsor,"  
15 we can't introduce, we have to contact some Legislator  
16 and ask if he would be willing to introduce it.

17 Q I understand that. To follow up that answer, for example  
18 if a commercial fishery group were particularly interested  
19 in a piece of legislation, has it ever happened that  
20 they come to you and ask for you to join in their spon-  
21 soring or their pressing to have the Legislature act in  
22 their favor on the bill?

23 A I don't remember any specific instance, but when bills  
24 are introduced, some bills are introduced, a specific  
25 fishery group, say the purse seiners or the gill netters

1 or the trollers, they might ask us to support that bill  
2 because they favor it, and then we have to decide  
3 whether we should or not.

4 Q And the Department stakes out an independent position  
5 based on its own expertise?

6 A That is correct. We are in the middle of any of these  
7 contests. I say "contests;" if the bill is introduced  
8 through the efforts of a seiner or seiners' organization  
9 and a gill netter organization doesn't like it, they  
10 will fight it, then we are in the middle, so we stay  
11 neutral, unless it is something, you know, that we do  
12 believe in.

13 Q So there are times when the legislation is proposed  
14 where you just don't take a position for or against?

15 A What we do is tell the legislative committee what we  
16 think the bill will do.

17 Q In that regard, is it accurate to say that it is a con-  
18 tinuing activity of your Department to adjust the  
19 various vested interests of commercial fishermen, sports  
20 fishermen, and the conservation aspects involved in the  
21 resource?

22 A What do you mean by "adjust" now?

23 Q Well, maybe a better word is distribute. Let me give  
24 you an example and try some preparatory questions.

25 When you speak of a run of fish, isn't it true that

1 you speak just of a river identification, let's say for  
2 anadromous fish such as salmon?

3 A Well, a run may come in and go to -- well, I see what  
4 you are getting at, a run of fish to a river.

5 Q Yes.

6 A Now, repeat your question again so I will get it.

7 Q I will try and do it more clearly.

8 A Yes.

9 Q The identity of a run is defined basically in terms of  
10 the river system where it spawns, is that not right?

11 A Right.

12 Q And the fish that make up that run are as they enter the  
13 straits and sound comingled with other runs?

14 A Right.

15 Q And at various places as they proceed toward their  
16 river some runs split off from them and they eventually  
17 split off from the others?

18 A Right.

19 Q Is there any place within the course of this inward  
20 migration outside the river system where the run is  
21 individually identifiable and not comingled?

22 A Well, not to my knowledge, but I think that question  
23 could better be answered by one of my biologists.

24 Q Okay. And your regulations from the Department of  
25 Fisheries govern the taking of the anadromous fish

1 throughout the entire course of their migration?

2 A Well, yes, our regulations cover the whole area, say  
3 Puget Sound from the entrance to the Straits until the  
4 fish are in the river. Well, we regulate them in the  
5 river, too.

6 Q And if there are commercial or sport fishermen taking  
7 from the runs in the upper Sound, they are taking from  
8 comingled runs, is that not right?

9 A Right.

10 Q And by the same token, are those who fish within the  
11 rivers themselves generally taking from one run?

12 A Well, from that river run.

13 Q Yes. Do you consider in deciding how to regulate the  
14 various methods and techniques of taking fish how the  
15 upper Sound and Strait fisheries influence the individual  
16 river runs?

17 A Well, that is kind of a general question. What we have  
18 in mind always, of course, is to see to it as much as we  
19 can that there is adequate escapement to each river to  
20 meet the natural spawning requirements, and if there is  
21 a hatchery on the stream to meet the hatchery requirements.

22 Q Let me see if I can take an example. If you had a  
23 commercial fishery near Whidbey Island, and you also had  
24 a sport fishery on the Nisqually River, and it were also  
25 true that the commercial fishery took from that Nisqually

1 run, how do you determine to adjust the interests of that  
2 commercial fishery in the Sound with the interests of  
3 the sport fishery in the Nisqually River?

4 A Well, again that would be better answered by my biolo-  
5 gists. As you know, I am more of an administrator.  
6 Whenever we set regulations I affix the final signature,  
7 of course, but the entire staff come to my office and  
8 we will even before proposing the regulations discuss  
9 what action should be taken and we reach a concensus,  
10 and more often than not I just follow the recommendations  
11 of the staff.

12 Q But as a general matter it is accurate to say that in  
13 considering these various regulations you are distributing  
14 the available harvest between at least two different  
15 groups?

16 A Well, we have three clients: Sport, Commercial and  
17 Indian, and we try to take into consideration their  
18 needs. We don't have a system of allocation. You call  
19 it distribution. We want them all to participate in  
20 the taking of salmon, to the point that the runs can  
21 stand it.

22 Q So it is accurate to say that after you get a figure or  
23 an estimate of how many fish the run can stand to have  
24 harvested, you then have the difficult job of deciding  
25 as well as you can from your regulations how much each

1 of the various interested groups will take?

2 A Well, I don't recall thinking in terms of numbers, num-  
3 bers that the gill netters should take, numbers that the  
4 purse seiners should take, or the numbers that the sports  
5 or numbers that the Indians should take, we do <sup>adopt</sup> ~~operate~~  
6 regulations for a season, but our people monitor the  
7 run or runs daily, and we get a report every morning as  
8 to what the catches were, to give us some idea when com-  
9 pared with previous years of what the size and count of  
10 the run is, and if it looks like a larger run than we  
11 anticipated we give extra time, and if it looks like it  
12 is smaller, well, then we take emergency action and cut  
13 off a day or more.

14 Q Let's try another example. Supposing you had a commercial  
15 fishery in the Straits and in the northern Sound a marine  
16 sport fishery and down on the Nisqually River an off-  
17 reservation Indian fishery, prior to the entrance of the  
18 species, let's say it is Coho, how do you attempt to  
19 regulate these three fisheries?

20 Well, let me go back. Do you regulate these three  
21 fisheries with the purpose of providing some harvest to  
22 each?

23 A Yes.

24 Q And am I accurate in assuming it is your staff generally  
25 who works out the nuts and bolts --

1 A Right.

2 Q (Continuing) of how much or what regulations to adopt  
3 as to each?

4 A Correct.

5 Q Is there any general policy or are there any guidelines  
6 which give you a handle on what portion of the available  
7 runs each of the - in my example - three interested  
8 groups should have?

9 A I don't think we have yet reached the point where we  
10 say that we ought to let the purse seiners have so many  
11 and the gill netters so many and the sports so many and  
12 the Indians so many. I have never heard that kind of  
13 discussion. One of the questions that we have in mind  
14 always is -- it is in connection with the Belloni  
15 decision, which said the Indians ought to have a fair  
16 and equitable share, and I don't yet know what that is.

17 Q Okay. Maybe it would be easier for all of us if you  
18 could think of an example where the three clients have  
19 an interest in a run or a species of fish and tell us  
20 in your experience how the regulations are adopted and  
21 the management considerations that you discuss.

22 A Well, I suppose the Columbia River is the easiest and  
23 best example. We set escapement goals based on the ex-  
24 perience of years as to how many fish a particular stream  
25 should have for spawning purposes, and the line somewhat



1 is the Bonneville Dam, and just to give an illustration,  
2 on the spring Chinook run we set a goal for one year for  
3 instance of eighty to ninety thousand Chinook which must  
4 be beyond not only Bonneville but beyond the Indian  
5 fishery for escapement purposes. We have varied it be-  
6 cause of some factor or another, maybe a bigger anticipated  
7 run, or conditions up the river maybe, and maybe at some  
8 other dam there was too much of a mortality or there  
9 was too much nitrogen mortality, and so that eighty to  
10 ninety thousand has been increased to a higher number.  
11 It varies. How to set the number that the Indians are  
12 going to take is very difficult, as it varies, but at  
13 least the Oregon Fish Commission's direction by the  
14 Belloni decision is to see to it that enough fish go  
15 over Bonneville not only to take care of escapement but  
16 to give the Indians an opportunity to get a fair and  
17 equitable share.

18 Q Would it be accurate to say both in your regulations  
19 and in that example and generally in the State that the  
20 three clients you are speaking of always want more than  
21 they have an opportunity to take?

22 A Oh, they are all human beings and they are all fishermen,  
23 so the answer is yes.

24 Q Now, in your regulatory scheme, as the season progresses  
25 and as the run is going on, you have, do you not, the

1 authority to alter your regulations to protect the run  
2 if necessary?

3 A Oh, yes, we do that every year.

4 Q And you have also the authority to alter the regulations  
5 to permit a larger amount to get to the next user? Say  
6 for instance on the Columbia with the Bonneville Dam  
7 and Indian example.

8 A Yes, the State of Washington particularly has emergency  
9 authority to take action immediately. Oregon did not  
10 have that type of emergency authority until just the  
11 last year or two. Theirs is not quite as effective or  
12 quick-acting as ours, but we can, both of us, now take  
13 emergency action, we quicker, to chop off fishing on a  
14 run or to add days on a run.

15 Q The regulation of the Columbia fisheries is a cooperative  
16 effort with Oregon, is it not?

17 A Correct, under a compact that is Federally-approved.

18 Q And there is an independent or a separate shall I say  
19 Commission which generally decides the regulations?

20 A Oregon has a Fish Commission and a Game Commission. The  
21 Fish Commission manages the food fish, the way I do.  
22 They employ a Director who occupies a position like mine.  
23 But he is answerable to a Commission; I am not.

24 Q And it is your staff and his that put together the regu-  
25 lations for the Columbia River?

1 A Correct.

2 Q And in the normal regulatory scheme, are those regulations  
3 the regulations of Oregon's Commission and the regulations  
4 of your Commission?

5 A Yes. The State of Washington adopts a recommended regu-  
6 lation, Oregon adopts a recommended regulation, and then  
7 the Oregon State Patrol can enforce it on this side and  
8 our own Fisheries Patrol can enforce them on this side.  
9 This is similar to the salmon --

10 Q So the enforcement of the regulations is also a coopera-  
11 tive effort with agencies of both States involved?

12 A Yes.

13 Q Does the State of Washington contribute to any planting  
14 or artificial supplementation of the Columbia River run?

15 A We have hatcheries on the Columbia River, and yes, we  
16 plant from our hatcheries into the Columbia River.

17 Q And does Oregon also participate in the same way?

18 A Yes.

19 Q Have you found that this dual-participation cooperation  
20 has been beneficial to the Columbia run?

21 A Well, without it we probably wouldn't have any run. We  
22 just have to regulate a resource or otherwise the users  
23 will just almost ruin it.

24 Q My reference really was to the fact that both Oregon  
25 and Washington have hatcheries which supplement the run.

1 A Right.

2 Q Has that been favorable and beneficial to the run?

3 A We think so. We think that it has been more beneficial  
4 except for the fact that we are now finding that the  
5 Canadians are taking huge numbers of Chinook and Coho  
6 from not only the Columbia River hatcheries but our own  
7 hatcheries up here in the Sound.

8 Q Can you think of an example similar to the Columbia  
9 River situation where you can explicate for us generally  
10 the considerations you engage in in the Puget Sound and  
11 Puget Sound drainage circumstance, separating it for the  
12 moment from the Columbia River?

13 A In the Sound we have not, at least I have not, worried  
14 about the take of salmon by sports gear. It hasn't  
15 played any tremendous role. We have felt that the sports  
16 fishery does not endanger the run or cannot endanger the  
17 run such as a net fishery can. Normally we let them  
18 fish many more days than the net fishery. We might let  
19 the nets fish only a day or two a week, whereas the  
20 sport fishery fishes right straight through.

21 Q Would it be accurate to say that the sports fishery  
22 would be a more substantial consideration if the number  
23 of sport fishermen increased?

24 A Well, I would assume that the more hooks there are in  
25 the Sound the more fish that would be caught.

1 Q Okay. In considering and discussing proposed regulations  
2 within your own Department regarding Puget Sound rivers  
3 and drainage in the Sound and Straits of Juan de Fuca,  
4 does your data include any information on on-reservation  
5 Indian fisheries?

6 A Well, not to the extent that we would like. We keep a  
7 pretty good handle on the numbers of fish caught by the  
8 commercial fishermen through our check system. We have  
9 what we call fish tickets. The buyer must give one to  
10 the fisherman concerning the number of fish purchased  
11 and the price, and then he in turn must supply one copy  
12 to us. But we have no jurisdiction on the reservations,  
13 and we can't compel the Indians to supply information.  
14 The only thing we can do there is to request it and urge  
15 that they supply it in their own interest. We are  
16 beginning now I think to have or we are at least on the  
17 way to having better information than we had in the  
18 past. As a matter of fact we just entered into, well,  
19 I say "entered into," we had some kind of an informal  
20 understanding with the Swinomish, that they are going to  
21 start using the fish ticket to supply information to us.  
22 This hasn't been formalized to my knowledge yet, at  
23 least I haven't signed any agreement. This is an indi-  
24 cation I can think of of at least some signs of a trend.  
25 Whether we will be able to get all the reservation

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Indians to do this or not I don't know.

Q It would be an important and helpful element in determining your regulations to have this information?

A It would. It is essential it seems to us that we know exactly how many fish are caught, whether by sports, commercial, or Indian.

Q And regardless of where?

A And regardless of where. Well, we like to know where they are caught, of course, but regardless of where, whether they are caught on or off the reservation.

Q Do the fish tickets identify the location where the fish were taken from the water?

A I am not sure if I can answer that. I hadn't thought about that. Normally the buyers operate in an area, and when we get the buyer tickets we know where he bought them, and the fish were probably caught in the area. I don't know that. One of my other people can answer that better.

Q Going back for a minute to the supplementing of the Columbia River run, do any other agencies contribute to it besides Oregon and Washington?

A Yes, there are Federal hatcheries owned and operated.

Q Does the State of Idaho contribute, if you know?

A There is a natural spawning. I don't know of any hatchery that is a salmon hatchery. If they have I am

1 not aware of it.

2 I might say that I know they constructed a very  
3 large hatchery a few years ago, and just what comes out  
4 of it I am not sure.

5 Q You serve on the Fish Commission for the Columbia River,  
6 is that correct?

7 A Well, I represent the State of Washington under the  
8 compact.

9 Q And the Commission proposes to the two State regulations  
10 designed to regulate the entire fishery?

11 A That is right, the Oregon Fish Commission and myself  
12 propose and adopt regulations, and then each State imple-  
13 ments them by adopting them also.

14 Q And you have attempted in that capacity along with the  
15 other contributing agents to distribute the take up and  
16 down the river equitably among the various users?

17 A Yes. Our own State of Washington proposed this as early  
18 as 1967, that is, we proposed that we accord the Indians  
19 above Bonneville the same number of days of fishing time  
20 as the non-Indians below Bonneville. It was first pro-  
21 posed to the Department of Interior, just for their  
22 information. Then I proposed it as a compact meeting  
23 with Oregon at that time; would not go along. They did  
24 not go along until after the Belloni decision.

25 Q Switching for a minute to the Puget Sound area, there

1 have been instances, have there not, where the Department  
2 of Fisheries has attempted on a case-by-case basis to  
3 develop seasons for off-reservation Indian fishing?

4 A Yes, yes, we have. I have forgotten exactly when we  
5 started that. I proposed it to the Indians themselves  
6 at some annual Indian meetings that they had down here,  
7 that we would start to provide off-reservation fishing  
8 time for the Indians, kind of river-by-river, tribe-by-  
9 tribe, but we couldn't do it overnight, it was going to  
10 take time, and we have been in that process.

11 If this is included in your question, we have pro-  
12 vided fishing time or regulation time on the Nisqually  
13 and on the Puyallup, and up on the Hoh and up on the  
14 Quillayute, specifically.

15 Q The runs in those rivers which you just mentioned, do  
16 they receive fishing pressure from commercial and sport  
17 fishermen also?

18 A Well, as far as the Nisqually -- well, there's no  
19 commercial net fishing on any of those rivers except by  
20 Indians, but there is sport fishing effort on all those  
21 rivers.

22 Q Further toward the sea, are there commercial or sport  
23 fishing activities which influence the supply of fish in  
24 the Nisqually and the Hoh and the Quillayute?

25 A Well, on the Hoh and the Quillayute I expect the runs



1 would be influenced by commercial troll fishery out in  
2 the marine area, within the three-mile limit for instance,  
3 near the mouth of the river. On a river running into  
4 the Straits, they would be affected by the troll outside  
5 the Straits and by net fishery in the marine area. There  
6 is not a great deal of non-Indian net fishery. On the  
7 Puyallup and Nisqually, of course, they are further down  
8 the Sound, and all the net fisheries following the  
9 course of the run would affect the number of fish going  
10 into the river, yes, the rivers.

11 Q Has your Department ever considered placing more restric-  
12 tive regulations on those fisheries outside the rivers  
13 so as to permit a larger escapement to and through the  
14 river Indian net fisheries which we have been talking  
15 about?

16 A Well, the regulations are very restrictive by their  
17 very nature. They are restrictive in order, number one,  
18 to get our escapement, but also to supply fish for the  
19 Indians. Now, this is difficult to do when you are  
20 managing a mixed stock. You might make them more  
21 restrictive. This was a thought advanced by the Indians  
22 more than once. Curtail the fisheries up the Sound,  
23 you know, and then more fish come back to the river.  
24 They are comingled. The net result of that kind of think-  
25 ing would be overescapement in some areas, and surplus

1 at our hatcheries, and we have been getting surpluses  
2 at our hatcheries beyond what we would really like to  
3 have. So this idea of restricting the fishing further  
4 up the Sound in order to get more fish back down to the  
5 rivers for the Indians is not the easiest thing to do.  
6 We think it would result in a waste of fish.

7 Q As I understand it then because the stocks are so co-  
8 mingled in the upper Sound that it is very imprecise and  
9 it is difficult to predict how a cutting-back in the  
10 upper Sound will influence particular rivers?

11 A Well, we were talking about one illustration today, that  
12 is why I have it in mind right now, and that is this  
13 artificial run of Chinook. I call it artificial because  
14 it is not a natural run. It is the one that the Fish-  
15 eries Department started years ago. It comes up Capitol  
16 Lake here, the Deschutes River, and we get more than we  
17 need coming up now. If we curtailed fishing up Sound  
18 we would get more, many more fish back up the Deschutes  
19 than we need. There would be a waste of fish in our  
20 opinion.

21 Q Let me go back. Using the Nisqually example, as you  
22 would proceed down the Sound the stocks become less co-  
23 mingled, is that correct?

24 A Well, of course, the fish that go to Minter Creek aren't  
25 coming down the South Sound. Likewise fish going up the

1 Green River aren't coming down Sound.

2 Incidentally, there is no commercial fishing on  
3 salmon in the South Sound. The line is northward of  
4 Point Defiance some distance. It cuts through Vashon  
5 Island. And there is no commercial net fishing below  
6 that area except by the Indians.

7 Q What is the reason for setting that line?

8 A That line was altered once since I have been here, and  
9 that is the only one that I have knowledge of. We moved  
10 that line northward on the east Sound, or on the east  
11 side of the Island, specifically to let more salmon get  
12 into the Puyallup River. I wasn't here when they estab-  
13 lished the line originally.

14 Q So it would be accurate to say that if the line were  
15 further southward the commercial fishery would take -  
16 non-Indian commercial fishery - would take more fish?

17 A Well, if the line was further south, yes.

18 Q Well, let me go back. Do you have a sports fishery in  
19 South Sound for salmon going to the Puyallup and Nisqually?

20 A Well, the Puyallup fish wouldn't get down South Sound.  
21 The Nisqually fish would, yes. There's sport fishing  
22 all the way up to Capitol Lake here; even in Capitol  
23 Lake.

24 Q If you imposed regulations on that sport fishery which  
25 effectively decreased the number of fish which it took,

1 would you have a greater predictability on the effect  
2 of the total run in the Nisqually than you would say in  
3 imposing similar regulations further north in the Sound?

4 A Well, the sport fishery in South Sound doesn't take any  
5 great amount of fish. We know how many they take via  
6 the punchcards which they have to send in to us at the  
7 end of the year. It is my personal thought that curtail-  
8 ing the sport fishery in South Sound wouldn't help the  
9 Indians up in the Nisqually very much.

10 Q But you would have a greater predictability about what  
11 run you were limiting if you were operating just outside  
12 the Nisqually River?

13 What I am getting at is, as the stocks separate  
14 off and they are less comingled, you have an opportunity  
15 for greater predictability of what the effect on restric-  
16 tions on those less comingled stocks will do in the  
17 various rivers?

18 A Of course, once they break off there is not confusion  
19 by the size of the other runs. I mean, you are better  
20 able to shall I say zero in on the one run. I am not  
21 sure that the sports aspect which you mention would help  
22 us much one way or another. What the staff does always  
23 is not just look at the run coming in, but look at the  
24 runs and the catches for years back.

25 Q And that serves as at least a rough estimate of --

1 A Yes.

2 Q (Continuing) coming years?

3 A There are a lot of other factors involved, too, other  
4 than just comparing with other runs, other years. There  
5 is water, high water, low water, flood, et cetera.

6 Q All of these enter into the determination concerning the  
7 regulations as the season goes on?

8 A Right.

9 Q And before?

10 A Right.

11 Q The recent attempts by your Department to adjust the  
12 interests of commercial salmon fishermen, sport fishermen,  
13 and Indian fishermen, have you reached a conclusion  
14 whether that has been detrimental to the conservation of  
15 the resource?

16 A Say that again.

17 Q Have these recent coordinations adding a third client  
18 to your interested groups whom you consider in regulating  
19 the fisheries had a detrimental effect in your opinion  
20 on the resource?

21 A No, I don't think so. It has had an impact on us because  
22 some people don't believe the Indians have the treaty  
23 rights that they claim when we accord them some fishing  
24 time consideration and we do get impact.

25 Q Before adding this third interest you were attempting to

1       adjust two interests, those of commercial and sport  
2       fishermen?

3   A    Basically (witness nods affirmatively).

4   Q    And you had some of the similar problems of the pressures  
5       from both of them that you now have from the Indians?

6   A    Sure. You get pressures with only one group.

7   Q    And in deciding how to regulate the commercial and sport  
8       fishermen in these earlier times the Department took an  
9       independent position and tried to decide to conserve the  
10       resource, is that correct?

11   A    Our basic requirement under our Code is to see that the  
12       stocks weren't impaired, you know. We had much the same  
13       objective, to see to it that we got adequate escapement  
14       for natural spawning and hatchery requirements. The  
15       addition of the Indians posed additional problems, of  
16       course, but they are mostly social or political rather  
17       than biological.

18   Q    And in these prior days when you were just considering  
19       the clients of sport fisheries and commercial fisheries,  
20       in addition to the conservation aspects of --

21                   MR. MCGIMPSEY: Have you established  
22       in earlier days there were only two clients?

23                   THE WITNESS: Well, I was -- excuse me.

24   Q    (By Mr. Pierson) Let me ask you prefatorilly: In earlier  
25       days, let's say before 1960, did you consider the Indians

1 as a separate or third client?

2 A I was not here prior to '65, but, of course, I have  
3 worked with my staff now for eight years, and the Depart-  
4 ment did work, did try to work with the Indians, as in  
5 the fifties they had agreements with some Indian tribes,  
6 like the Yakimas for instance, where the run of salmon  
7 into the Yakima system, Yakima River System, would be  
8 managed on a good biological basis, and this was not the  
9 only effort made, but for some reason or another the  
10 agreements didn't work, simply because an individual  
11 Indian or individuals Indians did not want to be bound,  
12 and the tribes never really enforced agreements, but we  
13 considered them, the Department that is considered that  
14 the Indians should have some fishing, should be permitted  
15 to fish, and we didn't define or try to define any treaty  
16 rights at that time, that is something that came along  
17 later when the lawsuits began to emerge, and we didn't  
18 in presenting our budget to the Legislature list them as  
19 a client as we have been doing now in recent years.

20 Q But you did list the commercial and sport fishing?

21 A Yes.

22 Q In addition to your considerations of biology, that is,  
23 preserving the resource, is it also a policy of the  
24 Department when considering these clients, whether there  
25 would be two or three, to try equitably to distribute

1 among them a resource you have available for harvest?

2 A Well, that comes back to this allocation thing again.  
3 I don't think that we have talked in terms of numbers,  
4 we have talked more in terms of opportunity, equitable  
5 opportunity. For instance on the Columbia, our first  
6 proposal was to give the Indians above Bonneville the  
7 same number of fishing days as those down below, but that  
8 has been altered from time to time. We give them addition-  
9 al fishing time.

10 Q Have you had the same policy in these recent agreements  
11 with the Nisqually and the Hoh and the Quillayute?

12 A Well, we have set fishing time on occasion, well, always  
13 equal in numbers of days, and at other times giving them  
14 more time. We have had this surplus problem with us now  
15 for several years, as a result of our hatchery enhance-  
16 ment program, and we don't want any more surplus in the  
17 hatchery than necessary, so we have in a sense asked the  
18 Indians to help us harvest the surpluses; put it just  
19 that way to them. So we have given them additional time  
20 beyond that which we gave the non-Indian commercial  
21 fishermen.

22 Q In adjusting or considering the various interests, it is  
23 the general policy that in addition to conserving and  
24 protecting the resource you try to be fair to the various  
25 user groups?



1 A (Witness nods affirmatively.) We try to exercise our  
2 best judgment no matter how fallible it might be.

3 Q If for example we take the Nisqually River and -- is  
4 there a Coho run in that river?

5 A Well, I expect there is, but you would have to ask my  
6 bios. Chinook and Chum are the main runs.

7 Q For example a Chinook run in the Nisqually River, and it  
8 appears from last year's data that by the time the run  
9 reached the river there were only enough fish in the  
10 run to provide an optimal spawning escapement, and it  
11 would seem that those who fish on the river should be  
12 foreclosed entirely; in such a circumstance, would the  
13 Department of Fisheries consider further limiting those  
14 who influence the run further toward the sea to provide  
15 a harvestable amount in the river?

16 A Well, it is hard to tell what numbers are going to come  
17 into the river at a given point, but our objective in  
18 setting time beyond that is to provide adequate escape-  
19 ment for spawning purposes, but also, coming to the  
20 Nisqually, to try to make certain that the Nisqually  
21 Indians had some fish to catch, so while the Belloni  
22 decision didn't affect us directly we have tried to follow  
23 the guidelines set down.

24 Q And one of the methods for doing so is limitation on the  
25 other users of the resource?

1 A Yes; bearing in mind the difficulties I mentioned earlier.

2 MR. PIERSON: Excuse me just a  
3 moment.

4 (Pause in proceedings.)  
5

6 Q (By Mr. Pierson) Mr. Tollefson, just a few more for me  
7 and then I will let you deal with the other fellows here.

8 You have generally spoken in your regulations of  
9 adjusting the take by limitation of days; is that your  
10 usual method?

11 A Yes, that's --

12 Q The principal method?

13 A Principal method, yes, time of fishing.

14 Q It is true, though, is it not, that at different parts  
15 of the year the same run will be heavier? For example,  
16 if the run is heavy in December and light in November,  
17 someone who gets five days in December is going to get  
18 a greater opportunity at a larger number?

19 I am trying to think of a hypothetical to bring  
20 out the point.

21 A I am not sure that I understand. If a run is peaking at  
22 a particular time, and then it tapers off, is this going  
23 to impact one group of fishermen more than another? Well,  
24 I can't think of an illustration. The peak moves through --

25 Q Let's try and take the example that if the peak for a

1 commercial fisherman were the 1st of November and then  
2 for an Indian fisherman it was the 1st of December, and  
3 they were each given five days, and the Indian fisherman  
4 got his five days in the middle of November and the  
5 commercial fisherman got his at the first of November,  
6 it would seem that the commercial fisherman, even though  
7 he has the same in number of days, has a greater number  
8 of fish which he has an opportunity to catch.

9 A Well, this is a biological thing. My only comment on  
10 that would be it is relative. If we have a big run it  
11 impacts all the people fishing upon it as if there were  
12 a smaller run. It is kind of relative. I don't --  
13 (witness shakes head negatively).

14 Q Well, let me see if I can put it a different way.  
15 Assuming the same number of days; the time and season  
16 when the fisherman has access to the run influences also  
17 his total take or opportunity to take, does it not?

18 A The size of the run impacts or affects the numbers of  
19 fish that commercial fishermen take. If it is a big  
20 run he gets more fish; if it is a little run he gets  
21 lesser fish. I can't quite see how that relates to the  
22 Indians.

23 Q Well, let me see if I can think of a different way to  
24 put it.

25 A When I say "relates to the Indian," we are talking about

1 the Indians principally fishing in the rivers.

2 Q Yes.

3 A Which I wish you would bear in mind the Indian can fish  
4 out there all he wants to.

5 Q If the Indian seasons that we are talking about, or the  
6 commercial fisheries on the river engaged in by Indians,  
7 if they were allowed their five days when the run was  
8 at its peak in the river, while the commercial fishermen  
9 further towards the ocean were allowed five days at the  
10 low point of the run, it is accurate to say that rela-  
11 tively, is it not, the Indian has a greater opportunity  
12 to take more because he is at the peak of the run even  
13 though he has the same number of days?

14 A When you are talking about the peak you are talking  
15 about the biggest volume of fish coming at a given time.  
16 If we gave the Indian five days in the river at the  
17 same time that the non-Indian is fishing out in the Sound  
18 before the fish come to him, well, obviously this five  
19 days doesn't amount to anything, so we try to take care  
20 of that by giving time when the fish are in the river  
21 you see.

22 Q Going back for just a moment to the Columbia River system,  
23 in discussing this within your Department and with officials  
24 in the State of Oregon, in addition to the interests of  
25 the Indians above Bonneville Dam, are you also considering

1 the interests of Idaho fishermen who may be taking from  
2 the runs?

3 A Yes, there are sports fishermen up there. Spring run,  
4 Chinook run in the Columbia is a good example. Idaho  
5 takes the view, and rightfully so, that this particular  
6 run is spawned in Idaho waters and they ought to have  
7 enough escapement to take care of not only the spawning  
8 requirements but to provide an adequate sports fishery,  
9 too.

10 Q Do agents or officials of Idaho serve on this cooperative  
11 Commission that Washington and Oregon have?

12 A No, Idaho is not a party to the compact, but the Governors  
13 of the three States have created what they call the  
14 Governors' Fishery Advisory Committee, and Idaho is repre-  
15 sented on it. Prior to the creation of that Advisory  
16 Committee the Director of Fisheries of Idaho or his repre-  
17 sentative always attended compact meetings and had a  
18 right to express views.

19 Q And the Compact members considered the interests of  
20 Idaho fishermen as --

21 A Right.

22 Q (Continuing) one to be equitably dealt with in regulations?

23 A Right. If we didn't see that such fish were up there  
24 to provide escapement plus the sports fishery, Idaho  
25 might just get right mad and fish out the escapement and

1 ruin the run entirely if they wanted to.

2 MR. PIERSON: That is all I have.

3 Al?

4  
5  
6 EXAMINATION

7 BY MR. ZIONTZ:

8 Q Mr. Tollefson, you were stating a moment ago that your  
9 staff can select the days that they are going to allocate  
10 for an Indian river net fishery so as to give those  
11 Indian fishermen a decent share of that run, that is,  
12 they will try to make sure that the Indian fishery days  
13 are at a time when the run has reached the river?

14 A Correct. There is no point in giving them time when  
15 there are no fish there, although when we did that down  
16 on the Columbia, as some of you know, gave the Indians  
17 a later starting time to make sure there were fish there,  
18 they insisted they wanted to start at the same time, and  
19 as a matter of fact they even started before, but our  
20 objective is to try to fix the fishing dates when there  
21 are fish there available for catching.

22 Q Right. And the placement of those dates can very sig-  
23 nificantly affect the volume of fish caught by the river  
24 fishermen, or for that matter the Sound fishermen?

25 A Yes.

1 Q If you give them time at the tailend of the run or at the  
2 head of the run, they are not going to get anything?

3 A That is right.

4 Q Similarly you say you try to achieve equality by think-  
5 ing in terms of the number of days for a particular run?

6 A Well, if you mean that on occasion we give the Indians  
7 in the river, like the Puyallup, extra days, yes. We  
8 have given them extra days on the Puyallup beyond that  
9 which was originally set for them, and beyond what was  
10 set for the non-Indian fishermen.

11 Q Do you have any way of determining roughly what amount  
12 of fish is going to be available to go up the Puyallup  
13 after your Sound fisheries have had a crack at a run?

14 A Well, the staff is constantly estimating the size and  
15 the timing of the run as it's coming in. They have some  
16 general idea because of a lot of factors that they con-  
17 sider before the run ever comes. They will estimate for  
18 instance, well, I don't know what the figures are for  
19 this year, but the Coho run to the Sound is going to be  
20 four hundred thousand, or whatever, and then when the  
21 fish start coming in and are being caught, then they  
22 monitor the catches and compare them with --

23 Q I understand.

24 A Yes.

25 Q By comparisons with previous years they get an idea of

1       how large that run is?

2   A     Right.

3   Q     So it is possible to roughly get an idea of what is going  
4       to be left after the Sound commercial and sports fisheries  
5       have taken their catch?

6   A     Yes, roughly.

7   Q     All right. Then you do have a way of controlling to  
8       some extent the number of fish that are going to arrive  
9       in the river?

10  A     Yes, that's the whole purpose of regulations.

11  Q     Correct. And you have the power then by setting times  
12       to increase or decrease the number of fish that are  
13       going to arrive at the rivers?

14  A     Sure. If we allow no net fishing in the Sound we are  
15       going to have more fish in the river.

16  Q     All right. My question is: How does your staff, by what  
17       principles or standards do they determine what amount  
18       of fish should be preserved to reach the rivers?

19  A     They can answer that better than I, but we discuss this  
20       matter every year, perhaps for my edification. They  
21       know what number of fish the river can handle because  
22       of experience. For instance on Minter Creek, which is a  
23       stream, you can let, well, I have forgotten what the  
24       figure is there, five hundred spawners go up, and you  
25       get so many return four years from now, but you can put



1 five thousand up there or you can put two thousand and  
2 you don't get any more return. So they have for Minter  
3 Creek fixed it, that is, the small spawners. They  
4 figure whatever it is now, five or six hundred, I don't  
5 recall. But up on another stream like the Skagit, or  
6 whatever, on a run they may say that there's no need of  
7 letting any more than twelve to fifteen thousand Chinooks  
8 go up that river because it can't handle them. If you  
9 send thirty thousand up you will not get any more back.  
10 So they know each stream's capacity on the basis of  
11 experience that they have had.

12 Q Well, let's take a river like -- I don't know if there  
13 is an Indian net fishery on the Skagit, but let's take  
14 the Nooksack where there is an Indian net fishery, and  
15 let's say that your staff theoretically determines that  
16 the Nooksack can only handle twenty thousand fish for  
17 spawning purposes; knowing that there is an Indian net  
18 fishery on that river they would assume that any surplus  
19 over and above that would be coming into that Indian  
20 net fishery, isn't that right?

21 A Indian or sport.

22 Q Sport fishery?

23 A ~~No, not fishery.~~ *There is a sport fishery on the Nooksack.*

24 Q A sport fishery on the Nooksack.

25 Well, as I understand it your biologists believe

1 that a net fishery is capable of taking up to ninety-  
2 eight percent of any fish --

3 A In a river.

4 Q (Continuing) in a river?

5 A Oh, yes. Well, I haven't heard that figure, but a net  
6 fishery in a river certainly can annihilate a run.

7 Q Then as I understand it by application of your standard  
8 management techniques you can insure that any Indian  
9 fisherman, any group of Indian fishermen at a river can  
10 get any size of run providing only that you are concerned  
11 that they allow your spawning group to escape and go  
12 upriver to spawn?

13 A I don't think it is quite that refined. I mentioned  
14 earlier the difficulty of managing comingled runs to get  
15 exactly the right number of fish to each stream.

16 Q I realize that, and you are going to get an overfly in  
17 some cases, and you are going to get real problems over  
18 surplus fish coming back to hatcheries, et cetera, but  
19 putting that aside, if you restrict your upSound fishing,  
20 or restrict the Straits fishing, you could deliver larger  
21 numbers of fish to rivers?

22 A Yes. Like I say, if you cut out all net fishing up Sound,  
23 then all the fish are going to come back to the rivers.

24 Q Right.

25 A But how to get the right amount back is difficult.

1 Q That is what I am getting at. Just how do you do that?  
2 What kind of magic goes on in your backroom that results  
3 in setting of days and seasons and closures and openings?  
4 Just how do you juggle all these things and decide what  
5 amount you are going to limit your commercial fisheries  
6 to and what amount you hope to get back to the rivers?

7 A Well, I had better let my bios answer that one. All I  
8 can answer is that we try to exercise our very best  
9 judgment having in mind that we have got three clients  
10 to serve. One other thing, too, the biologists in the  
11 Department, or any other Fisheries Department, have had  
12 years of experience in managing fish, but we haven't had  
13 years of managing for an Indian fishery. This is a  
14 fairly recent thing, and it is going to take as I view  
15 it a number of years before we have the expertise to do  
16 what I think you would like to have us do, get more fish  
17 into the rivers for the Indians.

18 Q Well, I am trying to inquire here, now for example you  
19 are operating, or trying to, on the principle that the  
20 Indians are entitled legally to a fair and equitable  
21 share --

22 A (Witness nods affirmatively.)

23 Q (Continuing) but that is a very vague statement.

24 A It is, but yet that is the one the Court used.

25 Q Right. Can you conceive of any other standard that would

1 be an easier one for your Department to work with in  
2 determining what is fair for the Indians?

3 A We haven't come up with anything better than a kind of  
4 equal opportunity or fair and equitable opportunity. We  
5 would like for the Courts kind of to tell us something,  
6 too.

7 Q Do you try to take a count of how the Indians did each  
8 season, the net fishermen, to see whether they did get  
9 a fair and equitable share?

10 A We have done that especially on the Columbia River. We  
11 watch each year, and for the various runs, the number of  
12 fish that the Indians above Bonneville catch, and if for  
13 instance in a given year the Indian catch was down from  
14 shall I say an average, well, we would certainly do  
15 something about that the following year. Of course, this  
16 is assuming that the runs are all the same size or a  
17 comparable size.

18 Q But you do know what the Indian catch is on the Columbia?

19 A Oh, yes.

20 Q But how about, oh, the Indian catch on the Sekiu or Hoko?

21 A I doubt that we have as accurate information as we would  
22 say on the Columbia.

23 Q If the Court were to come up with some kind of a ruling  
24 that said you are to allow the Indians to take sufficient  
25 numbers of fish by their river fishery to afford them a

1 standard of living equal to what the non-Indian takes  
2 offshore, and that would put you in a position of having  
3 to measure economic data, and say, well, the Indian  
4 ought to be able to make as much money at this as the  
5 non-Indian, could you work with that kind of standard?

6 A I am unable to answer that.

7 Q Prior to 1968, when you for the first time officially  
8 began to establish Indian seasons, I take it your biolo-  
9 gists were managing on the principle that they were  
10 going to look only to the impact of the sports and  
11 commercial fisheries and assume that the rest was des-  
12 tined for spawning?

13 A You will just have to ask them what was in their minds  
14 at that time. I don't know.

15 Q All right. But then after 1968, a situation that you  
16 are familiar with, you had to adjust for the entry of  
17 a new group into your planning situation, correct?

18 A Yes. I did mention earlier our efforts to work with the  
19 Indian tribes before my time.

20 Q I understand that.

21 A Yes.

22 Q But then in '68, it became a formal ruling and you then  
23 had to make an adjustment to allow for distribution to  
24 Indians officially?

25 A That is right. We thereafter discussed and considered

1 the Indian more than we had in the past.

2 Q All right. And I take it that in order to do that you  
3 had to then consider cutting back on some of the fishing  
4 allowed to the sport and commercial groups that had been  
5 allowed previously?

6 A As I mentioned earlier, we have never been very concerned  
7 about the impact of the sport fishery, but we have as  
8 far as the net fishery is concerned tried to manage it  
9 in such a way that the Indians in the Puyallup or Nis-  
10 qually or what have you got a fair and equitable share,  
11 and we didn't have the guidelines that we had -- well,  
12 put it this way, that we don't yet have the guidelines  
13 that we probably will have in the future.

14 Q All right. Now, Mr. Tollefson, if I understand you  
15 correctly, are you saying that the Department has always  
16 assumed that there was going to be such a river net  
17 fishery and unofficially and without any specific legal  
18 sanction have planned for that and that nothing has  
19 really changed as a result of the 1968 policy?

20 A No, I think it changed.

21 Q All right. When it changed, didn't that require cutting  
22 back on the commercial fishery to some extent?

23 A Well, I suppose in a sense that would be the case, but  
24 what we tried to do is to estimate the size of the run  
25 and estimate the take and have an escapement goal and in

1 that process try to make sure that the Indians in the  
2 Nisqually or Puyallup, and these are the principal rivers  
3 at this time, have an opportunity to catch fish.

4 Q When you speak of an escapement goal, do you mean the  
5 escapement upriver after the Indian net fishery?

6 A Yes.

7 Q All right. Well, I realize that you are restating your  
8 general principle, but it seems to me that you are not  
9 willing to say that you have cut back at all on the  
10 commercial fishery; have you or have you not cut back on  
11 the commercial fishery?

12 A I would say that indirectly, yes. This isn't the thought  
13 process that I go through. When we are sitting down  
14 preparing regulations we talk about the fact that there  
15 must be fish in the river for these Indians, and then the  
16 staff comes up with proposals as to the numbers of days  
17 and --

18 Q When you say you talk about the fact there must be fish  
19 left in the rivers for the Indians, do you talk about the  
20 numbers that must be left for the Indians?

21 A No, not exact numbers, no, we don't.

22 Q Is this because this is a process that your biologists  
23 work out and you are not involved in?

24 A No. Of course, they spend more time working up their  
25 proposals than they spend talking to me. The bulk of my

1 discussions with them take place after they have made  
2 up their own minds about the proposal. Then they come  
3 and discuss it with me. But when you are talking about  
4 cutting days -- (witness shakes head negatively).

5 Q I just have trouble, Mr. Tollefson, and I am not dis-  
6 puting the fact that you are trying your best to tell me  
7 what really goes on in your thinking, but it seems to me  
8 that if a formal point in time arrives where you say,  
9 "We must now legally give a third group a larger share  
10 than they have ever had in the past. We must now change  
11 our planning," that in a rational planning process some  
12 account must be taken in terms of numbers or whatever  
13 measurement you use what share that new group is going  
14 to get and what effect this is going to have on the two  
15 previous groups.

16 A Well, we have the same problem as you do. What is a  
17 fair and equitable share? You talked about cutting days;  
18 the days aren't the same year-by-year. I could inter-  
19 pret your question to mean, well, in this given year  
20 how many days did you cut off from last year? Maybe we  
21 didn't cut any; maybe we gave more.

22 Q All right. Now, Mr. Tollefson, I want to ask you some  
23 questions about reef netting. You are familiar with reef  
24 netting operations up on the North Sound as I understand.

25 A I saw them operate on one occasion.



1 Q Your Department issues licenses to these reef netters,  
2 is that right?  
3 A That is correct.  
4 Q Can you tell me what that license authorizes?  
5 A What that license authorizes?  
6 Q Yes.  
7 A Well, it authorizes them to operate a reef net at a  
8 certain location. They have certain locations fixed by  
9 law.  
10 Q The locations are fixed by law?  
11 A The reef net locations are fixed by law.  
12 Q Does the law specify what number of reef netters can  
13 occupy each one of those sites?  
14 A Well, in a particular setting only one operation can  
15 take place at a time.  
16 Q Well, let's try to be more specific. There is a reef  
17 net location near Lummi Island as I recall.  
18 A (Witness nods affirmatively.)  
19 Q And there may be ten or fifteen reef net boats operating  
20 on that site.  
21 A (Witness nods affirmatively.)  
22 Q Now, assuming they are all non-Indians, they would all  
23 have to be operating under licenses issued by your Depart-  
24 ment, isn't that right?  
25 A Yes.

1 Q Would you issue twenty licenses, or thirty licenses, or  
2 do you limit the number of licenses?

3 A I am going to have to let somebody else answer that one.  
4 I just don't know.

5 Q You don't know.

6 When you issue a license to an individual, does the  
7 license apply to a particular site within that general  
8 area, for example the Lummi Island reef net situation?

9 A I would have to again let somebody else answer that. My  
10 understanding is that there are some kinds of traditional  
11 rights, like down on the Columbia River, lower Columbia  
12 River. Drifts they call them there. My impression is,  
13 without having asked specifically about it, that a  
14 similar situation exists there. For instance, if Joe  
15 Doakes has operated his reef net right here for "X" num-  
16 bers of years, nobody else tries to pre-empt it.

17 Q Do you have a record of which Joe Doakes has operated in  
18 which location?

19 A I don't know if there is any such record, but our people  
20 have knowledge of where the individual fishermen fish.

21 Q Your staff?

22 A Yes.

23 Q Who on your staff would be the person most familiar with  
24 this situation?

25 A I suppose the Patrol.

1 Q I am talking about the issuance of licenses.

2 A Well, as I say, my guess is that the Patrol which patrols  
3 the area might be best informed there, but that is just  
4 my opinion.

5 Q Here in Olympia, would Mr. Lasater or anyone else in the  
6 Department that you would name be the person most  
7 familiar with --

8 A Well, he would be much more familiar with it than I, yes.

9 Q All right. Do you know whether you will issue a reef  
10 net license to anybody who comes in to apply for one, or  
11 do you insist that he show you some property right first?

12 A Well, my general philosophy has been that when anybody  
13 comes in for any kind of a fishing license he is entitled  
14 to get it.

15 Q Are there any regulations of your Department pertaining  
16 to the issuance of reef net licenses that would restrict  
17 the number or --

18 A If there is it is something, some regulation that was  
19 adopted prior to my time and I am not knowledgeable.  
20 That is a question that has never come up to me since I  
21 have been here.

22 Q Do you have any idea how many reef net licenses were  
23 issued last year?

24 A To pick one out of the air, less than a hundred.

25 Q Are there any reef net sites around the State other than

1 those up around Lummi Island and North Sound?

2 A Well, I don't know the exact location of the sites, but  
3 there are sites aside from the Lummi Island one, or ones,  
4 I should say.

5 Q I see. Do you know offhand whether the Quillayutes or  
6 Quinaults are operating any commercial trollers or gill  
7 netters off shore?

8 A Quillayutes?

9 Q (Counsel nods affirmatively.)

10 A It seems to me they operated off shore. I don't know  
11 of any -- the Quinaults? Well, I haven't had any dealing  
12 with the Quinaults to know whether they do or not, but  
13 I have had with the Quillayutes.

14 Q And have you set any special seasons for the Quillayute  
15 trollers or gill netters operating off shore?

16 A The trollers generally operate when the season opens, say  
17 April 15th, or June 15th, depending on the species, and  
18 my recollection is as far as the Quillayutes are con-  
19 cerned fishing off shore, well, the only thing that we  
20 have done is try to close an area to other trollers. I  
21 think we did that in one or two years.

22 Q You sit as representative of the United States as I under-  
23 stand it on the International Pacific Salmon Commission,  
24 is that right?

25 A Yes.

1 Q In that function, do you make a presentation to that  
2 Commission about Indian fisheries and Indian treaty  
3 rights?

4 A We have, especially with respect to the Makahs, and the  
5 last one was proposed to them on January 29th of this  
6 year. I was not present because I was ill and couldn't  
7 make the meeting, but I saw the proposal that the three  
8 American Commissioners had drawn up, and it was pre-  
9 sented to the three Canadian Commissioners, and motion  
10 was made and seconded that it be approved, but the  
11 Canadians either voted No or refrained from voting, and  
12 there must be agreement before anything can be effective.  
13 I told them at the next meeting when I was able to be  
14 there that my intentions at that time were to give the  
15 Makahs some additional fishing time as I had the last  
16 year and the year before.

17 Maybe I better explain it this way: The Salmon  
18 Commission recommends regulations to each country,  
19 Canada and the United States, and then each country so  
20 adopts, and that means that the State of Washington adopts,  
21 and the regulations might provide for say two days of  
22 fishing in the Straits where the Makahs fish, and under  
23 the Commission proposals the Makahs could only fish two  
24 days or otherwise they would be in violation of the  
25 regulations that we adopt, so I simply told the Canadian

1 Commissioner that my intentions were to give them more  
2 days of fishing than say the two that were recommended  
3 by the Commission.

4 Q And that motion was not accepted?

5 A No, it was not.

6 I have told the Makahs that we would get together  
7 before the season started and we would take some kind of  
8 unilateral action as a State.

9 Q Has the United States State Department accepted the  
10 position that the United States has an internal treaty  
11 obligation to Indians which must be put forward at these  
12 Commission meetings?

13 A We have some guidelines sent to us by the State Depart-  
14 ment, the U. S. Commissioners, which give recognition  
15 to the Indian treaty fishing rights.

16 Q This Commission is concerned almost exclusively with the  
17 Fraser River Sockeye run, isn't it?

18 A Yes, Sockeye and Pinks.

19 Q Sockeye and Pinks.

20 What other Indian groups that you know of fish on  
21 that same run?

22 A Well, the British Columbia Indians fishing on it each  
23 year take up to a hundred and fifty thousand fish.

24 Q Isn't it true some of that run moves past the usual and  
25 accustomed ground of the Lummiis?

1 A Oh, yes. I thought you had reference to the Canadians.  
2 How many they take I can't tell you offhand.

3 Q Have the Lummi ever contacted you about representing  
4 their interests or giving them any additional time under  
5 the International regulations?

6 A They haven't contacted me. They might have contacted  
7 somebody on my staff.

8 Q Do you know what form the Lummi fishery takes in this  
9 fishery, that is, it is an off-shore troll, or it is an  
10 off-shore net fishery, isn't it?

11 A Net fishery, and I am not sure, but one of those tribes  
12 had a trap, too, and I don't know which one it is.

13 Q With reference to the Lummi fishery, has there been some  
14 conflict between your Department and the Lummi Tribe  
15 about the opening of the north part of Bellingham Bay  
16 to commercial fishing?

17 A I will have to refer that to one of my people, more  
18 specifically Dennis Austin, who has been assigned by us  
19 to be the shall I say liaison between the Indian Tribes  
20 and our Department, and either he or Al Lasater would  
21 know about that. I am not familiar with it. I have  
22 heard some discussion, but I don't know the specifics of  
23 it.

24 MR. ZIONTZ: I have no further  
25 questions.





1 MR. GINGERY: I apologize, Mr. Getches,  
2 but I wonder if we could get at this time an estimate  
3 of the time remaining, and the purpose is that for  
4 humanitarian reasons we have to permit the staff to  
5 take their lunches out of the box which is back there.

6 (WHEREUPON, there was  
7 an off-the-record  
8 discussion.)

9 (NOON RECESS)

10  
11  
12 Q (By Mr. Getches) Mr. Tollefson, how does the Department  
13 of Fisheries determine the number of fish that will  
14 reach the State of Oregon over and above escapement needs?

15 MR. MCGIMPSEY: You mean the State of  
16 Idaho?

17 MR. GETCHES: What did I say?

18 THE WITNESS: Oregon.

19 A Well, on the Columbia there are some dams, and there are  
20 some fish-counting stations, so they can count every  
21 doggone fish for instance that goes over Bonneville, and  
22 based on the experience of years, well, just picking a  
23 figure of a hundred thousand fish going over Bonneville,  
24 then we would know that thirty-two or thirty-four or  
25 thirty-five thousand are going to go over Ice Harbor Dam.

1 That was kind of the measuring point over the years.  
2 Try to get an escapement over Ice Harbor from thirty-two  
3 to thirty-four thousand. As I said earlier, that has  
4 been increased, and I can't tell you the exact figure  
5 now. It is something we don't have on the Sound. We  
6 don't have any ~~tanks~~ <sup>dams at which</sup> to count, and it is a chore to count  
7 fish that you can't see.

8 Q How do you arrive at the figure for the number of fish  
9 that you hope to have reach Idaho over and above the  
10 amount needed for escapement, that is, the amount that  
11 Idaho will use as a sport fishery?

12 A That is included in the number. When I was first on  
13 this Compact that was a number that Idaho said they  
14 would like to have over Ice Harbor Dam, that that would  
15 take care of the spawning requirements plus a sport  
16 fishery.

17 Q So it is by agreement then?

18 A Well, gentlemen's agreement. But they revised their  
19 figures when they began having dam problems up there,  
20 other dams, and when the nitrogen problem came along on  
21 the Columbia they wanted us to increase that, as I say,  
22 escapement over Ice Harbor, just to insure that they got  
23 an adequate number of spawners and also had a sports  
24 fishery.

25 Q If you had a particularly short run one year, and by

1 "short" I mean --

2 A Numbers.

3 Q (Continuing) short in numbers, how would the Idaho  
4 portion abate? Would that abate before or after the  
5 portion allocable to Washington fisheries?

6 A Well, we don't know when a run is going to be small until  
7 it comes in, except in those cases where the estimates  
8 are low. Our biologists before the fish ever come in  
9 have an estimate of the size of the run. I don't think  
10 since I have been here we have had a run so small that  
11 we had to worry about that aspect of it.

12 Another thing, on the Columbia River, we don't per-  
13 mit a fishery until "X" numbers of fish get over Bonne-  
14 ville. Quite a few fish get over Bonneville before we  
15 permit any fish, Indian or non-Indian. Hank Wendler, who  
16 has a prime responsibility for Columbia River runs,  
17 could explain that.

18 Q In managing the Department of Fisheries I take it from  
19 the testimony you have given this morning that an impor-  
20 tant job is to take into account the interests of sport  
21 fishermen, is that not right?

22 A Sport fishermen?

23 Q Yes.

24 A Well, I didn't mean to leave that impression. The sport  
25 fishermen I thought I said this morning were not a great

1           problem to us because they don't catch great numbers of  
2           fish. They can fish seven days a week for six months  
3           and not catch as many fish maybe as the net fishery in  
4           half -- I say half the time; less than that. So there  
5           never has been a real -- except there have been occasions,  
6           and one down on the Puyallup River, when we closed the  
7           sport fishery on the Puyallup River to make sure that  
8           there was fish for the Indians, but --

9   Q       It has presented no problem administratively for you to  
10       manage the fishery resource for the two user groups,  
11       however, the sport fishermen and the commercial people?

12   A       No, no problems since I have been here, just simply be-  
13       cause we haven't felt, except in exceptional circumstances,  
14       that the sport fishery could take enough fish to really  
15       hurt a run.

16   Q       What is the reason that one species of fish, the Steel-  
17       head, is managed by another Department than the Department  
18       of Fisheries? If you know the reason.

19   A       Well, State law back in the early thirties designated  
20       the Steelhead as a game fish, and as such it was under  
21       the jurisdiction of the Game Department.

22   Q       What was the reasoning behind that? If you know.

23   A       No, I wasn't here at that time. I expect it was a desire  
24       on the part of the Steelheaders, who are a very aggressive  
25       group, to protect one of their favorite sport fish and

1 see that it wasn't caught in the commercial fisheries.

2 Q Do you know of any biological reason that that decision  
3 would have been made?

4 A I wasn't here at the time. I -- (witness shakes head  
5 negatively). Anything I would say in that regard would  
6 be a guess. We have not managed steelhead, so I have  
7 had no experience with it at all, except the problems  
8 that are attendant upon the commercial fishermen catching  
9 some in their nets, but on the biological side, no.

10 Q Are there any administrative reasons that you know of  
11 that support that determination that the Legislature  
12 made, based on your knowledge of fisheries management  
13 here in this Department?

14 A I wouldn't even hazard a guess as to why the Legislature  
15 did what they did, except the one I mentioned. I would  
16 assume that the Steelhead group got to their Legislators  
17 and urged them to introduce and support such a bill as  
18 was finally approved.

19 Q If the Legislature determined to put Steelhead management  
20 within the Fisheries Department, would this Department  
21 be capable of managing the resource?

22 A Well, that is calling for a biased answer. The answer is  
23 yes.

24 (Laughter)

25 Q Do you see any problems with splitting the regulatory

1 authority over sport fishing as between the Fisheries  
2 Department and the Game Department?

3 A I am not sure that I understand that fully. We do have  
4 as far as sport fishing is concerned two agencies regu-  
5 lating. We regulate the food fish sport fishery, and  
6 Game regulates steelhead, plus other game fish like trout  
7 and perch, you know, freshwater species. We have had  
8 some problems but I think we would have the problems if  
9 all the fish were in one agency. For instance, there is  
10 a kind of a conflict between steelhead and Coho, let's  
11 say, in the same streams together, and those problems  
12 would still exist even if all the sports fish were in  
13 one agency.

14 Q Is there close cooperation between the two Departments  
15 with respect to fish planting and propagation programs,  
16 exchanges of data, coordinating seasons and so forth?

17 A Well, my own impression, after eight years of experience  
18 here, is that we have a good but not perfect relationship  
19 with the Department of Game. We try to cooperate. For  
20 instance, we have used their tank trucks to haul our fish  
21 when they weren't using them and that sort of thing, and  
22 I am not too sure but what we have used some of their  
23 rearing ponds on occasion when they weren't using them.  
24 We can't do very much of that because they are rearing  
25 trout and steelhead and we are rearing salmon, but there

1 might be periods and there have been periods when we  
2 have been able to use a truck or two, and my recollection  
3 if it is accurate is we have even used a rearing pond or  
4 two.

5 Q Are there exchanges of proposed regulations before they  
6 are adopted as between the two Departments in order to  
7 obtain comments of --

8 A Yes. Once in a while we forget to do it, and we have  
9 trouble, but normally they let us know what they propose  
10 and then we will let them know what we propose so that  
11 we don't have conflicts in our separate sports regu-  
12 lations.

13 Q Then the other Department that receives notice of the  
14 first Department's rule-making will comment on it and  
15 offer suggestions?

16 A Well, if a Game Department's proposed sports fishing  
17 regulation raises a question in the mind of somebody in  
18 our Department, we will call them on the telephone and  
19 say, "Wait a minute," you know, and they will do likewise.

20 MR. GETCHES: I don't have any further  
21 questions.

22  
23 EXAMINATION

24 BY MR. HOVIS:

25 Q Mr. Director, you were talking about the clients you

1 have, and also allocation is more or less in a way  
2 determined by political and social factors --

3 A Well, I think I meant to indicate that there were politi-  
4 cal and social factors involved, but --

5 Q Yes. Well, if I could go through with those for a  
6 moment. I mean in regards to who your clients are. You  
7 have been talking somewhat about the relations with  
8 Canada for example, and with regard to some allocation  
9 this Department is governed somewhat by international  
10 treaty?

11 A The Commission as such has its guidelines in the proto-  
12 col and in what we call our terms of reference, and at  
13 no point up until the last year have the terms of reference  
14 or the protocol made any reference to Indian fishing.  
15 For the last couple of years or more the Bureau of Indian  
16 Affairs and, well, Mr. Dysart to be specific, with his  
17 Department have worked together to come up with some  
18 proposed guidelines which the State Department could  
19 approve, and we fussed with that, and I say "we" because  
20 we did have a number of meetings with Mr. Dysart and  
21 B.I.A. people, they wanted to find out if we could operate  
22 under these suggested guidelines, et cetera, et cetera,  
23 and finally the guidelines that Mr. Dysart and his people  
24 proposed were perfectly acceptable to the American  
25 Commissioners, and when the State Department learned that -



1 and incidentally we were in contact with the State Depart-  
2 ment throughout - when they learned that the guidelines  
3 were workable and posed no real problems for the American  
4 Commissioners, well, the State Department adopted them  
5 and then sent them to us and said, "These are the guide-  
6 lines that you are to operate under," and the key, of  
7 course, was that we as American Commissioners should  
8 seek in our activities and position on the Salmon Commission  
9 to protect the Indian treaty fishing rights and to support  
10 them, and it is for that reason that we have proposed to  
11 the Canadian Commissioners that the Commission as such  
12 provide extra fishing time for the Makahs, and as I say,  
13 the Canadians would not accept that, so now I have got  
14 to act unilaterally, and hope we don't have a war.

15 (Laughter)

16 Q Well, my point of asking the question, Mr. Director, is  
17 for the purpose of pointing out or finding out that your  
18 Department has some limitations on its share and some of  
19 what reaches the Puget Sound in regards to international  
20 law --

21 A Well, whenever the Salmon Commission has jurisdiction  
22 it has jurisdiction over the whole of the Strait of Juan  
23 de Fuca plus the convention area, which runs through the  
24 Strait, and the lower line runs generally as far as  
25 across the Sound. The upper line runs up to Point Roberts

1 and encloses the San Juan Islands, so it has absolute  
2 jurisdiction at a time when some of our fish are coming  
3 through. When I say "our fish" I mean other than Fraser  
4 River Sockeye and Pinks. We have to ask the Commission  
5 to accommodate our problems by maybe letting us fish or  
6 letting our fishermen fish in an area that while it is  
7 in Convention area it isn't going to hurt the Sockeye  
8 and the Pink run. In other words, there may be some  
9 Chinook coming in or some Coho that don't go up the  
10 Fraser River and we would like to crop them when they  
11 are in our waters and they accommodated us.

12 Q So you have those international agreements for your  
13 guideline in the management of the fishery within the  
14 Puget Sound area that you must take into consideration?

15 A We must take them into consideration. As a matter of  
16 fact under the treaty we must adopt the recommendations  
17 of the Salmon Commission as our own.

18 Q Then as other guidelines, exterior guidelines in the  
19 management problem, as to who is to harvest the fish,  
20 outside of the Department, you have some legislative  
21 guidelines as to user groups?

22 A Well, the Legislature, of course, and we are a creature  
23 of the Legislature, has a right to pass laws saying we  
24 can or cannot do this or that, and, yes, we have some  
25 guidelines there.

1 Q And as I heard you discuss a few moments ago in regards  
2 to Idaho, you have some cooperation guidelines in regards  
3 to accommodating someone who has a spawning area within  
4 the jurisdiction, in a fairness guideline more or less  
5 I presume?

6 A Yes, there is no legal imposition on us to see to it  
7 that certain numbers of salmon go up to Idaho spawning  
8 areas but we are realistic and if we don't play fair  
9 with Idaho, Idaho can be unfair to us and could hurt the  
10 run. If they are not going to get enough fish for a  
11 sport fishery up there, they might just as well fish out  
12 the fish that do come there and that will destroy the  
13 run or impair it severely. It is just a matter of fair-  
14 ness.

15 Q Then by your adoption of the decision in Belloni and the  
16 guidelines in the Belloni decision, a U.S. versus Oregon  
17 case, you have some judicial guidelines in regards to  
18 the operation of your management system within the Depart-  
19 ment as well?

20 A Yes, we do, not only the Belloni decision but the Puyallup  
21 decision and a few others.

22 Q Yes. But taking away these exterior controls, outside  
23 of the Department, exterior factors and elements that I  
24 have discussed, wouldn't it be better from a biological  
25 point of view for a management program, that is, if the

1 permitted landings were taken within the streams them-  
2 selves?

3 A You mean no commercial fishing on salmon until after  
4 they reach the stream?

5 Q Yes, from a purely management point of view, to allow  
6 this Department to adequately manage the resource and  
7 more efficiently manage the resource, wouldn't it be a  
8 better thing to have the permitted landings taken within  
9 the streams on the way to the spawning beds?

10 A Well, we would have a kind of a chaotic situation it  
11 seems to me. I don't have authority to refuse a commercial  
12 fishing license to anybody, and if you have two thousand  
13 gill netters for instance who are going to be permitted  
14 to fish in the river when there is not room enough for  
15 fifty, or whatever the number is, well, you see what I  
16 mean?

17 Q I am with you. That is the reason I pointed out in all  
18 fairness to you that there are many of these other factors  
19 that are not within your control, you know, not within  
20 this Department's control. But excluding that, excluding  
21 these other directions that you have from the Legis-  
22 lature, international law and from the Courts, and also  
23 in cooperation with people who are in control of the  
24 spawning grounds, wouldn't it make your job much easier  
25 if the permitted harvest was taken in-stream from these

1 tributaries that feed the --

2 A Well, I am excluding the problem of deciding who is  
3 going to be able to fish in this stream and who is going  
4 to be able to fish in that stream. It would be a very  
5 simple matter, we wouldn't have to worry about the fish  
6 coming down through the Sound, but --

7 Q Well, let's go with my hypothetical for a minute, Mr.  
8 Director, if I could. Let's assume that the Department  
9 itself was to take all the harvest, not only the regu-  
10 lating agency but the harvesting agency as well --

11 A That would simplify matters.

12 Q It would work out a better conservation scheme, would  
13 it not, or make your management easier?

14 A Well, I am just giving you my views on the spur of the  
15 moment. I haven't thought it through. My people may  
16 have thought something like that through and have a  
17 different and more intelligent response. But that would  
18 certainly be a simple arrangement, for us to be the  
19 taker of the fish via a trap or whatever and sell it and  
20 be the merchandiser. There would be probably attendant  
21 problems that I don't think of now, but from a purely  
22 biological standpoint that probably would be very easy,  
23 or relatively easy.

24 Q Now, if I might go one more step with you. When you are  
25 to control the numbers and the percentage and the portion

1 of the harvest concerning enforcement purposes, wouldn't  
2 it be easier for you to control the harvesters if they  
3 were in one location, and let's say at the mouths of the  
4 streams or in-stream or on an in-stream fishery?

5 A If there were other harvesters than the State?

6 Q Other harvesters than the State.

7 A I fear that we would have a real chaotic situation with  
8 fifty gill netters saying they want to fish at the  
9 mouth of the Nisqually and there's only room for five.

10 Q I can realize the political and social problems that you  
11 might have --

12 A This would be a legal problem, too. We have no gear  
13 limitation laws in the State of Washington. We can't  
14 tell any fisherman where he can fish. We sometimes can  
15 tell him where he can't fish, when we have closed areas,  
16 but that applies to everybody in a class. For instance,  
17 we can't say one hundred gill netters, and pick them  
18 out, can't fish this closed area, we have to say that to  
19 all of them, that all the gill netters can't fish in  
20 that closed area, and if the situation that you are  
21 suggesting should come about, I wouldn't know how to --  
22 well, I wouldn't have any authority under present law  
23 to just pick five gill netters and say that they are the  
24 five that can fish at the mouth of the Nisqually, and  
25 here's another five at the mouth of the Puyallup. Under

1 present law they could all go to the one stream if they  
2 wanted to.

3 Q Well, that is a problem you see with the hypothetical  
4 situation that I am presenting as determining --

5 A I haven't said anything about fish quality either, and  
6 the Indians as well as other fishermen know that nor-  
7 mally when the fish get into the freshwater stream they  
8 are not the same quality as when they enter the Puget  
9 Sound. That is one of the complaints we have had from  
10 the Indians on the Columbia River. They say the better  
11 quality of fish are caught in the lower river and not  
12 up above Bonneville.

13 Q All right. Now, we have got the fish quality reserva-  
14 tion, and you have the reservation about allocation, you  
15 know, who is to make the taking in-stream; are there any  
16 other problems that you yourself can see? Perhaps your  
17 staff may see more, and I wish to ask them this question,  
18 as to in-stream harvesting of the allowable harvest.

19 A There may be some. I just haven't, as I said, given  
20 that any thought, and you would probably get a better and  
21 more intelligent response from somebody who has been  
22 with the Department longer and is in the biological area,  
23 in the management area of fish themselves.

24 Q If the Courts were to direct, or anyone were to direct  
25 that a particular group was the one to make the harvest,

1 and this group had the authority to make allocation  
2 among that group, would that be a possible way of removing  
3 your concern about making the allocation about who is to  
4 be in the river?

5 A Well, in the first place we would abide by and would have  
6 to abide by the decision of any Court, I mean of any  
7 Court that had jurisdiction. If the Court told us or  
8 gave us some formula for determining which gill netter  
9 shall fish in which stream, we would follow the formula  
10 and do the best we could. We might not agree with this  
11 form of management, but that is what we would do.

12 Q Well, I wanted to see if there were any problems with  
13 the management if someone would give you those guidelines  
14 as far as priority is concerned.

15 A Well, I expect there would be some problems that I don't  
16 think of right now.

17 Q That you don't think of. I will ask your staff.

18 A Any time you manage fish you have got problems, you have  
19 got fish and people problems.

20 (Laughter)

21 Q Sometimes I imagine, Mr. Director, that you think you  
22 have more people problems perhaps than fish problems.

23 A Well, I think you are right.

24 (Laughter)

25 Q Do you maintain a legislative program, do you, within



1           this Department?

2   A       Maintain a legislative program?

3   Q       Yes, do you have anyone assigned as a legislative repre-  
4           sentative to answer the questions for the Legislators  
5           and so forth?

6   A       Oh, yes, whenever the Legislature is in session, we  
7           assign generally two men to be liaison between our  
8           Department and the Legislature and just to supply infor-  
9           mation to the Legislators who ask for it. We have done  
10          that for years. This year we have some limitations  
11          because of Initiative 276.

12                 I guess that is the right number; 276?

13   Q       That is the right number.

14   A       And we took the view immediately that we were lobbyists,  
15           you know, and have to make reports, et cetera, et cetera,  
16           and recognizing our problem we received a number of  
17           letters from individual Legislators inviting our people  
18           to come to see them whenever they wanted to. I think  
19           there was some legislative action at the outset, too,  
20           that kind of prohibited us from lobbying up there.

21   Q       In the course of the time you have been here since '65,  
22           have you presented Departmental requests in regards to  
23           either conservation measures or allocation legislation  
24           to the Legislature, to the various committees, that you  
25           drafted, or --

1 A Are you asking me if we have asked the Legislature to  
2 determine how many fish should go to the sportsmen, how  
3 many fish should go to the Indians, commercial and --

4 Q Either allocation or conservation.

5 A No, we have not.

6 Q Getting away from the allocation problem and also the  
7 quality problem, if you were to be permitted to instigate  
8 an in-stream management program, without the allocation  
9 that this Department must necessarily make under inter-  
10 national law, judicial decisions, directions from the  
11 Legislature, wouldn't that precise control that you would  
12 be able to maintain in-stream allow for the maximum  
13 spawning escapement to be arrived at almost every year,  
14 and also allow you to fluctuate almost immediately with  
15 the change of conditions?

16 A Well, on the face of it it sounds easy, but this is  
17 really kind of a biological question that I don't feel  
18 competent to respond to, Mr. Hovis.

19 Q Well, you have had some experience in regards to the  
20 Fraser River for example, the joint management up there?

21 A Yes.

22 Q They allocate almost daily, do they not, as far as allo-  
23 cation is concerned?

24 A Well, they keep a daily count of fish landed at indexed  
25 places, and years of experience have shown that that is

1 fairly accurate. If on a given morning it looks like  
2 the Canadians are two hundred fifty thousand fish ahead  
3 of the Americans, then we will knock a day maybe off -  
4 I am using this as an illustration - we would take a  
5 day away from the Canadians to give the Americans a  
6 chance to catch up, and that is true in the reverse as  
7 well.

8 Q Isn't it true that when you have different users groups  
9 that among people in the fishing management business  
10 the Fraser River is considered to be a well-managed  
11 situation in that regard?

12 A Well --

13 Q In regard to escapement?

14 A Yes, it has been well-regarded by fishery people.

15 Q And also in regards to allocation?

16 A Yes. We have been as high as a couple of hundred thou-  
17 sand off for an uncontrollable reason. For instance,  
18 fish traveling through the San Juans might not take  
19 their normal course, which happened here two years ago.  
20 They swung way over on the Canadian side, and our fisher-  
21 men couldn't get them, and so we wound up a couple hun-  
22 dred thousand short. But that was kind of a freak situa-  
23 tion. Other than that I think the Commission over the  
24 years has done a good job in the division-of-catch area.

25 Q And almost since your connection with it, isn't it a

1 fair statement to say that there have been both a  
2 maximum harvest and a maximum escapement goal reached in  
3 that area almost every year?

4 A There will be some exceptions because they have inter-  
5 mingled fish in the sense that the Sockeye aren't all  
6 going to the same tributary, and the Sockeye destined  
7 for one tributary may have been overfished during the  
8 fishery you see, and in that case we will have an under-  
9 escapement, but in most cases an adequate escapement.

10 Q Thank you very much for your time.

11 A I should point out that the Fraser River fishery, well,  
12 it doesn't have the problems that we have in the Sound.  
13 I manage, or the Department manages the Puget Sound  
14 fishery -- well, I also help manage the Fraser River  
15 fishery, and that is a more simple problem than ours.

16 Q I think that was just my point, Mr. Director, that the  
17 closer you can get to the mouth of the river for the  
18 management of the fishery, the easier it is for the  
19 management agency to reach its goals.

20 A Well, that Fraser River fishery is fished upon all through  
21 the Strait of Juan de Fuca and all through the San Juans  
22 and Northern Puget Sound. There is a river fishery,  
23 which is the last resort, or not a last resort but the  
24 final fishery on the runs is in the river itself.

25 Q As a matter of fact you could improve the management of

1 the Fraser River fishery by moving all your fishery to  
2 an in-river fishery, could you not?

3 A Well, you would have the same chaotic conditions we  
4 would have down here, all the Canadian gill netters and  
5 purse seiners and American gill netters and purse seiners  
6 in the river. You have got to be practical.

7 Q I am presuming in saying it would be a better management  
8 that both the Canadians and the Americans would have the  
9 capabilities of determining who would take their per-  
10 centage of the harvest within that river.

11 A Well, as I say, Mr. Hovis, on the face of it it sounds  
12 quite simple, but I am not sure but that there would be  
13 problems in connection with it which I don't think of  
14 now.

15 Q I see. Thank you very much for your time again.

16 THE WITNESS: Could I just interrupt  
17 to say that I must be or should be before the Legislative  
18 committee at two.

19 MR. PIERSON: Yes.

20 MR. MCGIMPSEY: What time would you  
21 like to leave, Mr. Director?

22 THE WITNESS: In about ten minutes.

23 MR. PIERSON: Quarter of for sure.  
24  
25

1 FURTHER EXAMINATION

2 BY MR. PIERSON:

3 Q Just to speak for a moment, Mr. Tollefson, about the  
4 Fraser River example, and you were speaking about, well,  
5 I guess it was a hypothetical where the Canadians had  
6 caught two hundred fifty thousand more fish than the  
7 Americans and you would try and knock a day off the  
8 Canadian season to let the Americans catch up to --

9 A Or even a half-a-day; depending.

10 Q What standard is it that tells you you should do that?  
11 Is there some standard as to a level of share in the  
12 convention?

13 A Oh, the treaty, the treaty and the convention provide  
14 that the catch shall be divided as equally as possible  
15 between the two nations.

16 Q And however roughly your regulation of the run is as it  
17 proceeds through, it is an attempt to achieve that?

18 A That is right.

19  
20  
21 EXAMINATION

22 BY MR. DYSART:

23 Q Mr. Tollefson, in answer to one of Mr. Getches' questions  
24 you stated that there were some instances of problems  
25 between Steelhead and Coho in the same stream together;

1 is this a biological problem of compatibility of the  
2 two species in the same river, or harvesting?

3 A As I understand it it is a biological thing.

4 Q Is there any interdepartmental mechanism between you and  
5 the Game Department for determining which species will  
6 be given predominance in a stream where there is this  
7 compatibility, or whether a stream will be used primarily  
8 for salmon production or for Steelhead production?

9 A Well, let me say I have never discussed this subject  
10 with the Director of the Game Department. This subject  
11 would be discussed at the staff level. I would think  
12 that my staff would be better able to answer that than  
13 I.

14 Q I see.

15 MR. DYSART: That is all.

16  
17  
18 EXAMINATION

19 BY MR. McGIMPSEY:

20 Q Mr. Tollefson, directing your attention to some questions  
21 that were asked you by Mr. Ziontz regarding change of  
22 policy in the Department of Fisheries, and whether that  
23 meant a cutting of the number of days in a season for  
24 commercial fishermen in order to enable the Indian fishery  
25 to fish more, management of the fishery to allow an Indian

1 a separate Indian fishery, recognized Indian fishery,  
2 does that entail anything other than just the taking, the  
3 amounts taken by each of the different fishery interests?

4 A Well, I am not sure what you are getting at, but we do  
5 a variety of things to try to bring more fish to the  
6 Indians. A stream like the Nisqually, we plant juvenile  
7 fish in the Nisqually up above the Indian fishery, and  
8 those plants are brought from some hatchery that is not  
9 on the Nisqually, and since we have given greater recog-  
10 nition to the Indians as a client - incidentally that  
11 word is not ours, this is a legislative term - we have  
12 increased our plants on the Nisqually. There was a big  
13 log jam on a tributary of the Nisqually beyond which fish  
14 could not go to spawn, so we cleaned that out, and this  
15 was designed to bring more fish back to the Nisqually  
16 River. Water flows in the Nisqually are important just  
17 as in other streams, and one of the problems has been  
18 the fluctuation in the water flow due to the City of  
19 Tacoma's power plant up the river, and so we have been  
20 negotiating with Tacoma people to not have this extreme  
21 fluctuation. That is designed to make the habitat better.  
22 We also have been negotiating with the City of Centralia,  
23 which takes water out of the river and has some kind of  
24 a water right, to try to get relief from them when we  
25 need it. For instance, when the river is low we don't



1 want them to take too much water. These are illustrations  
2 of things we try to do and are doing to bring more fish  
3 back to a particular river. In the case of the Nisqually  
4 it is designed to bring back more fish to the Nisqually.  
5 Appreciate, of course, that the fish will be running  
6 through the other fisheries as well.

7 Is that what you had in mind?

8 Q I was interested in other means that you use to regulate  
9 management of fish other than just simply taking of fish.  
10 I believe Mr. Ziontz was making the point that to increase  
11 one fishery you might have to decrease the taking of  
12 others, and I think you answered the question that that  
13 was the only way that one could do that. You have also  
14 indicated that on the Columbia River at least with  
15 regards to the Idaho fishery for sportsmen that a certain  
16 number of fish are allowed to escape for a fishery and  
17 for purposes of spawning, and I believe you indicated  
18 that the determination of those numbers could be made  
19 because of dam counts, is that correct?

4 20 A That is correct.

21 Q Is that same method applicable to the Sound, the Puget  
22 Sound region?

23 A No, we don't have any dams over which fish go through  
24 fishways and you can see them with your eye and count  
25 them one-by-one, we don't have any such thing on the

1 Sound. No, it is an entirely different situation.

2 Q So in determining the fair share for Idaho fishermen it  
3 would not necessarily be analogous to say that the fair  
4 share for a fishing tribe on the Sound, on a river that  
5 comes to the Sound, that is, it should be determined by  
6 a number count?

7 A I don't have any number counts like we have on the  
8 Columbia River.

9 Q Is that the reason that you used a period, a time period,  
10 trying to develop a fair share?

11 A Time period, days of fishing, well, we will close areas,  
12 you know, in the Sound sometimes to take care of some  
13 problems but it is not comparable, that is, the Sound  
14 management is not comparable to the Columbia River manage-  
15 ment in this respect, where we can actually count practi-  
16 cally every single fish.

17 MR. MCGIMPSEY: That is all the ques-  
18 tions I have.

19 MR. PIERSON: I wonder if I might just  
20 follow up on that last question you asked.

21  
22  
23 FURTHER EXAMINATION

24 BY MR. PIERSON:

25 Q Are there any pieces or types of data which you or your

1 biologists utilize, however roughly, to estimate the  
2 level of a run as it proceeds southward through the  
3 Sound?

4 A Well, the first thing that occurs is the estimate based  
5 on the escapement of the brood stock four years earlier,  
6 and the counts of the actual numbers of adults that  
7 spawn, sampling of the egg deposition, and observation  
8 of the out migration, and the water conditions at the  
9 time the eggs are in the ground, in the gravel, and when  
10 the migrants move, and then before the fish come in our  
11 people make an estimate, as I mentioned earlier. As an  
12 illustration, in 1973, we will have, well, just picking  
13 this figure, a four hundred thousand run of Coho, and  
14 we will get such a figure when we have our hearing on the  
15 Puget Sound regs in just the near future, maybe next  
16 week I guess is the date, or the week after. Then our  
17 people on the grounds, out in the boats and elsewhere,  
18 check the catches daily, and after a few days they are  
19 able to determine, not accurately, but they are able to  
20 pretty well determine whether the run is going to be around  
21 four hundred thousand, or is it going to be less or more,  
22 so they watch it daily. Of course, they don't see any  
23 fish at all to count, they just add up the fish tickets,  
24 check with the buyers at key points, and reach their  
25 estimates on the basis of that.

1 Q And it is much rougher than counting as they go over the  
2 dam?

3 A Oh, yes. You can't do it accurately. You might have  
4 to wait -- I can recall times when it seemed like the  
5 run was almost over before we suddenly discovered that  
6 it was a smaller run or it was a larger run.

7 Q When this rough estimate from catch indicates a lower  
8 run, do you have emergency regulations to protect it?

9 A Yes. We either take time away or add time, depending  
10 on the circumstance.

11 MR. PIERSON: That is all for me.

12 MR. GINGERY: I would like to ask the  
13 Director one question. It is kind of a summing-up  
14 question. I have been thinking of a number of things  
15 as you have asked questions and it seems to me necessary  
16 at least to ask it. It is a little long but it only  
17 requires a yes or no answer.

18

19

20

EXAMINATION

21 BY MR. GINGERY:

22 Q Now, I would ask you, Mr. Director, whether or not it is  
23 true to say that to achieve an increase in the Indian  
24 river net fishery participation merely to decrease the  
25 fishing efforts of the up-Sound commercial fishery is

1 only one available tool, and perhaps a somewhat crude  
2 tool to employ in this endeavor, but the recognition of  
3 such rights does in fact require the Department to under-  
4 take a careful retuning of the entire region, including  
5 such matters as you have just mentioned regarding pur-  
6 poseful stream improvements and special plantings in  
7 Indian fishery rivers?

8 MR. HOVIS: I am going to object to  
9 the form of that question.

10 THE WITNESS: I didn't hear what you  
11 said.

12 MR. HOVIS: I said I am objecting to  
13 the form of the question.

14 MR. MCGIMPSEY: You can go ahead and  
15 answer.

16 MR. HOVIS: I just wanted to put my  
17 objection on the record.

18 A Yes.

19 MR. GINGERY: May I in response to Mr.  
20 Hovis's objection point out that I have refrained all  
21 morning and into the afternoon from objecting to the  
22 form of questions propounded by Plaintiff's counsel which  
23 were improper in that they failed to appreciate the  
24 complexities of a region-wide fishery being managed for  
25 the purpose of achieving certain very specific results

1 at individual locations, each of which was entirely  
2 different, and many of the questions failed to appreciate  
3 this, and I felt it was necessary to somewhat remedy the  
4 forms of questions previously addressed to Mr. Tollefson  
5 to at least see that there was introduced into the  
6 record some recognition of the fact of the complexity of  
7 managing a region-wide fishery, that it does not always  
8 permit one to give yes or no answers to questions which  
9 are not sufficiently refined.

10 MR. HOVIS: If I might respond to  
11 that, we certainly feel like the Director has adequately  
12 covered the complexities, and I think we have appreciated  
13 his candor and informative testimony.

14 MR. CONIFF: I have no questions of  
15 the Director.

16 MR. MCGIMPSEY: No questions.  
17  
18  
19

20 *Thor C. Tollefson*  
21 THOR TOLLEFSON  
22  
23  
24  
25

C E R T I F I C A T E

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

4 I, EUGENE E. BARKER, Notary Public in  
5 and for the State of Washington, residing at Tacoma in said  
6 County and State, do hereby certify:

7 That the annexed and foregoing depo-  
8 sition upon oral examination of THOR TOLLEFSON was taken be-  
9 fore me and reduced to typewriting under my direction, said  
10 deposition upon oral examination being taken at Olympia,  
11 Washington, on the 29th day of March, 1973, being completed  
12 on said day.

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

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

23 I further certify that the above-named  
24 witness, before examination, was by me duly sworn to testify  
25 the truth, the whole truth and nothing but the truth;

1 I further certify that the right of  
2 said witness to read and sign the said deposition after the  
3 same was fully transcribed was reserved;

4 I further certify that said deposition  
5 upon oral examination, as above transcribed, is a full, true  
6 and correct transcript of the testimony of said witness, in-  
7 cluding all questions and answers, and all objections, motions  
8 and exceptions of counsel made and taken at the time of the  
9 foregoing examination;

10 I further certify that I am herewith  
11 securely sealing said deposition in an envelope, with the  
12 title of the above Cause thereon, and marked, "Deposition  
13 Upon Oral Examination of THOR TOLLEFSON," and causing the same  
14 to be delivered to the Clerk of the above-entitled Court.

15 IN WITNESS WHEREOF, I have hereunto  
16 set my hand and affixed my official seal this 1ST day  
17 of <sup>MAY</sup> ~~April~~, 1973.

18  
19 Regene L. Barker  
20 Notary Public in and for the State  
21 of Washington, residing at Tacoma.  
22  
23  
24  
25