

7-30-1973

Docket Entry 314 - Filed Deposition of Carl N. Crouse on behalf of Plaintiff

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

DEPOSITION OF CARL N. CROUSE

Olympia, Wash.
March 27, 1973

(Original)



Game Commission

Director / Carl N. Crouse

Assistant Directors / Ralph W. Larson
Ronald N. Andrews

Arthur S. Coffin, Yakima, Chairman
Harold A. Pebbles, Olympia
Elmer G. Gerken, Quincy
James R. Agen, LaConner
Glenn Galbraith, Wellpinit
Claude Bekins, Seattle

DEPARTMENT OF GAME

July 16, 1973

Ms. Irene Dahlgren
Court Reporter
Thurston County Courthouse
Olympia, Washington 98501

re: United States v. Washington
No. 9213 - USDC

Dear Ms. Dahlgren:

I am enclosing the original transcript of my deposition of March 27, 1973, in connection with the above-entitled case. Corrections to the transcript are as follows:

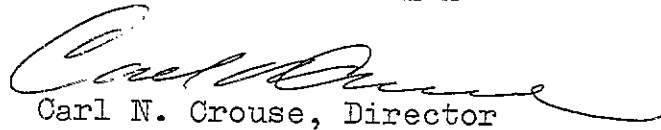
Page	Line	Change
6	17	Change "appointed" to "a point"
7	3	Change "Sociology" to "Zoology"
13	21	Change "perameters" to "parameters"
14	12	Change "one" to "run"
14	23	Change "Fisheries" to "Game"
15	24,25	Change "and levels of different runs" to "level of different year runs"
15 16	25 thru 3	Change "This year against last year being probably when we end up with the data being when that is showing a decided fluctuation, that year over the previous year." to "This year against last year when we end up with the data, it will probably show a decided fluctuation, this year over the previous year."

Ms. Irene Dahlgren
July 12, 1973
Page 2

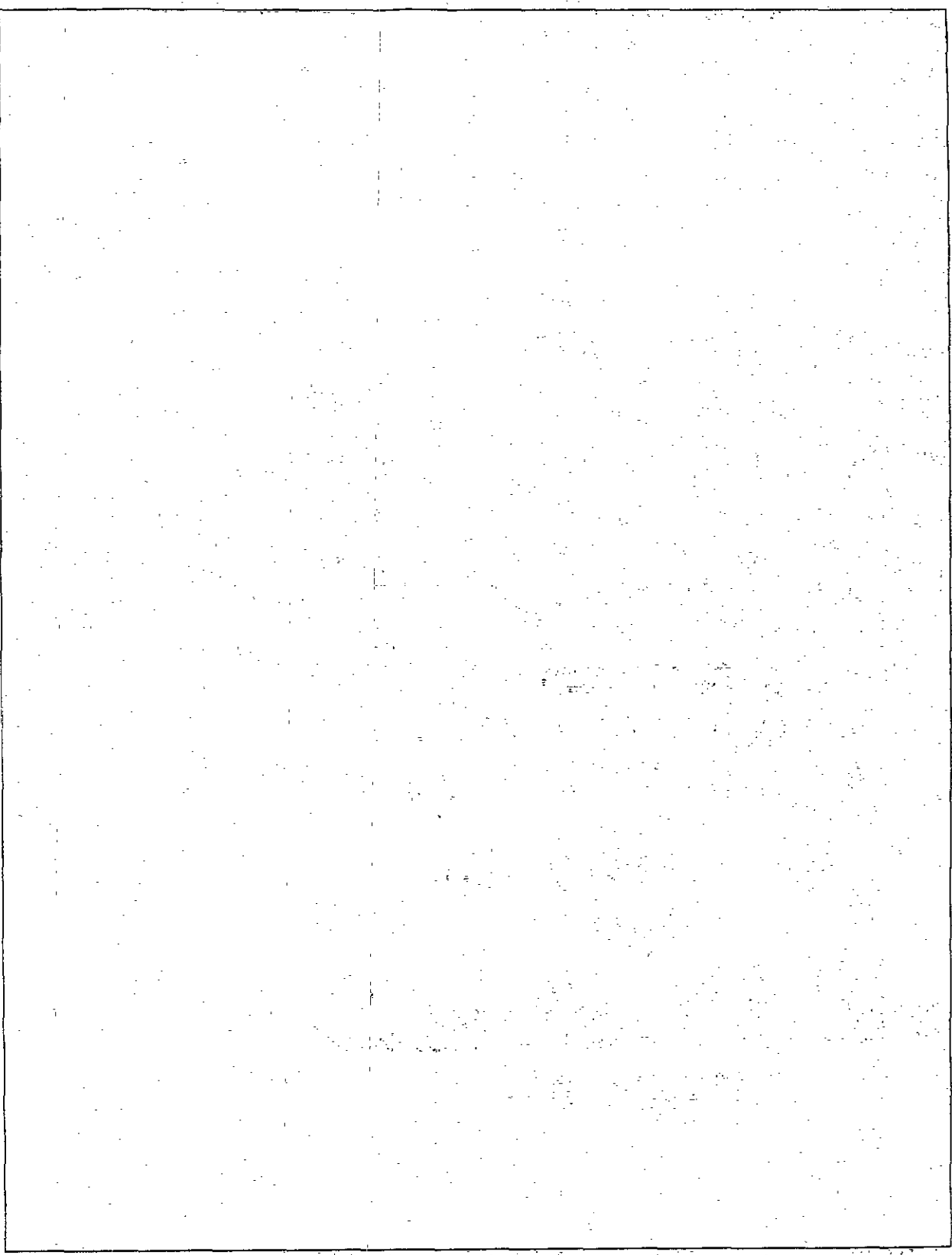
<u>Page</u>	<u>Line</u>	<u>Change</u>
19	20	Change "fees" to "these"
27	9	Change "Quinault" to "Quileute"
50	10	Change "operations" to "openings"
60	11	Change "1963" to "1973"
69	7	Change "collection" to "selection"
70	14	Change "seasoned members" to "season recommendations"
71	17	Change "seek" to "speak"
123	15	Change "The Nooksacks have a reservation." to "The Nooksack River has a reservation."
161	14	Change "in a ball" to "on the ball"
174	15	Add "written" between "report" and "in"; change "1940" to "1840"

Very truly yours,

THE DEPARTMENT OF GAME


Carl N. Crouse, Director

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1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON
3 AT TACOMA
4

5 UNITED STATES OF AMERICA,)

6 Plaintiff,)

7 QUINULT TRIBE OF INDIANS on its)
8 own behalf and on behalf of the)
9 QUEETS BAND OF INDIANS; MAKAH)
10 INDIAN TRIBE; ALUMMI INDIAN TRIBE;)
11 HOH TRIBE OF INDIANS; MUCKLESHOOT)
12 INDIAN TRIBE; SQUAXIN ISLAND TRIBE OF)
13 INDIANS; SAUK-SUIATTLE INDIAN TRIBE;)
14 SKOKOMISH INDIAN TRIBE; CONSOLIDATED)
15 TRIBES AND BANDS OF THE YAKIMA INDIAN)
16 NATION; UPPER SKAGIT RIVER TRIBE;)
17 STILLAQUAMISH TRIBE OF INDIANS; and)
18 QUILTEUTE INDIAN TRIBE;)

19 Intervenor-Plaintiffs,)

20 vs.)

21 STATE OF WASHINGTON,)

22 Defendant,)

23 THOR C. TOLLEFSON, Director, Washington)
24 State Department of Fisheries; CARL)
25 CROUSE, Director, Washington Department)
of Game; WASHINGTON STATE GAME)
COMMISSION; and WASHINGTON REEF NET)
OWNERS ASSOCIATION,)

Intervenor-Defendants.)

CIVIL NO. 9213

FILED IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

JUL 30 1973

EDGAR SCOFFIELD, CLERK

By *ell* Deputy

26 DEPOSITION UPON ORAL EXAMINATION OF CARL N. CROUSE
27

1 APPEARANCES :

2 FOR THE PLAINTIFF:

STUART F. PIERSON
Special Assistant to the
U. S. Attorney
Seattle, Washington

3
4
5 GEORGE D. DYSART
Assistant Reg. Solicitor
6 U. S. Department of the
Interior
7 Portland, Oregon

8 FOR THE INTERVENOR-
PLAINTIFFS, MUCKLESHOOT,
9 SQUAXIN ISLAND, SAUK-
SUIATTLE, SKOKOMISH and
10 STILLAQUAMISH TRIBES:

DAVID GETCHES, ESQ.
DOUGLAS NASH, ESQ.
Native American Rights Fund
1506 Broadway
12 Boulder, Colorado

13 FOR THE INTERVENOR-
PLAINTIFFS, MAKAH,
14 LUMMI, QUILEUTE TRIBES:

MASON D. MORISSET, ESQ.
3101 Seattle-First National
Bank Building
15 Seattle, Washington

16
17 FOR THE INTERVENOR-
PLAINTIFFS, YAKIMA
18 INDIAN NATION:

JAMES B. HOVIS
Hovis, Cockrill & Roy
316 North Third Street
P. O. Box 437
19 Yakima, Washington

20
21 FOR THE INTERVENOR-
DEFENDANT, WASHINGTON
22 STATE DEPARTMENT OF
FISHERIES:

23 WILLIAM M. GINGERY
EARLY R. MCGIMPSEY
Assistant Attorneys General
24 Department of Fisheries
Temple of Justice
25 Olympia, Washington

1 FOR THE INTERVENOR--
2 DEFENDANT, WASHINGTON
3 DEPARTMENT OF GAME:

JOSEPH L. CONIFF
Assistant Attorney General
Department of Game
600 North Capitol Way
Olympia, Washington

6 MR. PIERSON: This is a deposition
7 taken pursuant to notice in the case of United States
8 versus the State of Washington No. 9213, Western District
9 of Washington at Tacoma. As indicated in the earlier
10 deposition of Mr. Coffin, we have some ground rules
11 which we have been generally following. I think you
12 know them. We will try to make it as easy as possible
13 for you.

14 CARL N. CROUSE,

called as a witness by the
plaintiff, having been first
duly sworn on oath, testified
as follows:

17 DIRECT EXAMINATION

18 BY MR. PIERSON:

19 Q To begin with, Mr. Crouse, what is your age and where
20 do you live?

21 A Fifty-six. I live in Olympia.

22 Q Here in Olympia?

23 A Yes.

24 Q You hold a position with the Washington State Department
25 of Game?

1 A Yes.

2 Q What is that position?

3 A Director.

4 Q How long have you been in that position?

5 A Since July, 1970.

6 Q Prior to that time had you been engaged in any employment
7 with the Washington State Department of Game?

8 A Yes.

9 Q In what capacity?

10 A Well, 19 years roughly prior to that I was Assistant
11 Director. Then I'd have to go back through a lot of
12 different jobs. I have been employed for about 32 years.

13 Q Game and Fisheries Management?

14 A Yes, sir.

15 Q When you were Assistant, you were Assistant to Mr. Biggs?

16 A That is correct.

17 Q In the last 10 or 20 years have you held any other
18 governmental positions relating to Game and Fisheries
19 Management?

20 A No. I presume you mean jobs I received money from.

21 Q Yes. Are there any honorary positions that you fill?

22 A No.

23 MR. MORISSET: Mr. Crouse, we need to
24 hear you. Don't tell just Mr. Pierson.

25 A I presume you are not talking about various committees

1 like Chairman of the Flyway Committee for Water Fowl
2 for the Western Flyway and things like this. There
3 are numerous things like that I have held that are
4 not positions, that are not paid for that are committees
5 such as this.

6 Q Are these committees governmentally oriented or citizens
7 groups?

8 A State oriented.

9 Q That is the executive part of the State?

10 A No, they are oriented to Fish and Game Department.

11 Q Are you a member of any sportsmen's groups?

12 A Honorary, yes. Pay, no.

13 Q Do those groups pay anybody besides their officers?

14 A I don't have the foggiest idea.

15 Q Which sportsmen's groups have you been a member of and
16 maybe if we can start off with prevalent ones like the
17 Washington State Sports Council.

18 A I am not a member of that. I do from time to time
19 receive what I presume are honorary yearly or life
20 memberships in various organizations around the State.
21 I promptly file them in my drawer or some other recept-
22 acle and do not attend any of the meetings as a member.
23 I am a member of a number of other organizations such
24 as the Western Association of Game Fish and Conservation
25 Commissioners, the International Wildlife Society, the

1 National Wildlife Federation. I don't know if I am
2 still in the Wilderness Society or not. I pay my dues
3 at times. The Audubon Society, groups such as this.

4 Q Have you held any office in any of these organizations?

5 A Yes.

6 Q Let's say in the last three years?

7 A I am President of the International Association of Game
8 Fish and Conservation Commissioners at the present time.

9 Q What is their general purpose?

10 A It is an organization of the various states, commonwealth,
11 Mexico, and most of the Canadian provinces that have as
12 a general purpose conservation, preservation of various
13 wildlife resources.

14 Q Have any of these organizations which you have been a
15 member of and generally been described as a purpose at
16 any time the protection of Indian treaty fishing rights?

17 A Oh, I can't recall Indians ever being appointed for
18 discussion at any of them or any official action being
19 taken at this time in any way.

20 Q Have any of these organizations that you have been a
21 member of made representations or statements to the
22 Washington State Game Commission or the Department of
23 Game in matters within their regulatory jurisdiction?

24 A No.

25 Q Prior to your assention to the Directorship of the

1 Department of Game, did you have any degrees or other
2 specific expertise in Fisheries Management or Biology?

3 A No, I had a degree, a Bachelor's Degree in Sociology
4 and a Master's Degree in Wildlife Management or vice
5 versa, I forget which, from the Washington State
6 University at Pullman.

7 Q At Pullman?

8 A Yes.

9 Q Are there any other formalized items of expertise which
10 you have in your background relative to your duties
11 as Department of Game Director?

12 A Not that I recall.

13 Q In addition to the formal schooling that you have had,
14 you also have your experience in the Department of Game?

15 A That is correct.

16 Q Have you ever served in the Washington State Legislature?

17 A No.

18 Q I believe you were present, were you not, when we were
19 deposing Mr. Coffin?

20 A Yes.

21 Q We were asking him generally about the regulatory
22 procedures that the Department and the Commission follow
23 when addressing the various regulatory duties and powers
24 of the Commission. Could you outline for us just
25 generally how the Department of Game determines to make

1 recommendations, how it makes those recommendations,
2 and how it implements what action the Commission takes.

3 A As an example the meeting coming up -- would that
4 suffice?

5 Q Surely.

6 A Where they are setting the opening date of elk season.
7 The opening date is set at that meeting and the public
8 is informed through all news media, radio, television,
9 and newspapers. Normally there are two releases even
10 on a statutory meeting and the people who have asked to
11 be informed are informed directly by letter. The meeting
12 will be held in Olympia and the first part of the meeting
13 will be set aside for the public to make recommendations
14 to the Game Commission. Also and included in that is
15 any correspondence that is received from any individuals
16 since the prior season was set on opening day of elk
17 season that has asked it be brought to the Commission
18 is sent to them either by previous letter or given to
19 them as a list at the Commission meeting on who it is
20 from and what the recommendation is. The Department
21 formulates its recommendations and it formulates them
22 first at the regional level and people within the
23 Department at all levels of the Department at the
24 regional level make a recommendation on this issue.
25 Then the supervisors and biologists will come in here

1 and attempt to rationalize this into a statewide
2 recommendation. The statewide recommendation will be
3 the one that is presented to the Game Commission as the
4 departments recommend. That generally is the procedure
5 that is followed.

6 Q Now the letters that are addressed to you by people
7 outside the Department of Game that you forward on to the
8 Commission in the normal course, does the Department
9 take a position on the recommendations in these letters?

10 A The letters that are sent go as letters from the
11 individuals to the Commissioners. No, we don't comment
12 on the letters although the letters say all kinds of
13 things like, what do you charge for elk licenses, and
14 then give a recommendation. The thing I am saying is
15 part of the letter may need an answer. By and large
16 they don't. They are forwarded as they come.

17 Q Generally speaking, the Department's formulation of its
18 own recommendations is entirely independent of the
19 letters that are sent to the Commission?

20 A Very often these letters come from people who have
21 talked to our people in the regions or have met with
22 them. There is both a tie in and not a tie in. People
23 can independently make these or people can make them
24 in effect after discussion with our people in the regions
25 and they do both.

1 Q But is it accurate to say the recommendations the
2 Department makes is not governed by but is under
3 independent determination by the Department itself?
4 You don't feel bound by any of the letters?

5 A No, I do feel that these letters are generally a
6 reflection of public opinion, but, no, they are not
7 bound by the individual letter nor is the Commission
8 bound by our recommendation.

9 Q In the formulation of the regional recommendations that
10 you spoke of and with specific reference to game fish
11 and locations outside reservation boundaries, to your
12 knowledge have these regional recommendations ever
13 considered net fisheries by treaty Indians?

14 A Off reservations?

15 Q Yes.

16 A No.

17 Q To your knowledge has the Department of Game ever
18 forwarded to the Commission any letters incorporating
19 recommendations relating to Indian net fishing at usual
20 and accustomed places outside of reservation boundaries?

21 A No, because our statute makes it illegal to do this,
22 so we have not considered it.

23 Q But as far as you know, you haven't received any such
24 letters at all?

25 A Rephrase your question, please.

1 Q I am trying to get out whether or not, first of all,
2 the Department has received letters relating to Indian
3 net fishing at usual and accustomed places outside
4 reservation boundaries.

5 A Have we received letters? Yes.

6 Q Have you ever forwarded those to the Commission?

7 A No, I don't believe so. I say that with some degree of
8 humility and lack of knowledge. I try to keep them
9 informed.

10 Q If one of them referred to setting a season, would you
11 do that?

12 A Certainly it would go. If they were also in effect to
13 me saying you should or should not do this, I would not
14 forward them to the members of the Game Commission.
15 What I am trying to differentiate, if it was a request
16 to the Commission, yes, it would go to them. If it was
17 a letter to the Game Department stating an opinion, no,
18 I don't attempt to send letters like this to all members
19 of the Game Commission.

20 Q Is it accurate to say from your experience nobody has
21 sent the Game Commission recommendations for or against
22 Indian net fishing at usual and accustomed places outside
23 reservation boundaries?

24 A Not for consideration at Commission meetings. I am sure
25 all Commissioners and I have also expressed opinions on

1 this.

2 Q But none in effect asking for permission or expecting
3 an opinion against permission?

4 A Yes, this is what they do. They express an opinion
5 there should be or should not be.

6 Q You do not forward those to the Commission?

7 A Not if they are a letter to me. The Commission may and
8 does receive letters direct. If it is a letter to the
9 Game Department on that or any other subject expressing
10 an opinion, I don't unless it refers to something they
11 want the Commission to take action on. Then this would
12 go. I am trying to differentiate what I consider routine
13 mail that comes in and mail that comes in that should
14 be directed to the Commission because they are going to
15 act on it.

16 Q You know of no circumstance where you have received the
17 latter kind of correspondence that you have forwarded to
18 the Game Commission?

19 A Offhand I don't recall any.

20 Q With respect to the first type that is addressed to the
21 Game Department, have you or any of your staff to your
22 knowledge considered these in the formulation of your
23 recommendations to the Game Commission?

24 A You mean letters to me?

25 Q Yes, expressing opinions.

1 A On?

2 Q Fishing by Indians by net at usual and accustomed
3 places outside reservation boundaries.

4 A I'd suspect most of the correspondence has come about
5 since the Indian take-over at this office and subsequent
6 actions. No, these haven't been taken into consideration.
7 There has been no reason to take them into consideration
8 at this time.

9 Q Why do you say that?

10 A There has been no meeting of the Game Commission since
11 that time. There has been no seasons set. I think most
12 of the letters if my memory is right would not be the
13 kind that really go that way. They were letters that
14 expressed opinions on Indian philosophy.

15 Q I see. In your view would the current state of the State
16 law prohibit the Game Department from considering
17 recommendations in favor of Indian net fishing at usual
18 and accustomed sites outside reservation boundaries?

19 A Yes, that is my feeling that the existing laws and the
20 laws that are on appeal would preclude this Department
21 from establishing seasons and the parameters of the cases
22 would make it impossible for us.

23 Q Let me see if I can frame the question directly. I am
24 not really directing my question to a particular season
25 or confining the Indians alone to net fishing or anything

1 of that kind. All I want to know is whether in your
2 view, your understanding as a Director of the Department
3 of Game, the law as it stands on March 27, 1973, prohibits
4 the Game Department from favorably considering recommend-
5 ations that Indians be permitted to fish with nets outside
6 reservation boundaries at usual and accustomed places.

7 A Yes, it prohibits anyone.

8 Q In the process of formulating your recommendations for
9 seasons and bag limits, do you consider information about
10 previous years fisheries and catch?

11 A Yes.

12 Q Do you try to predict one size in various rivers?

13 A I suppose that I do. The fisheries biologists don't.
14 Mine is only a guesstimate off the top of my head trying
15 to second guess. A steelhead run has no information to
16 predict an oncoming run in any given year. The only
17 information you have is what has happened in the past.

18 Q Do you estimate from that past information, however
19 broadly but just the fact of an estimate, what it might
20 be?

21 A I don't think you can get a qualified fisheries biologist
22 to do this.

23 Q Do you as Director of the Department of Fisheries?

24 A I do not do this officially, no.

25 Q In making recommendations with respect to bag limits and

1 seasons, what are the factors you consider?

2 A What bag limits? Game or fish?

3 Q For game fish in the Department of Game's recommendations
4 to the Game Commission.

5 A Are you talking specifically about steelhead or some
6 other type of fish?

7 Q Well, let's start with steelhead and talk about game
8 fish after that.

9 A On steelhead you have, because I think there is really
10 a biological problem, if you want an amateur rundown I
11 will give it to you.

12 Q Go right ahead.

13 A On steelhead you don't have the information as to what
14 you are going to have once the fish leave this stream.
15 When you have limited information at the size they might
16 grow to in the ocean, there is no technique. They are
17 not a type of fish you know what is going to happen
18 until they make the cycle and come back into the stream
19 which is different from the other fish that are
20 commercial fish such as salmon, so we do not have a
21 backlog of information on steelhead. Until that fish
22 is in the stream, we don't have really information to
23 make a guess as to what is coming back. There are some
24 classic biological examples of this and levels of
25 different runs. This year against last year being

1 probably when we end up with the data being when that
2 is showing a decided fluctuation, that year over the
3 previous year.

4 Q Let me see if I can define it a little bit. How do you
5 estimate the size of last year's run?

6 A From the catch, from the figures the fisheries biologists
7 develop.

8 Q What kind of figures?

9 A It is biological data. I am not a fisheries biologist.

10 Q When you get their estimate, you don't know where they
11 come from, whether they come from spawning grounds or
12 plants?

13 A I can look at the information and tell where it comes
14 from. I am sure you people can do the same thing.
15 The thing I am saying, it comes after not before the
16 fact.

17 Q Okay now when you set a bag limit say for the Upper
18 Skagit River, do you know what factors are considered
19 in deciding what specific bag limit is set?

20 A Yes.

21 Q Can you give us a detailed rundown, please?

22 A There are many things considered in this. These are
23 considered by the fisheries biologists, but they include
24 what the stream flows have been and how many fish was
25 released, the condition of the fish. The regulations are

1 geared so there won't be too much fish taken to
2 decimate the run and hook and line fisheries is a
3 fisheries that will not normally do this. If it does,
4 it can be closed off.

5 Q Let me work backwards. Does that mean that game runs
6 you have the power and have in the past considered
7 limiting further the hook and line fishery to preserve
8 the run?

9 A We have the power to do this on both hunting and fishing
10 seasons.

11 Q Do you have the technological data to do it?

12 A Steelhead is by far the most difficult animal.
13 Anything else is relatively easy, deer and elk, things
14 like that, yes.

15 Q Let's talk first about steelhead. Do you have the
16 ability, technological ability to cut back or know when
17 to cut back on a hook and line fishery in order to
18 preserve a river run?

19 A We have only considered it at one time to the best of my
20 memory.

21 Q What were the factors you had available at that time
22 that induced you to consider cutting back?

23 A Again it was lack of fish going over the fish ladder
24 on one of the dams on the main stem or one of the
25 tributaries of the Columbia River and we had the factor

1 of dam counts.

2 Q What is the purpose of a bag limit?

3 A Well, generally a bag limit is put on to regulate the
4 number that any individual can take to spread it out
5 amongst more people. This is the general purpose, to
6 set the top limits.

7 Q That individuals may take?

8 A That individuals may take.

9 Q Does a bag limit also influence the total number of fish
10 taken from a stream run?

11 A Hook and line fishery for steelhead?

12 Q Yes.

13 A I would guess that the bag limit generally does not
14 influence the total number of fish taken. It influences
15 distribution more than the total numbers. I would guess
16 this.

17 Q Would it be accurate to say the policy behind imposition
18 of bag limits is to distribute as many catches of the
19 fish involved amongst the greatest number?

20 A The reason for a bag limit generally is to keep as wide
21 a distribution of fish as you can. Now steelhead --
22 again I am talking off the top of my head -- but my
23 recollection is that a sports fisherman will fish about
24 four days before he catches one, so this is not a hot
25 fishery anyway. So I guess what I am saying is I don't

1 think that really you are controlling the total take,
2 but you may be controlling somewhat the distribution of
3 these by limiting it to two fish a day per person.

4 Q My question was really one step beyond that, whether in
5 determining how and when to impose bag limits, there is
6 a policy that the number of fish caught be distributed
7 among the greatest number of people, that is the greatest
8 number of fishermen, and I am assuming a hook and line
9 fishery for steelhead or other game fish.

10 A Generally it is our desire to have as broad a segment of
11 population enjoy the recreational resource of fishing
12 and hunting as possible and want to do it.

13 Q You only do this by distribution?

14 A Bag limit is one of the methods.

15 Q And one of the other methods is the setting of seasons,
16 is that correct?

17 A The setting of seasons is probably not so much
18 distribution as conservation. First you have to take
19 care of the resource and those that you allow to the
20 public, then you get into the area of distributing fees.

21 Q Is it accurate to say as a general management principal
22 that an anadromous game fish run requires a certain
23 number of fish untaken to spawn and return in later
24 years?

25 A If you are going to perpetuate any form of life, you

1 have to have them spawn and come back again, yes.

2 Q In setting your seasons do you consider what each stream
3 requires in terms of spawning fish, for example for
4 steelhead?

5 A Insofar as you have the information. Again you are
6 getting into biological questions. I am not going to
7 run biologically stream by stream if you are heading
8 that way. Give it to the biologist.

9 Q No, I am trying to get general policy principals that
10 you utilize.

11 A As a general policy when we set seasons, yes, we tend
12 to look them over stream by stream and watershed by
13 watershed. I use the "we" of the Game Department. I
14 don't use it for myself or the Game Commission.

15 Q When you do that, do you take into consideration in
16 setting your seasons your idea of how many fish should
17 be left untaken to spawn?

18 A The seasons are set by length and by areas from the
19 experience we have and knowledge we have to protect this
20 resource to leave enough fish to spawn.

21 Q Is it an accurate term to call that untaken part of the
22 spawn escapement?

23 A Yes.

24 Q To your knowledge has the Game Department in the past
25 river by river estimated what the spawning escapement

1 should be to conserve the resource?

2 A I will defer that to the biologist, fisheries biologist.

3 Q That would be Mr. Millenbach?

4 A Yes, I believe he can answer that question.

5 Q Mr. Crouse, as the Director of the Department of Game,
6 have you ever recommended action in any form to the
7 Washington State Legislature in matters relating to game
8 fish or steelhead management?

9 A I am sure I have.

10 Q As a matter of fact, isn't it so that many of the
11 statutes that now exist in Title 77 were originally in
12 the form of recommendations from the Department of Game
13 to the Legislature?

14 A You have in the legislative process executive request
15 bills that come from the Governor's office. You have
16 departmental request bills that come from the Game
17 Department in our particular case. You have interim
18 committee bills that come from the various committees.
19 You have individual bills that are put in. All of them
20 I presume have come from one of the sources. Yes, from
21 time to time we have departmental request legislation.
22 From time to time executive request legislation affects
23 us. From time to time the individual legislator bills
24 affect us.

25 Q When the recommendations that do not originate in your

1 Department are being considered by the Legislature and
2 they relate to game fish management, does the Department
3 follow a practice of giving its views on the desirability
4 of passage of such legislation?

5 A At public hearings on bills that have an affect on us,
6 we will normally appear and express our views on
7 legislation that has an affect on the resource we manage.

8 Q For example in the last regular legislative session,
9 do you know how many, just an estimate, bills the Game
10 Department sent to the Legislature on its own initiative?

11 A I don't know that we had any there. The Vanity Plate
12 Bill has caused some consternation. At one time we did
13 considerable work on that, but it ended up being an
14 interim committee bill. I don't recall we had any
15 departmental request legislation in. It may be one or
16 two.

17 MR. CONIFF: May I interject a clarifica-
18 tion. I assume you are speaking of substantive law and
19 not appropriation bills.

20 MR. PIERSON: That is right, strictly
21 appropriation measures I am not asking about.

22 A I don't believe we had any departmental request
23 legislation that entered the Legislature at this time
24 with this title on it.

25 Q Can you estimate how many times during that session you

1 or any other representative of the Game Department
2 appeared or in written form stated the position of the
3 Department regarding any of the other bills affecting
4 the Department?

5 A Offhand I would hate to guess time. Some days there
6 will be two or three hearings that affect us that we
7 will appear at. Sometimes two or three people will be
8 up there at once because they are going into different
9 rooms and different meetings. I would say by and large
10 we appear at any committee hearing that there is a bill
11 that has a substantial affect on us. Any public hearing.

12 Q I am trying to get an outside figure. Would you say
13 a hundred times in the last session?

14 A I would doubt that much. Again you are talking about
15 outside figures, 40 to 80, 25 to 100 or something.
16 Virtually all of them that affect us when it is a public
17 hearing.

18 Q How do you normally get notice of pendency of the
19 legislation when it doesn't originate in your Department?

20 A Notices are sent out to all state departments of all
21 bills that they feel have a relation to the state. The
22 Natural Resources Committee notifies all Natural Resources
23 Departments and so on down the line.

24 Q Is it accurate to say when a Department expresses a
25 position to the Legislature on any of the pending

1 legislation, then it has general policies that determine
2 its position?

3 A Yes, we think we are talking about a policy. The
4 general policy on legislation is what is good for the
5 resource. If you are talking about a firm written policy,
6 I don't think anybody has that on legislation. You
7 don't know what is going to come in or what it is going
8 to be.

9 Q In matters of policy of this kind, expressing positions
10 on legislation, who within the Department of Game has
11 the ultimate determination of what the position is?

12 A In the Department of Game the Director.

13 Q In your capacity as Director of the Game Department,
14 do you have a policy for or against the desirability or
15 the prudence of permitting Indians with treaty rights
16 to fish with nets for steelhead outside reservation
17 boundaries?

18 MR. CONIFF: I will object to the form
19 of the question. You are assuming the existence of a
20 treaty right which is one.

21 MR. PIERSON: I will modify it.

22 Q (BY MR. PIERSON) A claimed treaty right and ask if you
23 have a policy.

24 A Presently there is a statute against taking with a net
25 game fish. Yes, we follow that.

1 Q What I am really after, Mr. Crouse, is the Department of
2 Game's independent position, the kind of policy it looks
3 to when it formulates recommendations to the Legislature.
4 I want to know whether you have a policy that would
5 determine how you would respond to a legislative proposal
6 that such claimed treaty right fishing be permitted.

7 A I think you probably have a copy of my testimony at the
8 last bill that came up. If you don't, I would be glad
9 to furnish it to you.

10 Q I would like to have a copy and append it as Exhibit I
11 to your deposition and reiterate the question I just
12 asked you.

13 A Phrase it again so I can tell what you are getting at.

14 Q As a matter of policy, the policy I am talking about is
15 the policy you utilize in determining how to make and
16 present recommendations to the Legislature on pending
17 legislation. I want to know whether the Department of
18 Game and you in particular have any policy for or
19 against permitting the Indians to fish by nets at their
20 claimed usual and accustomed treaty fishing places
21 outside of reservation boundaries?

22 A No, in forming a policy on any legislation, again I form
23 a position on that legislation based on what I think it
24 will do for the resource it pertains to, protecting or
25 preserving or enhancing it. This is the basis I testify

1 on legislation up there.

2 Q Would you agree a short form synonym for conservation is
3 wise or prudent use?

4 A I think it is satisfactory.

5 Q As a matter of policy would you consider fishing by
6 Indians with nets at claimed usual and accustomed
7 treaty places outside reservation boundaries a wise or
8 prudent use of the steelhead resource?

9 A No.

10 Q Why?

11 A The steelhead resource as such cannot stand unlimited
12 net fisheries or unlimited net fisheries to the extent
13 that you will have any fish left over for the use of
14 the resource and rehabilitate the river. I am confident
15 net fisheries is not the proper use for steelhead
16 resource.

17 Q Is there some biological facts or data you base that
18 opinion on?

19 A I was trying to think of any. There are a number that
20 have been done. There are a number of reports that
21 have been done on the capabilities of set nets and
22 gillnets and commercial type of gear. To quote you one
23 individually, if that is what you are getting at, no.

24 Q Do you know of any studies which indicate to the contrary,
25 that is that fishing for steelhead by net by Indians has

1 not adversely affected the steelhead run?

2 A I know of none where it has enhanced the run.

3 Q Are you aware at the Quileute Indian Reservation the
4 Indians fish by net on steelhead?

5 A Yes, I am.

6 Q Are you aware within the last two or three years the run
7 has not decreased or has in fact expanded?

8 A I have not been able to get any information on the
9 Quinault steelhead run.

10 Q Quileute.

11 A Oh, Quileute has been expanded. I have not been able to
12 get information on it but I would not be greatly
13 surprised.

14 Q It is true, is it not, the Indian fishing for steelhead
15 is not regulated by the State?

16 A I would have expected the Indians take in the last
17 several years to have increased.

18 Q The run itself increased or decreased or do you know?

19 A I am sure it has increased due to the management of the
20 Game Department.

21 Q What activity has the Game Department engaged in that
22 enhanced the run?

23 A Planted additional fish in the river.

24 Q Do you know whether the practices of the Quileute on the
25 reservation, Indian fishermen fishing by net on the

1 steelhead run, have affected at all the level of the
2 steelhead run in that river?

3 A I have been unable to get any information on what the
4 Indians take as steelhead. Certainly if this information
5 was available, I think a reasoned judgment could be made
6 by our people on that.

7 Q Have you undertaken any studies at the Quileute Indian
8 Reservation to determine this?

9 A Have we taken any studies?

10 Q Yes.

11 A No, we have not.

12 Q Have you asked the tribe for the information?

13 A I believe we have and certainly we have asked people in
14 the Fish and Wildlife Service who deal in this as a
15 business.

16 Q Do the facts we have been talking about with regard to
17 the Quileute Reservation Indian net fishery on steelhead,
18 would it be accurate to say that it is evidence that an
19 unregulated Indian net fishery on steelhead will not
20 always destroy the run?

21 A Well, you are using a supposition of a specific river
22 in a specific area. Yes, I think within the parameters
23 of where the Quileutes are fishing that it probably
24 would not. I think if you would move that to encompass
25 more of the river, you would have to either limit the

1 amount of days they fished or in some way do it or
2 obviously it would destroy the run.

3 Q But if all of their fishing by nets was within the
4 reservation, the State would not assume or presume to
5 regulate them, would it?

6 A We have never presumed to regulate the Indians on
7 reservation. We hope that they would at some point in
8 the future wisely use the resource if they are not now.

9 Q Doesn't the evidence you have available to you --
10 A I said "if they are not now."
11 Q My question is, doesn't the evidence available to you
12 now indicate that they are?

13 A Not in all cases. I think probably there can be some
14 information shown that Indians have reduced runs of fish.

15 Q What do you mean? By netting, unlimited netting?
16 A Yes.

17 Q Is there any way the State can regulate the amount of
18 take the net takes?

19 A Is there any way to regulate the amount of fish the net
20 takes? Well, your size of mesh, the type of net, the
21 length of it would tend to regulate what could be taken
22 in it. That may not reach the issue, no.

23 Q Is it technologically feasible to regulate the net to
24 taking just one fish?

25 A Not in my technology.

1 Q Do you have available any studies indicating what
2 management techniques can be utilized to limit the take
3 of nets?

4 A We have some studies that indicate that mesh size can
5 limit the take of the size of the fish and by this
6 method be somewhat selective in the type of fish.

7 Q I presume you are talking about set nets. You are not
8 talking about hand dip nets. I think you used the term
9 generally.

10 A I am talking about set nets certainly. A man with a hand
11 dip net will dip one at a time unless he is dipping
12 smelt.

13 Q As far as steelhead and the largest game fish concerned,
14 would permitting the use of a hand dip net be unwise or
15 unprudent use of the resource?

16 A It depends on where they use it. It could be, yes.
17 A hand dip net as commonly used in landing fish, no.
18 As you would use a hand dip net in an area of concentra-
19 tion such as a fish ladder, it could be very devastating.
20 If you use the type that was used commercially at one
21 time and still is in some places, yes.

22 Q It would be accurate to say you could limit the total
23 take or the capability of total take in a set or drift
24 net or purse seine by limiting its mesh size and where
25 it is used?

1 A I don't think you can limit the total take by limiting
2 the net size. Certainly you could by where it is used.

3 Q Could you by the mesh size?

4 A By the mesh size you can't limit the total take, but you
5 can allow certain fish to have an opportunity to escape,
6 namely the smaller fish.

7 Q Would it also limit the total take of the net if you
8 limited it in the time that it could be used. For
9 example, if you said the net could only be used one day
10 a week, that would limit the total take it was capable
11 of.

12 A One net one day?

13 Q Yes.

14 A Yes.

15 Q If you had no hook and line fishery on the Quileute River
16 and you allowed one net one day out of 365 outside the
17 park boundaries, would you threaten the resource?

18 A I would guess not, but I don't desire to guess with
19 you as to where this happens. I presume you are going
20 to two nets two days and so on down the line. I do not
21 have an answer to it. I will tell you that before you
22 reach that.

23 Q I am asking about the one net one day.

24 A I would think it would have a very limited affect on
25 the resource and particularly if the river was high and

1 muddy the day you selected, it would have even less.

2 Q Isn't it accurate to say that the policy against the
3 use of nets on steelhead or other game fish is that it
4 permits the operator of the net to take more fish at
5 one time than those who use hook and line?

6 A No, I don't think so.

7 Q That is not the reason?

8 A It does this, but the policy against use of net is by
9 using a net as a manner of taking fish, you are taking
10 them in such a way that you can take the entire run of
11 fish unless you put restrictions on it and this is a
12 commercial way of taking fish. Almost all of your
13 commercial fishing is done with a net and it is designed
14 to take large numbers of fish. This is the purpose of
15 it.

16 Q Are you aware that in times of the treaties that are
17 involved in the case, Indians utilized nets to take fish
18 purely for subsistence?

19 A I am not aware nor do I make a presumption of being
20 an anthropologist. I believe you have one and I believe
21 he is going to come up with all the answers on it.

22 Q I sure hope so. Is there anything in the use of a net
23 in taking steelhead that means it must be commercial?
24 Can it be purely a food gathering technique?

25 A On the reservation they take them this way, but they take

1 them commercially. In this State it is against the law
2 to take them with a net.

3 Q I am really after whether a net is always a commercial
4 technique in your experience.

5 A I can't think of one that isn't.

6 Q Okay, do you know whether there are net fishing techniques
7 utilized by Indian treaty tribes in this State which are
8 not commercial?

9 A I am aware that the treaty Indians sell a substantial
10 number of fish off reservations as a commercial operation.
11 I presume that is part of this. They take some
12 subsistence fish.

13 Q My question really is, do you know whether there are
14 Indian treaty tribes who fish exclusively for subsistence
15 and not for commercial use?

16 A I can't think of any offhand. There may well be some.

17 Q If there were some, would it change your view of the use
18 of nets for steelhead as a wise and prudent use? To
19 frame the question differently, would it be more wise
20 and prudent use of the resource when nets were used to
21 take the fish only for food?

22 A No, I think the principal of net fishing is the same.
23 Again give me a whereas and specific example of what you
24 are talking about. Certainly if the Yakima Indians take
25 fish out of the Yakima River for personal use, they take

1 them the way they feel they want to do it.

2 Q I will give you an example. Maybe it will help.

3 Suppose we took the one Indian fisherman fishing one day
4 outside the park on the Quileute River with a net which
5 the Game Department could regulate in terms of mesh size,
6 length, depth, filament content. Would it change your
7 view of whether that was a wise or prudent use that the
8 particular fisherman used the fish only for food but not
9 commercially?

10 A This is a Quileute Indian fishing off the reservation?

11 Q What he claims to be his usual and accustomed spots.

12 A It wouldn't change my feeling. In the first place, he
13 has the whole park.

14 Q Suppose a Puyallup Indian were fishing one day with one
15 net which you can regulate in the manner I have indicated
16 and he were taking the fish solely for food purposes
17 and not for commercial use. Would you consider it a
18 wise or prudent use or more wise or prudent than if he
19 took it for commercial purposes?

20 A I don't know. I think that type of question deserves the
21 same type of answer. As an example, as a whereas with
22 one Indian with one fish, I suppose in my humble opinion
23 and anybody else's, this is not going to hurt the resource;
24 but again where do you end on this and where do you
25 begin? I think they all ought to be treated equally.

1 I feel this very strongly. It is like one more lot
2 filled in the bay. What is it going to hurt? This is
3 the context you are putting the question in. I don't
4 think that there is a yes or no answer to it.

5 Q Let me go at it a different way. As I understand it,
6 one of the objections that you as a policy maker have
7 against Indian fishing with nets in claimed usual and
8 accustomed places outside the reservation is that the
9 nets are capable of taking large quantities or all of
10 the run?

11 A You are referring to off reservation net fishing for
12 steelhead?

13 Q Yes.

14 A The objection is the capability of the nets to take a
15 large number of them and these are taken by people for
16 commercialization, yes.

17 Q Let's work backward. Would your judgment be different
18 if they were taken only for food purposes?

19 A I don't know. The question has never been posed that
20 way except as a hypothetical question the way you propose
21 it.

22 Q Are you finished with your answer, Director?

23 A Yes.

24 Q Did you consider that question on October 2 when you
25 determined or along with the Game Commission considered

1 whether to permit Indians to take steelhead by net
2 outside reservation boundaries?

3 A You are going back to your hypothetical once again,
4 one fish in one day. No, we never considered it in that
5 context.

6 Q Did you assume in your mind that the net fishing you
7 were speaking about would strictly be for commercial
8 purposes?

9 A I can recall of no other net fishing by anyone that
10 doesn't have this connotation to it, yes.

11 Q Were there any representatives of the plaintiffs tribes
12 in this case who appeared at that time to indicate to
13 you what uses they would make of the fish?

14 A No.

15 Q Did anybody express to you or to the Commission at that
16 time information or data as to what use would be made
17 of the fish?

18 A No.

19 Q Did anybody at that particular session indicate what
20 number of nets would be used if the permission were
21 granted?

22 A No, in my consideration if the permission was granted,
23 it would cover many rivers and many Indians.

24 Q Was there any indication in the evidence and data
25 presented how many Indian fishermen would be involved

1 if the permission were granted?

2 A Again I am speaking from memory and you have the record
3 in front of you. As I recall there were some guessti-
4 mates at 200 Indians and nets on reservations around
5 the State.

6 Q And I take it that was -- this is a guesstimate. That
7 was an estimate of how many Indians would fish off
8 reservation?

9 A I couldn't make an estimate how many would fish off or
10 who they would be frankly.

11 Q My question really is whether there was presented to the
12 Department and the Commission any facts indicating how
13 many Indians would utilize the permission at the off
14 reservation sites should the permission which was being
15 considered be granted?

16 A No. The basis premise is whether you would have an
17 off reservation fishing for steelhead and certainly our
18 present statute precludes that. Actually we are talking
19 policy and not numbers or anything else.

20 Q Isn't it accurate that -- is it accurate to say that one
21 of the bases of your determination to recommend as you
22 did in October that the permission not be granted, was
23 one of the bases your general view that net fishing for
24 steelhead will destroy the resource?

25 A My view is that net fishing for steelhead has a potential

1 for destroying the resource and certainly unregulated
2 it will.

3 Q Was there any consideration in your mind given to
4 regulating and limiting net fishing after it had been
5 permitted?

6 A No.

7 Q Does the Game Department have the power to regulate
8 types of gear?

9 A Not in this.

10 Q Does it regulate the type of hook and line gear used?

11 A Yes, it does.

12 Q Does it regulate the places that it is used?

13 A Yes, it does, but it doesn't have the authority to
14 regulate net fishing.

15 Q On what do you base that statement?

16 A The statute.

17 Q Is it your view or was it your understanding on October
18 2nd that the law, all of the binding law prohibited you
19 from permitting Indian net fishing?

20 A Yes.

21 Q Would it be accurate to say then that as Mr. Coffin did
22 when Mr. Millenbach was giving the information he was in
23 his long presentation, he was merely informing the
24 Commission and those were not elements to be considered
25 in its determination?

1 A He was informing the Commission at that time these were
2 the elements. He was informing them as a policy if it
3 was possible to do this, if the Commission wanted to
4 accept it. It did not.

5 Q In your view as Director of the Department of Game,
6 could you have recommended to the Game Commission that a
7 permit of the kind of Indian net fishery you were
8 considering, if Mr. Millenbach's data and facts had
9 indicated that it would not destroy the run as to the
10 steelhead in the State?

11 A It was my impression they would not have the right to do
12 it.

13 Q Let me ask the question differently. If Mr. Millenbach's
14 facts and data had indicated that the type of fishing,
15 net fishing you were considering could not destroy or
16 harm the steelhead resource in the State, do you feel
17 that you could have under the prevailing law recommended
18 that such net fishing be permitted?

19 A No.

20 Q In other words your opinion was you could not recommend
21 it?

22 A My opinion was we could not recommend it because of the
23 law.

24 Q In considering as a policy matter what is wise and
25 prudent use of the steelhead resource, is it important

1 that the fishermen who engage in taking the fish go
2 through a lot of physical exercise and personal effort
3 to achieve the fish?

4 A It seems to be the direction desired by those who take
5 them.

6 MR. CONIEFF: You are referring to steel-
7 head in that question?

8 MR. PIERSON: Yes.

9 Q (BY MR. PIERSON) My question really was as a policy
10 matter.

11 A As a policy matter, the people who take steelhead in this
12 manner feel this is the proper way to take them. They
13 are concerned as much as anyone about the conservation
14 of the resource and the perpetuation of it.

15 Q In your determination of what bag limits to set and what
16 seasons to permit, do you consider the element of
17 individual effort, maximizing the individual effort to
18 achieve?

19 A We consider we have the right to regulate the place, time,
20 and manner.

21 Q Is it important to you in doing that that the individual
22 who gets the fish in this recreational framework go
23 through a large amount of physical effort to achieve a
24 small amount of fish, say one?

25 A I don't know of anyone that thinks this is not a proper

1 way that takes them in that manner with hook and line.

2 Q In your experience has the Game Department ever met with
3 organizations of the plaintiff tribes for example the
4 Makah or the Lummi or the Quileute in an effort to
5 coordinate utilization, that is harvest of the steelhead
6 resource in this State?

7 A Yes.

8 Q When and where has that happened just recently?
9 Give me an example or two.

10 A Oh, we have met with the Lummis, Nooksacks, Quileutes,
11 several other tribes. We have cooperated with them
12 on on-reservation fisheries from the standpoint of trying
13 to develop the resource. I believe we gave them 750,000
14 eggs of fry this year. We have done that in the past
15 for reservation programs they have.

16 Q By the same token some of the tribes, for example the
17 Quinaults, have engaged in hatchery development of the
18 various game fish runs also?

19 A Steelhead.

20 Q Steelhead at Quinault?

21 A Yes, the only source of eggs they had to begin the program
22 was the Game Department. We have cooperated with them
23 fully in it.

24 Q Have your considerations or meetings with any -- strike
25 that. When was the first time in your recollection that

1 such cooperative meetings took place?

2 A I think they go back quite a ways. I can remember
3 meeting with Indians when I was in Eastern Washington
4 as a Wildlife agent on Natural Resources problems on
5 their reservation, Colvilles, Yakimas. That goes back
6 to '41. More recently we have met with the tribes on
7 the Coast on several occasions and set up meetings with
8 them. We have met with the Nisquallys.

9 Q In each of these meetings the consideration has been
10 solely on reservation utilization?

11 A This is correct.

12 Q You never met with them to consider harvest by Indians
13 by methods other than hook and line at their claimed
14 usual and accustomed places outside reservation boundaries?

15 A No.

16 Q You said the only source of eggs for the Indians is the
17 Game Department. Are you sure of that? Are there not
18 federal hatcheries in the State?

19 A The federal hatcheries have no jurisdiction over steel-
20 head. The federal government has come to us and asked
21 us for steelhead eggs for this purpose and fry which
22 we have given for this purpose to give to the Indians.

23 Q There are federally operated hatcheries?

24 A Not for steelhead.

25 Q For other fish?

1 A Salmon.

2 Q How many hatcheries does the Game Department operate in
3 the Western part of the State?

4 MR. CONIFF: May I state we are providing
5 you this information, as you know. I believe it is in
6 the documents and also Mr. Millenbach would have it at
7 his fingertips. IF the Director doesn't recall, I
8 would hope he doesn't make an estimate that we would be
9 bound by.

10 A Skamania Hatchery is one operated by the Game Department,
11 Quilcene is a federal hatchery, if this is what you are
12 going to ask.

13 Q (BY MR. PIERSON) Now the Quilcene Hatchery gets what
14 steelhead eggs it has from the Game Department?

15 A To the best of my knowledge they take no steelhead eggs
16 there. Skamania is a State hatchery. The one at
17 Corson is a salmon hatchery. I presume this is the one
18 you are referring to.

19 JAMES HECKMAN: What about the hatchery
20 at Corson?

21 THE WITNESS: That is a salmon hatchery.

22 MR. HECKMAN: One is according to our
23 hatchery division raising 500,000 summer steelhead for
24 you this year.

25 THE WITNESS: They are in several of the

1 federal hatcheries raising fish for us, this is correct.

2 Q (BY MR. PIERSON) Mr. Crouse, I think a short time
3 earlier you indicated the federal government would not
4 have authority to plant steelhead eggs. Is that correct?
5 I am not sure I understand what context you made that
6 statement.

7 A The State Department of Game has the responsibility for
8 steelhead in the State of Washington outside of Indian
9 reservations. The federal government has not. If the
10 federal government is planting any steelhead in waters
11 outside the reservations, they have to do it with the
12 concurrence and permission from us and I know of no
13 place they are doing this.

14 Q On what are you basing this?

15 A On State law. Steelhead is game fish in the Department
16 of Game.

17 Q Under no circumstance could the federal government under-
18 take planting or other similar techniques outside
19 reservation boundaries?

20 A I think it would be a disservice to the resource if they
21 did.

22 Q Why do you say that?

23 A How many masters can you serve and manage one resource
24 without getting it goofed up beyond all recognition.
25 The knowledge and expertise and ability is in the State.

1 Q In that regard would you include different management
2 by Indians and different management by the State?
3 Would that bring the same disaster?

4 A I am sure it would in any resource in one river.

5 Q It is true, is it not, though that Indian reservation
6 fisheries for steelhead exist independently and without
7 State regulation?

8 A This is true. This does not include off reservation
9 planting of fish.

10 Q But the point I am after, Mr. Crouse, is that there are
11 independent management operations going on, some inside
12 the reservation and the State outside?

13 A Yes.

14 Q It is true, is it not, that on those rivers where
15 steelhead runs through a reservation and the management
16 scheme is entirely unregulated by the State, the
17 resource has in some cases increased and in some cases
18 not decreased?

19 A To the best of my knowledge they have increased under
20 State management on the sections of the river the State
21 manages.

22 Q What kind of management are you talking about? Maybe
23 you can give me examples?

24 A Additional plantings of fish.

25 Q There is also additional fishing by anglers in that part

1 of the river too, is there not?

2 A There is an additional take of fish by anglers.

3 Q Do you have figures indicating any data or opinion as
4 to whether the planting in those rivers where there are
5 such reservations is greater in number or is responsible
6 for a greater number of fish than are caught by the
7 outside reservation anglers?

8 A Come again.

9 Q What I am driving at is, is it your opinion that if the
10 State did not plant in those rivers and if also there
11 were no outside reservation fishing of any kind, that
12 the Indians fishing on the reservation would destroy
13 the run?

14 A Well, I think you have a record of what was taken, the
15 sports count. If you don't, they are readily available
16 to you on all rivers of the State. We do not have
17 information what the Indians take on the reservation.
18 I think these records would tend to speak to the question
19 that you asked. Then you have copies of our planting
20 records.

21 Q What I am really after is what I think you are saying
22 is the causal effect between your planting of fish and
23 the preservation of the resource in the river where
24 there is unregulated Indian net fishery on the reserva-
25 tion, I want to find what fact and data or whom I may

1 talk to that will show me that those runs would be
2 destroyed if the only activity on the river were the
3 Indian net fishery on the reservation.

4 A I think you have been back to this one before. I think
5 you are getting back to biological data. You have
6 raised this before and we will get back to it.

7 Q You said your management techniques had preserved the
8 resource.

9 A Our management techniques outside the reservations are
10 designed to take no more fish that come beyond the
11 reservation than to allow sufficient escapement. This
12 is a hook and line fisheries with the other restrictions
13 that go with it. The other restrictions being area,
14 season, manner, closed areas, all of these things that
15 are a part of management.

16 Q The fact which you are referring to indicate that there
17 are greater numbers of steelhead escape upward from the
18 reservations than are needed for spawning. Is that
19 correct?

20 A No, the point I was making is that you do have -- you
21 refer to the Quileute River and the increased catch by
22 the Indians. I would presume this would be true. My
23 presumption is built on the State management of the
24 river that has built up the total run. Within that total
25 run I would presume more are taken on the reservation and

1 I would presume we have records what the catch have
2 been by sports fishermen and records to indicate our
3 planting. You can reflect the two back and forth.

4 Q Are there any figures that estimate what percentage of
5 the Quileute River run are the result of your management
6 propagation techniques?

7 A Yes.

8 Q Do you have any idea what the estimate is?

9 A No, I wouldn't attempt to quote it.

10 Q Considering for a minute what you call your policy for
11 determining wise and prudent use, if there were figures
12 indicating that a greater number of steelhead were coming
13 to the spawning ground than could use it or than could
14 effectively produce the optimal downstream migration,
15 would that extra amount of escaping steelhead be wasted
16 in your estimation?

17 A I don't know what you mean by wasted. I will readily
18 admit I don't have the expertise to undertake a system
19 of river management that is not completely aware of the
20 capability of determining to the last fish how many are
21 up or down nor the capability of being able to determine
22 environmental or weather factors, which are environmental
23 factors, that are going to affect the conditions for the
24 next four years to where they mature. You can control
25 a river with this type of management by putting a complete

1 barrier at the mouth and letting X number up. I don't
2 know whether it has been done but it is possible to do
3 it.

4 Q My question was in another direction. If your data or
5 the data made available to you indicated in previous
6 years on a river a greater number of fish escaped to the
7 spawning grounds than in the biologists' estimate would
8 produce the optimal downstream migration, would that
9 excess amount in your estimate and determination of wise
10 use be wasted?

11 A In the management of any resource if you are going to
12 err, it has to be on the side of conservatism or
13 preservation. No, it would not be wasted in my opinion.

14 Q But it is true --

15 A (Continuing) It may be if this would consistently happen,
16 we would attempt to adjust our seasons to take a few
17 more. If we had reason to believe otherwise, we would
18 attempt to adjust to take a few less and we have the
19 adjustments within the regular seasons that we set.

20 Q So as the seasons progress, you do adjust?

21 A No, not during the season.

22 Q In advance?

23 A It would have to basically be a long term thing.

24 Q It would be after many years of indications that this
25 excess escaped, you would increase the seasons?

1 A One brood year of an anadromous fish such as steelhead
2 results in another brood year four years hence. You
3 go through this cycle before you reach point X so at
4 least you are looking at this to begin with.

5 Q But as you said, you would adjust seasons to allow
6 greater take.

7 A Or lesser take, which we have done from time to time
8 in our regulations. Per example, at one time the limit
9 was three. Now it is two. Some areas have had closures,
10 some have had operations that have been moved upstream,
11 some have moved the other way or are more restrictive.
12 These things do happen. It is dependent on the
13 conditions.

14 Q It is your idea of what is wise use which enters into
15 your determination. It is because of wise use, is it
16 not, that you increase it when the information warrants
17 it, as you say.

18 A Our first consideration is preservation of the resource
19 itself, and if to preserve this we have to prohibit the
20 taking of any fish or any wildlife, this is done and we
21 have done this.

22 Q After the facts indicated that you have conserved the
23 resource as well as you possibly can and there is still
24 in excess, as I understand you consider it wise use to
25 allow full utilization of what is not necessary for

1 optimal conservation?

2 A Up to the measurement you can make of it.

3 Q Now you indicated that the bag limit has been reduced
4 from three to two. Is that correct?

5 A Yes.

6 Q Is one of the reasons for that that there are a greater
7 number of fishermen?

8 A I think partly this is it. Partly it was again a further
9 distribution of the catch. Partly because of the
10 difficulty of a pole fisherman to catch steelhead.
11 Two seemed to be a very satisfactory bag limit. I can't
12 tell you off the top of my head when it came about. I
13 suppose 12 or 15 years ago.

14 Q Has the Game Department ever limited the total number of
15 steelhead cards which have been issued?

16 A No.

17 Q Would it be accurate to say that in the past and presently
18 it is the policy of the Game Department to distribute an
19 unlimited number of cards?

20 A Anyone who wants a steelhead card may get one by purchas-
21 ing it or in other ways that are available to those that
22 don't need to purchase it. There is no limit to the
23 number. The limit is only those who desire to pay the
24 money and participate, if this answers your question.

25 Q And because your cards are not limited, the total number

1 of sportsmen fishing is not limited either. Is that
2 correct?

3 A That is correct.

4 Q I believe in response to Interrogatory No. 180, it is
5 page 54, the interrogatory reads:

6 "In the opinion of the Game Department, would there
7 be any effect on the continuation of a steelhead
8 run in any of the water systems listed in answer
9 to Interrogatories 80 and 81 if there were permitted
10 unlimited fishing on that run by hook and line?"

11 The answer was:

12 "No. A hook and line fishery is incapable of
13 destroying a steelhead run."

14 Then on page 15 in answer to Interrogatory No. 49, the
15 interrogatory reads:

16 "If the answer to Interrogatory --"

17 Well, doggone it, I will have to go back. Interrogatory
18 No. 48 had asked whether the Department regulations had
19 ever allowed persons to take by hook and line steelhead
20 from their spawning beds or holding pools at any time
21 during the ten days immediately preceding their main
22 spawning period and 49 following that asked if the
23 answer to Interrogatory 48 is affirmative, it asked for
24 each season and location where such taking was permitted,
25 and:

1 "a What danger, if any, to future steelhead runs
2 was created thereby."

3 At line 19 in the answer there is a statement similar to
4 the one I quoted from Interrogatory 180:

5 "No danger to the steelhead resource is created by
6 the regulations per se. A hook and line sport
7 fishery is not destructive to the steelhead resource."

8 With that preface, Mr. Crouse, I would ask you whether
9 there aren't some assumptions built into those statements.

10 MR. CONIFF: May I advise you, counsel,
11 Mr. Millenbach assisted me in the preparation of those
12 answers and not the Director, although the Director did
13 participate in the preparation of some of the answers.
14 I am not objecting to the question with that understanding.

15 Q (BY MR. PIERSON) Let me preface my question with a little
16 more which is, is that your understanding, as those
17 statements stand?

18 A That is basically a hook and line fishery will not
19 decimate a steelhead run? Yes, I don't feel that it
20 will.

21 Q Are there some fisheries management assumptions built
22 into that? For example, doesn't that assume that there
23 won't be five million sports fishermen on one river?

24 A Well, I think the only assumptions built into that, and
25 I think they are proper assumptions on the basis of the

1 present knowledge we have. It has not happened in the
2 past. I don't know what will happen tomorrow. Maybe
3 you won't be here for reasons beyond your control.

4 Q Maybe I can develop my question a different way. Would
5 the statement be the same or would you stand by that
6 statement if it appeared there were five million steel-
7 head fishermen standing on the bank and in the river and
8 on boats on one stream? Do they have the capacity to
9 destroy the run?

10 MR. CONIFF: I object to the question.
11 There is no relationship to any evidence that could cover
12 the question.

13 A I know of no area that this has happened.

14 Q (BY MR. PIERSON) So that statement is based on your
15 knowledge of previous years numbers of steelhead fisher-
16 men. Is that correct?

17 A Yes, based on my knowledge of how many punch cards we
18 have out and how many people fish.

19 Q And also how many fish have been taken in?

20 A Yes, we have catch records.

21 Q And also whether any runs have been decimated by fishing
22 by hook and line in previous years?

23 A This is correct.

24 Q To rephrase the question, that statement is based
25 entirely on past knowledge and doesn't stand as an

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absolute.

A It stands as absolute within the parameter of knowledge we now have. Nothing is cast in concrete.

Q Do you know whether there is the same absolute statement for the taking of steelhead by net?

A From my limited knowledge of nets and from talking to people with nets, including an Indian recently, they have the capacity to under proper conditions virtually take all the fish in the river.

Q What Indian was it that you talked to?

A One of the Nisquallys. I can't give you the name off the top of my head. I think if you talk to anyone that is an efficient fisherman, given an efficient fisherman and a river of that magnitude, they have the capability of doing this.

Q Did the conversations with the net fishermen indicate whether if at all the nets could be regulated to prevent taking all the fish in the river?

A We never got in that type of discussion.

Q Does your knowledge or opinion stretch to those facts? That is, do you know whether it can be so limited?

A If you are getting back to your example of one net for one day or one fish which I presume you are getting back to, certainly this is not going to hurt the run. If you go the other way and put five million fishermen with

1 five million gillnets on any given river, certainly you
2 will destroy it in a hurry.

3 Q Would that be the same five million fishermen with hook
4 and lines on the river?

5 A They would not be as efficient.

6 Q Do you know any river in the State that would be
7 destroyed by such hook and line fishery?

8 A I think the question is ridiculous. I think it is
9 hypothetical. I don't know of any river with that many
10 fishermen on it. Maybe you do.

11 Q I was taking your example of five million nets.

12 A I was taking the example you used previously.

13 Q Has it entered into your formulation of policy there
14 might be five million net fishermen on the river?

15 A I don't think I will bother to answer that. I can see
16 no reason to pursue the line of questioning. If you
17 give me a reason, I will.

18 Q I want to know as a matter of policy in your capacity as
19 Director of the Department of Game if you have any
20 estimate of the upward number for the controlable limits
21 of net fishing for steelhead?

22 A If I have any estimates of the upper limits of net
23 fishing for steelhead where it would hurt the resource?
24 Yes, one net can hurt the resource with one man under
25 the right conditions.

1 Q Is that true also for hook and line?
2 A No, that is not true for hook and line.
3 Q If the fisherman is standing on a spawning bed?
4 A It would still not be true.
5 Q It wouldn't hurt the resource?
6 A I know of no condition where one man with one hook and
7 line would hurt the resource.
8 Q How is one man with one net going to hurt the resource?
9 A Because of his capability to take so many more fish,
10 his capability is virtually unlimited compared to a hook
11 and line fisherman.
12 Q When you say his capability, are you assuming nobody
13 will regulate it?
14 A I am saying that one man with one net if he wants to
15 can destroy a run under certain conditions. One man
16 with a hook and line cannot under any condition.
17 Q Can you be stepping on a spawning ground?
18 A Well, is he fishing or is he walking on eggs? No, I
19 can't do it by stepping on spawning grounds.
20 Q What I am trying to get at, Mr. Crouse, is you seem to
21 have an opinion that net fishing is as such absolutely
22 destructive of the resource. On the other hand you have
23 the opinion under no circumstances can a hook and line
24 fishery be destructive.
25 A I don't believe you can compare the two.

1 Q My question about net fishing is do you assume that the
2 net fishing will be entirely unregulated in the formu-
3 lation of your opinion?

4 A You are still talking about the efficiency of the gear,
5 whether it is regulated or not. A net under any
6 circumstances is much more efficient than a pole
7 fishery and regardless of what regulations you put on it,
8 in my opinion a net fishery has a capability of taking
9 many more fish under similar regulations, under different
10 regulations. I know of no way that you can compare the
11 two.

12 Q You earlier said one net under the right conditions
13 is capable of taking an unlimited number and destroy it.

14 A Under the right conditions I said one net operated by
15 one man has an unlimited ability to take fish and it can
16 virtually destroy a run under the right conditions.

17 Q In making that opinion, are you assuming that the man
18 who is operating the net will not be regulated as to
19 size, time, or mesh size?

20 A I am saying that one man if he had the right to do this
21 could do it. Again you get back to where you can go
22 any degree you want. One man for five minutes with a
23 five foot net, no. A net that is capable of taking one
24 fish. All you are talking is degree. With net fishing
25 you start with a degree of capability of eliminating the

1 resource.

2 Q You also said that a net fishery would be destructive
3 of the resource because of its unlimited capability.
4 I want to know whether that opinion assumes the type of
5 net fishing is unregulated as to time, place, mesh size,
6 and net size. I am asking your opinion.

7 A In my opinion what you are getting back now to, I
8 presume. Maybe I shouldn't presume. I don't know where
9 you are going. A net fishery under any circumstances
10 is a much more efficient fishery than a pole fishery.
11 You can regulate any fisheries from total prohibition
12 to total no regulation.

13 Q And all various degrees in between?

14 A You have all degrees in between.

15 Q That applies to nets and it applies to hook and line?

16 A A net fisheries at point zero is more efficient by far
17 than a pole fishery and any degree in between is more
18 efficient, one net, one pole.

19 Q You say you can regulate nets all the way from prohibition
20 to unlimited.

21 A We can't.

22 Q You say that the difference between hook and line and net
23 is when a net is used for the same amount of time and
24 effort it takes more fish?

25 A That is correct.

1 (Discussion off the record.)

2 Wednesday, March 28, 1973
3 Morning Session - 9:30 a.m.

4 MR. PIERSON: Let the record show that
5 it is 9:30 the following day, the 28th. We are continuing
6 with the deposition of Mr. Crouse.

7 CARL N. CROUSE, resumed the witness stand
8 and continued to testify as
9 follows:

10 EXAMINATION (CONTINUED)

11 BY MR. PIERSON:

12 Q Mr. Crouse, I am looking at a pamphlet called the 1963
13 Game Fish Season Catch Limits. Can you tell me what
14 this publication is and how it happens to be published?

15 A This is a publication by the Game Department that is
16 distributed to anyone that wants it to give the 1973
17 game and fish seasons and bag limits as established by
18 the State Game Commission.

19 MR. PIERSON: I would like to attach
20 this as Exhibit 2 to your deposition.

21 MR. CONIFF: No objection.

22 (Pamphlet marked Exhibit No. 2.)

23 MR. CONIFF: To inform you, Mr. Pierson,
24 I forgot that material you requested as Exhibit 1. I
25 will do so at the luncheon break.

MR. PIERSON: Without my knowing it, Dave

1 Getches got a copy of some of the material and we can
2 give the reporter that copy.

3 MR. CONIFF: Fine.

4 Q (BY MR. PIERSON) Now referring to Exhibit 2, Mr. Crouse,
5 this pamphlet, it indicates in some cases the laws
6 applicable to licensing and permit holders for game
7 fishing, does it not?

8 A The law applicable to license holders, yes.

9 Q I am looking at pages 34 through 36 and before we look
10 at specific provisions, let me ask a simple question.
11 Does the Game Department require that treaty Indians
12 outside the reservation be required to hold a steelhead
13 permit?

14 MR. CONIFF: Excuse me. May I for
15 clarification, are you referring to the game fishing
16 license or the steelhead punch cards?

17 MR. PIERSON: The steelhead permit punch
18 card is what I am after. If you want to confer with
19 counsel, it is fine.

20 A No, I was trying to think. My recollection is, yes,
21 they do have to have it but there is no charge for it.
22 Again I am talking from my recollection. I am sure this
23 is right.

24 Q (BY MR. PIERSON) That is to say that an Indian who is a
25 member of a treaty tribe fishing outside the reservation,

1 even if he fishes by the proper hook and line method
2 under your regulations he must still have a steelhead
3 permit?

4 A That is my recollection. He has to have a permit and
5 that is to punch it if he catches a fish under our laws
6 and regulations, but he is not charged. The card is
7 free to him.

8 Q Is it required also that he have a game fishing license?

9 A No. Inside of his ceded area, he does not need a State
10 fishing license and there is no fee in lieu of the
11 license issued. There is no fee in lieu of license
12 issued to him that I know of when fishing outside of his
13 reservation.

14 Q Within his ceded area, the only specific identifying
15 licensing or permit card he must have is the steelhead
16 punch card permit?

17 A In fishing for steelhead, yes.

18 Q Just generally speaking from the Game Department's point
19 of view of fishing management and policy, what is the
20 reason for having a steelhead punch card permit over and
21 above the licensing?

22 A Management purposes, information so that we can properly
23 assess the number of fish taken and develop our management
24 program on this. To properly manage a river we have to
25 have some information what the take is by sports fishermen

1 and this is our system of doing it.

2 Q The punch card generally identifies the date and the
3 place and the size of the fish taken?

4 A The size need not be identified.

5 Q But it gives the date and the place?

6 A This is correct.

7 Q How confined is it by place? Is it counties or --

8 A River, just by the river.

9 Q Are there generally sections of the river that are
10 indicated or is it the entire system?

11 A No, it is the entire system. The exception to that would
12 be the Columbia where there is a break on numbers above
13 and below Bonneville Dam, but generally speaking the
14 river in the State, either the Skagit or Toutle or
15 normally you get the north and south fork of the Toutle.

16 Q How does the Game Department collect the punch cards
17 after they are used in a season?

18 A They are returned to the various licensed dealerships
19 which they go out there to begin with and they are mailed
20 in by our people or mailed in directly.

21 Q Referring again to pages 34 through 36 of the 1973
22 pamphlet, Exhibit 2, my confusion and reason for asking
23 this question is that it doesn't appear from reading this
24 that there is a direct statement that all the treaty
25 Indians must have is the punch card. What I am really

1 trying to get at, is there a regulation or an order of
2 the Game Commission which states all they must have is a
3 punch card and need not pay for it, or is the interpre-
4 tive language on pages 34 through 36?

5 A From reading this it would not be necessary, I presume,
6 for an Indian to have one.

7 Q Maybe I can explain to you what my confusion was in
8 reading this. There is a section on page 34 which
9 requires that all those who steelhead or fish for steel-
10 head must have a punch card permit and following on
11 page 36 there are the statements that the treaty Indians
12 need not have licenses when fishing within the ceded
13 areas but no mention of steelhead is there made. My
14 question is, is there any order or regulation of the
15 Commission which specifically states all a treaty Indian
16 must have is a punch card?

17 A I would have to look that up. I would say this: It has
18 never been a problem to the best of my knowledge with
19 Indians or with any of our people. I would have to look
20 it up.

21 Q Has the Game Department to your knowledge ever considered
22 utilizing the steelhead punch card permit method to
23 gather information on net catches of steelhead on
24 reservations?

25 A No, we have not attempted to gather information on

1 reservations with the exception of buyers. We had
2 rather hoped that the federal government through their
3 program, since they have been working on reservations
4 for years, would be able to give us information.
5 Apparently they have not gathered it either.

6 Q To your knowledge have there been times you have
7 requested such information from the Fish and Wildlife
8 Service?

9 A Yes.

10 Q Do you have within your files letters and requests that
11 we could see after this session?

12 A Verbally I asked I suppose not more than two weeks ago,
13 three weeks ago, if any of this information had been
14 compiled and the answer at that time was that the
15 information had not and they didn't know how many
16 steelhead were taken.

17 Q On reservations?

18 A On reservations.

19 Q You do gather general information through fish buyers
20 information?

21 A We have some information from fish buyers and primarily
22 fish receipts of fish sold in Oregon. Also there are
23 commercial lists of fish sold from Vancouver that are put
24 out by the commercial fisheries agency that lists
25 steelhead. They list the various types of fish and

1 steelhead is listed.

2 Q When you mention Vancouver?

3 A Vancouver, B. C.

4 Q Mr. Crouse, if the Game Department were authorized by
5 State law to permit net fishing outside the reservation
6 boundaries, could the Department regulate the net
7 fishery to conserve the resource?

8 A Are you talking about a net fisheries as a primary
9 fishery? You are talking about steelhead to begin with.

10 Q Yes.

11 A Then you are talking about a net fishery that is for the
12 basis of taking steelhead commercially in nets?

13 Q I am just speaking about net fishery, period.

14 A Okay, if the Game Department was required to have a
15 regulated net fisheries on a river in the State, you
16 could conserve the resource but it would be to the
17 detriment of any other use of the resource. It would be
18 subservient to the net fisheries.

19 Q By other use of the resource, you speak of such uses as
20 hooks and line recreational use?

21 A Yes.

22 MR. PIERSON: For the reporter, we have
23 today Mr. Allen Ziontz who represents the same clients
24 as Mr. Morisset.

25 Q (BY MR. PIERSON) Mr. Crouse, are you aware of any data

1 or facts indicating that net fisheries for steelhead
2 have existed or coexisted with other fish techniques
3 on the same river, such techniques as recreational
4 hook and line uses, and that there is no evidence that
5 this coexistence has harmed the resource?

6 A I am not aware of any situation that you are alluding to,
7 no. Are you alluding to net fisheries on reservations
8 at river mouths which is commonly carried out and pole
9 fishing up above?

10 Q I am speaking generally of net fishing existing in a
11 river system within the same general area as hook and
12 line fisheries.

13 A Do you have an example? I don't know of any.

14 Q Just to give you some of the things I am driving at,
15 it is my understanding that there are net fisheries
16 authorized on the Columbia River which take steelhead
17 and sell them commercially and the steelhead runs on that
18 river have survived in that fishery and there are other
19 uses or techniques for taking fish in the same river
20 system and that the resource has not been damaged.

21 A I think as a broad statement on the Columbia River, yes,
22 there is commercial fisheries on the Columbia River.
23 The commercial fisheries for steelhead is one that is
24 based on attempting to reduce the take of steelhead to
25 a minimal degree. The commercialization is on the salmon

1 resource and the regulations are pointed towards the
2 reduction of the take of steelhead and the primary
3 direction of the commercial fisheries is on the salmon.
4 You have different races that come in at different times.
5 Salmon and steelhead sometimes come in at the same time.
6 This is an incidental catch with as much protection to
7 the steelhead as possible. It has resulted in an increased
8 Zone 6 fishery by the Indians, their steelhead has gone
9 up as the down river take of steelhead has gone down.
10 There is a reduction. I think the record will show this.
11 I can't quote them from the top of my head. There has
12 been an increased take in the Columbia River.

13 Q Just to make some clarification of that last comment,
14 are the steelhead that are taken by non-Indian fishermen
15 by nets down river sold commercially to your knowledge?

16 A Yes, they are. My point is, this catch is going down
17 because of the regulations and attempt to reduce this
18 incidental catch of steelhead and it has showed a
19 substantial reduction over the last several years.

20 Q In other words there has been net fishing regulations
21 down river in the Columbia which have decreased the take
22 of steelhead in those nets?

23 A During particularly the early run and this is done again
24 by net size and by seasons in attempting to not fish
25 when the steelhead is the predominant fish in the river,

1 not to have commercial fishing.

2 Q But the regulations as to seasons and mesh size have
3 been successful in decreasing the take of steelhead?

4 A They have worked to a limited degree. This again is
5 because you have races of different fish that come in
6 at the same time that it is possible to make this
7 collection and you can only make this on a large fish,
8 a Chinook salmon against a steelhead which is a relatively
9 small fish.

10 Q Do you have relative a similar situation in other
11 areas in the State such as the Puget Sound region?

12 A No, primarily this is a Columbia River situation. It is
13 not comparable to any other river in the State both on
14 the magnitude of the runs and the number of different
15 races that come in.

16 Q You don't have circumstances where salmon and steelhead
17 intermingle in runs in the Puget Sound area?

18 A You do, but again not to the degree that you do there
19 and again there is no place that I can recall comparable
20 to the Columbia River that there is any commercial
21 fishing in the rivers for salmon with the exception of
22 the Indian reservations.

23 Q Now I believe when talking about the steelhead down river
24 net take in the Columbia, you indicated regulations had
25 been somewhat successful in increasing the run up river

1 and that the Indians fishing up river had therefore
2 taken or been able to take greater amounts of steelhead.
3 Is that correct?

4 A As one side has gone down, the other has gone up.

5 Q It is also your understanding that the amount of escape-
6 ment up river from the Indian fishing effort indicates
7 that the escapement level has decreased?

8 A The fisheries above Zone 6, the number of fish have
9 shown a decline in the Columbia River speaking of
10 steelhead.

11 Q Are the methods used by the Indians up river of a kind
12 that can be regulated to decrease their take?

13 A Well, certainly season changes could be made but my
14 experience in listening to the seasoned members of the
15 federal establishment, they are always pressing for
16 longer seasons and more Indian fish.

17 Q The question was whether to your knowledge the type of
18 gear and the method for taking fish by the Indians up
19 river in the Columbia River were of a kind that could
20 be regulated as the net fisheries down river have been
21 regulated, to decrease the Indians take of steelhead?

22 A I think it probably could be done by restrictions of
23 seasons at the time of take. This is a primary thrust
24 of the lower river fishery and I think it would be much
25 easier up there to do it this way.

1 Q Is it your impression that in these sessions where the
2 federal government has been speaking about regulation
3 of the Indian fisheries up river in the Columbia, that
4 without exception the federal government asks for longer
5 seasons and greater take?

6 A It has been my impression rather consistently they have
7 indicated a desire for a stronger Indian fisheries. I
8 would suspect that this may have reached its ultimate
9 as to what they can take at this time. This has been my
10 past experience in the past several years.

11 Q Is it your impression that federal requests in this
12 regard have been without concern for the optimum
13 propagation of the steelhead run in the Columbia River?

14 A It is my impression their primary concern in appearing
15 at these meetings is to get a larger share of commercial
16 fisheries in the Columbia River for the Indians who
17 they represent at these meetings. The Indians also seek
18 for themselves certainly.

19 MR. CONIFF: I don't know. Maybe I should
20 ask. I would like a couple of clarifications so the
21 record isn't too fouled up. Could you ask him what
22 regulatory authority it is that is setting the seasons
23 and in other words who votes and where it occurs, to
24 clarify the record.

25 MR. ZIONTZ: I was going to ask that.

1 Let me follow the last thought.

2 Q My question, Mr. Crouse, was whether you feel that the
3 federal government and its requests have ignored the
4 conserving of the resource and the propagation of the
5 steelhead resource in making the requests in regard to
6 the Indian fishing on the Columbia?

7 A I have felt their primary interest to date has been,
8 one, to establish as strong an Indian fisheries as
9 possible on the Columbia River. This is again a personal
10 opinion. In attempting to establish this, it will
11 probably have to come out of the commercial fisheries
12 down below that is generally not fished by the Indians.

13 Q Do you think that this has been without regard for
14 conserving the resource?

15 A I think that first -- and again this is a personal
16 opinion -- I think the first regard was to establish a
17 strong base of Indian fisheries there. The second was
18 to consider the resource that was to come out of the
19 Zones 1 through 5. This had to be carved out in their
20 opinion and it was carved out. It is now a substantial
21 fishery.

22 Q Could you describe within your knowledge the regulatory
23 authorities which determine the seasons and mesh sizes
24 and takes on the Columbia and what interest if any the
25 State of Washington has in these regulatory authorities?

1 A The regulatory authorities are carried to the compact
2 by the Department of Fisheries in the State of
3 Washington and the Oregon Fisheries Commissioner from
4 Oregon. They jointly settled the rules and regulations
5 on the Columbia River as it pertains to the commercial
6 taking of fish.

7 Q Does the Game Department have any responsibility or
8 input in the setting of regulations which affect the
9 take of steelhead by net?

10 A We have no responsibility. We have some input as it
11 pertains to the decision reached by the Commission, and
12 we do quite commonly make our recommendations known when
13 the seasons are set as do individuals, the federal
14 government, anybody else interested.

15 Q In making that input has the Game Department ever
16 expressed a position for or against the Indian net
17 fisheries up river?

18 A We have consistently expressed an opinion on the Columbia
19 River that where there is commercialization of salmon on
20 the Columbia River, we would like to see a minimal take
21 of steelhead in order that they will go up river, both
22 to sustain the run and also for the limited sport fishing
23 that is now available on the River.

24 Q Do you know any data indicating an excess of escapement
25 over that necessary or the optimal propagation is harmful

1 to the resource of the steelhead?

2 A An excess of escapement is harmful to the resource? No,
3 I know of no data.

4 Q Do you know any evidence net fishing for steelhead has
5 destroyed a run before the Game Department began its
6 artificial propagation of the resource?

7 A I think that probably I would like to defer that question
8 to the biological expert.

9 Q When expressing your impressions have you before
10 yesterday stated that you have heard or known of instances
11 where net fishing for steelhead has been harmful to the
12 resource or destroyed the run or decimated it? Do you
13 have reference to any evidence about such net fishing
14 which occurred before the Game Department began its
15 artificial propagation efforts?

16 A No, I think the statement again, if I understand what you
17 are alluding to or referring to, is that I made the
18 statement that catch records on the rivers would indicate
19 what the catches were and the differences between certain
20 rivers where there is a reservation net fisheries and
21 where there isn't. These were the records I was referring
22 to and I presume you have all of this at this time and
23 have for some time, catch record data of the Game
24 Department by rivers of steelhead.

25 Q The catch data and punch cards do not go back further

1 than the beginning of the Game Department official
2 propagation efforts, do they?

3 A Again you are getting back into a biological question.
4 I can give you rough guesses of when we started
5 propagation but there was propagation done on steelhead
6 before the Game Department took over by the various
7 county game departments. I am sure the records show
8 this. I don't know what you are alluding to by time.
9 I am sure that it goes back at least to county times.

10 Q Then it is accurate to say the impressions you have
11 about how the net fishing is decimating the steelhead
12 run were not contained in a time frame as far as you can
13 remember?

14 A No, did I say that net fishing for steelhead has
15 decimated the run? I thought I made the statement by
16 looking at the records you can draw a conclusion to the
17 effect that net fishing on reservations against rivers
18 that did not have reservations and from this you could
19 reach a conclusion.

20 Q Are there any other variables between the rivers which
21 would explain the difference in the steelhead runs
22 other than the fishing by nets on reservations?

23 A I think this would be the primary consideration in some
24 rivers. You can select them or you can select rivers
25 that have had environmental changes. The Columbia River

1 being a classic example of a river having substantial
2 environmental changes.

3 Q Have there been in the past instances on rivers without
4 reservation net fisheries that the steelhead has
5 fluctuated a great deal from year to year?

6 A You got the records. If you want me to look at them
7 and make a determination, I can. I think the biological
8 people can make a better determination than I can. You
9 always have a fluctuation as pertains to wildlife, be
10 it fish, game, or anything else.

11 Q I was just asking whether you had an impression or
12 within your recollection steelhead runs in rivers
13 without reservation net fisheries have fluctuated vastly
14 or remarkably from year to year.

15 A Not as a common thing although you do. Again, as I say,
16 you could have a fluctuation in any wildlife resource,
17 whether it be steelhead or grouse or elk or robins or
18 anything else. You will always have some fluctuation
19 whether it is on a stream that has a net fisheries or
20 not. When you are referring particularly to one that
21 has attempted to be sustained on a natural run --

22 Q Do you know the reasons for these fluctuations in the case
23 of steelhead?

24 A I wouldn't even venture a guess. You can get all kinds
25 of reasons within the parameter you have of expertise.

1 I don't know of anyone that has set down the reasons.

2 If it is an ocean problem, steelhead are more difficult
3 to follow in the ocean. The depth of work has not been
4 done on steelhead as it has on salmon.

5 Q Mr. Crouse, if there were a method of taking steelhead
6 which was less efficient than hook and line fishing and
7 if it distributed the fish taken as widely amongst the
8 fisherman as does the hook and line fishery on steelhead
9 now, in your view would such a method be more prudent
10 or a wiser use of the steelhead resource?

11 A I would rather have a whereas there as to what you are
12 talking about. I think maybe to clarify this, and you
13 have been back to it two or three times, any resource
14 and steelhead is a resource of the State and not a
15 numerous one, incidentally, any resource and using
16 steelhead as an example for the whole anadromous fish
17 field, you have no regulations on this and they are taken
18 by people who want them. Then you have commercialization
19 with no regulation. If commercialization with no
20 regulation reaches the point the resource is diminishing,
21 the people make a decision what they want to do to
22 sustain the resource. This is regulations on the
23 commercial part. When you get past this, the next is
24 prohibiting commercialization of a resource when it
25 reaches the numbers when to preserve it you have to do

1 this. When you prohibit commercialization you can only
2 relate the way they are taken in a recreational or
3 personal use fishery to the ones you want to take.
4 You have one step left. That is complete closure to
5 preserve a resource. I presume this is what you are
6 trying to get at. This steelhead is the last step before
7 complete closure so no one would take them.

8 Q I really wasn't trying to get at that. My question was
9 addressed to your comparison between net fishing and hook
10 and line fishing in which you said net fishing was
11 infinitely more efficient than hook and line and that is
12 one of your reasons for feeling it was not as wise or
13 prudent a use of the resource. My question is if there
14 were a method less efficient than hook and line fishing
15 which distributed the fish as widely amongst the
16 fishermen as your hook and line fishery, would that
17 method be a more prudent or wiser use in your view than
18 the current hook and line fishery?

19 A If there was such a method and I knew what it was,
20 certainly I would be real pleased to take a hard look
21 at it whether it would be more acceptable and make a
22 better type of use of the resource. I don't know what
23 it is. If you have something in mind or anybody does,
24 I would be interested in looking at it. Until I know
25 what it is I can't make a decision.

1 Q My questioning really is whether the standard of
2 efficiency is one of the elements you consider in
3 determining wise or prudent use.

4 A Well, efficiency as you talk about a gillnet fisheries
5 or a fish wheel, certainly it is, absolutely.

6 Q If you will indulge me a minute with a somewhat extreme
7 example, you did make a statement that a hook and line
8 fishery is not capable or cannot destroy a steelhead run.
9 Of course that wouldn't apply if the steelhead run were
10 just two fish, would it?

11 A Well, you are getting back at examples again, where is
12 the beginning and the end. If it was only one fish,
13 it certainly wouldn't apply. One is not able to spawn
14 so it would already be lost.

15 Q If you had two, male and female, it would be the same
16 conclusion?

17 A Not necessarily. Again you are drawing a numbers game.
18 Where is the beginning and where is the end of this?
19 When you get to four, eight, sixteen, thirty-two and
20 five million. Really I would rather have you tell me
21 where you are going and I will make a reasoned statement
22 on it.

23 Q Would it be accurate to say the statement about whether
24 the hook and line fishery can harm a steelhead run
25 depends upon the size of the run and the amount of the

1 hook and line fishery?

2 A We have no information under our present system of
3 management that hook and line fisheries has hurt the
4 steelhead run. Now if we do this, if it does and I
5 will try to get to your question before you ask it,
6 if we do have this there would be further restrictions
7 on it to the point the run would be preserved. Our
8 first responsibility is the resource and the preservation
9 of the resource. The second is the use the people make
10 of it.

11 Q The second element of the use the people make of the
12 resource after taking it, does that mean that the use
13 can vary while the resource is conserved?

14 A You have various uses of anadromous fish resources in
15 this State at this time. You have a substantial
16 commercialization by one department of anadromous fish
17 and they have the capability of these particular fish
18 by their adaption can stand this type of fisheries. You
19 have a number of other fish that do not have the
20 commercialization because obviously over the years
21 commercialization would have destroyed this resource
22 so this is not done. The use by the people and the best
23 interest of the people of the State after sufficient
24 conservation of the resource or sufficient regulations
25 are put in to conserve the resource. On some things

1 in this State there is no season. There is complete
2 protection. You follow this all the way up to complete
3 commercialization. It depends upon the species, the
4 capability of reproduction, and all the other factors
5 that come into it.

6 Q My question was really directed to the two elements which
7 you say enter into your consideration, conservation was
8 one and the second was the use made thereof. Let me
9 take an example. If your current hook and line fishery
10 did not increase the number of steelhead taken and the
11 actual escapement and the resource itself were either
12 staying at least at current levels or expanding but in
13 addition the hook and line fishery was selling the
14 steelhead catch commercially, would that harm the resource?

15 A If they were selling it commercially?

16 Q Yes.

17 A Under the present regulations I think the worst thing
18 you would do by saying I could go out and catch two
19 steelhead a day by hook and line and punch them and
20 sell them, you would open up an impossible situation for
21 commercialization of steelhead for money. Any time
22 anyone has an opportunity to commercialize in this way,
23 there are the limited few people who would take advantage
24 of a situation like that. You would open up a market.
25 My biggest fear, what I am saying, if I was allowed to

1 take mine down to the meat market and sell them if I was
2 lucky enough to catch two in one day, you would open
3 up unregulated, uncontrolled fisheries so you would have
4 illegal fish entering the market so you would destroy
5 the run. You would make an impossible enforcement
6 problem.

7 Q You are saying the commercialization of the resource is
8 bad, because it would effectively create a greater
9 pressure on your runs?

10 A What I am saying under this one, and your specific
11 question as I remember it, if you caught a steelhead
12 would it hurt if you sold it, was that your specific
13 question?

14 Q Yes, would it harm?

15 A If you caught it under the present regulations of the
16 Game Department, the selling of the steelhead would not
17 harm the resource; but such a law would ultimately and
18 totally have a great harm on the resource. Presuming it
19 was acceptable by the public and I don't think it would
20 be, but presuming it was, you could not have a law such
21 as this with no regulations on it to allow a sport
22 fisherman to sell this but what you would have too many
23 outlets and too many of the few people who do this
24 attempting to commercialize on it and make a living on
25 it and you have an impossible enforcement problem.

1 If you four sold a fish, no, it probably wouldn't hurt.

2 Q Would the commercialization through allowing sale of
3 hook and line caught steelhead, if I understand, that
4 would be bad because such commercialization would create
5 a heavier pressure on the greater take of steelhead?

6 A No, not by hook and line fishermen. I would doubt this
7 very much because the cost of a hook and line fisherman
8 taking a steelhead is considerably more than the value
9 of the steelhead, but what it would do would be to open
10 up avenues of commercialization of steelhead by people
11 who went into it for commercialization in other ways
12 such as gillnet and have a ready outlet for them. In
13 many ways they could take them that would be contrary
14 to the law but it would make it difficult to enforce.
15 This is basically what you would be into and the problem
16 it would cause.

17 Q I understand your point about enforcement. Assuming
18 what you are telling me is there is no way you could have
19 an enforceable regulation permitting a hook and line
20 fishery alone but allowing commercialization.

21 A I think, number one, and this is a judgment question,
22 in my candid judgment there is nobody in this State
23 or no people would accept that type of season. I think
24 this in itself would be out. I think the question is
25 not germane. Number two, whether you catch a steelhead

and spend an average of X dollars catching it, say \$30, and catch a steelhead worth \$5 commercially, if you sell this to your neighbor it is not going to change the basic run if it is caught under the right regulations. What you are doing is developing an unacceptable practice that the general public wouldn't accept and likewise you are developing the possibility of outlets by people who normally do not respect laws and follow them, for them to commercialize it. That is my judgment decision.

Q You are saying the people who would utilize the commercialization wouldn't respect your regulations.

A I am saying you have a law against murder, but you have people who do this. You have a law against gillnetting steelhead, but if you open the avenue so it is easy for them to do it, they would take it with gillnets which is illegal if they have a ready market. They would take it with dynamite or any other way. What I am saying, you have opened a back door here that has no return.

Q You are saying even though you had a regulation against gillnetting, you couldn't enforce it if you allowed the steelhead to be sold?

A I would say it would be extremely difficult by opening up all the markets to enforce it, extremely difficult. I can't see any value there in your trying to obviously establish that steelhead can be sold commercially. The

1 State had a decision on this a long while ago. I
2 presume if people wanted to sell them commercially,
3 they would.

4 Q I wonder if you have specific examples where people
5 allowed to sell steelhead commercially but were regulated
6 in the take and at the same time ignored and violated
7 the regulations?

8 A I have no specific people in mind.

9 Q You are aware on the Columbia there are commercial takes
10 of steelhead and people who take them are regulated and
11 they are obeying the regulations?

12 A I would presume likewise on the Columbia you have people
13 where they are commercially taken are not obeying the
14 regulations and selling them. I have heard on two
15 occasions the head of the Indian -- whatever committee
16 it is -- fisheries committee criticize rather severely
17 State agencies not enforcing laws against Indians out
18 there who are outside. Maybe if you are looking for this
19 example, it is warranted.

20 Q Is this greater enforcement problem according to your
21 understanding than you have regulating the hook and line
22 fishery in the State of Washington?

23 A This is an enforcement problem that pertains to salmon
24 and the commercial taking. We have the capabilities of
25 regulating hook and line fisheries or steelhead and have

1 had no criticism in the past. I assume our enforcement
2 is at an acceptable level.

3 Q Is your enforcement more or less difficult than what
4 your understanding of the enforcement difficulties we
5 have been talking about on the Columbia River?

6 A A judgment decision.

7 Q What is your opinion?

8 A Any enforcement is difficult, but it depends on what you
9 are enforcing again. You have got a law against murder.
10 Is your enforcement difficulty more difficult on first
11 or second degree? Enforcement is always difficult.
12 You only enforce up to acceptable levels. I know of no
13 law that you have a hundred percent enforcement on.
14 Maybe you know of one. I don't know of any.

15 Q Is it accurate to say that it is a goal of the Game
16 Department management program to permit the taking of
17 the entire harvestable steelhead stock to the extent
18 that amount can be estimated on the data available to
19 the Department?

20 A I think it is fair to say the goal of the Game Department
21 is, number one, conservation for the resource of any
22 species we manage. The second goal is if these can be
23 taken, if there is a sufficient surplus, we attempt to
24 take the surplus. We attempt on any species we have
25 managed to err on the conservative side. We do everything

1 to preserve the resource. This is our first responsi-
2 bility.

3 Q With those qualifications, it is accurate to say that it
4 is a goal to take the entire harvestable amount of
5 steelhead stock?

6 A With those qualifications, we would attempt to take what
7 we would consider stocks that are not needed for the
8 carrying out of the run in the future.

9 Q Looking at the answers to interrogatories, Mr. Crouse,
10 referring to Interrogatory and Answer No. 71.

11 A Page or number 71?

12 Q Number 71. That is an interrogatory on page 21 which
13 asks:

14 "Please furnish a list of the names and addresses
15 of all persons or organizations outside of the
16 Game Department to which the Department sends
17 notices of proposed rule making, rule making
18 hearings, contested case hearings, regulations
19 issued, or orders issued."

20 The answer listed approximately two and a half pages,
21 two columns of names. Is it accurate, Mr. Crouse, to
22 say that this list includes as a general matter newspapers,
23 outdoor or wildlife editors and sportsmen's groups?

24 A It includes as a general list, it includes the news
25 media and in looking at these, most of these are outdoor

1 editors, not all of them because some papers don't have
2 the number of people that do that. They have a sports
3 editor instead of an outdoor editor. Generally we send
4 an announcement to all the news media. We send announce-
5 ments to any group that have expressed interest and a
6 number of groups expressed interest only in specific
7 seasons. The granges in many cases, the cattlemen's,
8 sometimes the wool growers, farm groups, timber people,
9 the Forest Service, Department of Natural Resources.
10 Some of the -- well, I hesitate to use the term. I was
11 going to say preservationist groups. Some of the
12 environmentalist groups have specific things they are
13 interested in. We have a rather broad group we try to
14 notify. We try to notify anyone that has an interest
15 in this. I think this is probably a standard list of
16 all meetings, and then you get back into specific areas
17 and a number of individuals who want to know particularly
18 as it pertains to a particular season.

19 Q The list that you have there includes 15 or 20 Washington
20 State Sportsmen's Council members. Is that not correct?

21 A I think the list probably includes the directors.

22 Q But there are about 15 or 20, a large portion of the list?

23 A Yes, I think there are 15 directors they have.

24 Q The list also includes myself and Mr. Dysart and Mr.
25 Nash also, does it not?

1 A I believe you gentlemen recently requested you be put
2 on it.

3 Q But the list we are talking about includes those names?

4 A Does it?

5 MR. CONIFF: The list speaks for itself.

6 MR. PIERSON: The question is prefatory.

7 A Is this you?

8 Q (BY MR. PIERSON) Right, and that is Mr. Nash and Mr.
9 Dysart.

10 A I presume the list has them. Do you want me to read the
11 list?

12 Q No, is it accurate to say a person gets on this list only
13 by requesting?

14 A I would say this is not true, particularly as it pertains
15 to the news media. We always attempt to inform the news
16 media and attempt to put out news releases. Past this
17 we will send special notice for a meeting in Richland
18 to the various groups in Richland, not necessarily sport
19 groups but all the groups. Again we will send notice to
20 the Department of Natural Resources. Are they on the
21 list? When we set opening dates of hunting season, they
22 are interested in them. We send these out. By and large
23 people are placed on the list by displaying interest
24 that they want to know.

25 Q So there are people in addition to the news media to whom

1 you send notices even though they have not specifically
2 requested?

3 A Again this would be if we had a special meeting where we
4 had an interest expressed by somebody, say in the
5 Richland area, that will be at our meeting after this
6 one. We would notify them. We would probably make a
7 special note there as it pertained to the news media
8 so all the public could come in and have their input
9 in whatever we are doing.

10 Q My question is really there are some people on the list
11 or people to whom you send notices who are not in the
12 news media and who have not specifically requested
13 notice?

14 A I suppose there could be. I wouldn't know who they are
15 offhand.

16 Q Have you done that before? Have you sent notices to
17 people who are particularly interested in things you are
18 engaged in, not members of the news media and have not
19 specifically requested such notice?

20 A I would doubt it.

21 Q The example you gave of the Richland group.

22 A I say there because our meeting is specifically held
23 there. We would be more apt to be sure that the news
24 media and if there are any other people who expressed
25 an interest in the meeting receive notice of it. This

1 would be within the given community.

2 Q The interest is not in a expressed notice?

3 A It would be expressed one way or another. Usually a
4 letter.

5 Q Is it in the form of a request to be notified always?

6 A Possibly verbal. We have no hard and fast rule that we
7 are going to tell you we are having a meeting unless you
8 ask for it. Certainly not. Public announcements are
9 made of these things. I may be to a meeting of the
10 County Commissioners and say, yes, we are meeting at
11 such and such a time in Richland. This is not unusual
12 and the public notices go out for this and people very
13 commonly write in and express an interest in our meeting
14 there and want to know if they can come. If they want
15 to come we put them on the agenda if they want to testify.
16 I think probably Game Commission meetings are as widely
17 publicized as any meetings of any group in the State.

18 Q It is accurate to say in addition to the public notices
19 you undertake on your own to notify people who you feel
20 in your correspondence have expressed an interest in
21 what you are doing. That calls for a yes or no answer.

22 A I can't give you a yes or not answer. As far as I know
23 every individual who has been on here has asked to be
24 on the list with the exception of the newspaper news
25 media. They get it anyway. My judgment decision is we

1 attempt to notify anyone who has an interest and usually
2 this is expressed. We normally don't read people's
3 minds. I guess maybe to get things directly back to
4 your question, I had four people in my office the other
5 day talking about predatory animals. I said, yes, the
6 Game Commission is meeting in your area over there at
7 their meeting of April. I presume they now have notice.

8 Q It is also accurate to say the list we are talking
9 about does not include any identifiable Indian tribal
10 organizations, does it?

11 A You have the list. I would say this, that we have from
12 time to time I guess through the normal notifications
13 had people from tribal organizations come to our
14 meetings. It is not unusual. If any of them want to
15 be on the list, all they would have to do is ask. In
16 fact I can assure you that is all they have to do.

17 Q Do you recall a request of the United States that you
18 add to this general list a number of Indian tribal
19 organizations?

20 A Yes, I believe that came in last fall and I believe the
21 request was based on establishment of fishing seasons,
22 wasn't it? Anything that had to do with fishing at any
23 meeting that we discussed seasons.

24 MR. CONIFF: May we take a five minute
25 break?

1 (A short recess was thereupon had.)

2 Q (BY MR. PIERSON) Mr. Crouse, to put it a little more
3 directly, do you know whether the Game Department
4 notified any of the plaintiff tribes in this case of
5 the October 2nd, 1972, meeting and the fact that they
6 were going to consider the motion which we talked about
7 yesterday?

8 A To my knowledge we did not. To my knowledge we had no
9 request at that time to notify them.

10 Q Did you feel at that time the plaintiff tribes in this
11 case were interested parties in respect to that issue?

12 A To be honest with you, I never gave it a thought one way
13 or the other.

14 Q Based on what you knew then, did you feel that the
15 Indians would have no facts or data to add or did you
16 have any impression what facts or data they might
17 present to the Commission in addition to what Mr.
18 Millenbach presented?

19 A No, to my knowledge in any of our previous meetings, I
20 presume you are talking about the facts and data as they
21 pertain to steelhead runs, they have never indicated
22 any biological facts that they had that they wanted to
23 present in the previous meetings or any meetings that
24 our people had with them to my knowledge.

25 Q Would that be true also of information they had on the

1 number of fishermen and the techniques they would
2 utilize?

3 A Well, I think I indicated yesterday we had met with
4 various Indian tribes around the State from time to time
5 and within the last two years on steelhead and steelhead
6 management and have attempted to work with them on their
7 own reservation fisheries. I presume if they had
8 anything, they would have brought it up at that time.
9 In fact we have employed some of them and are training
10 them to run hatchery operations for the purpose of
11 furthering the Indian management of reservation fish.
12 At none of these do I recall the Indians coming in with
13 any biological data as pertains to steelhead run.

14 Q Do they have data about the number of fishermen and the
15 techniques they use?

16 A On reservations?

17 Q At all?

18 A Yes, they have discussed -- some tribes have desired
19 not to meet with us, which is their decision, obviously
20 not ours. Some of them have discussed the number of
21 people they have fishing on reservations. Others have
22 not. To my knowledge they have never come up with an
23 estimate on the total number of fish they have taken
24 from the reservations, either as a group or as a separate
25 entity.

1 Q To your recollection, Mr. Crouse, did Mr. Millenbach
2 present any information or data describing the number
3 of fishermen and the techniques of net fishing that
4 any of the fourteen tribes in this case might utilize
5 should the permission you were considering be granted?

6 MR. CONIFF: Are you referring to the
7 October 2 meeting we have provided the minutes on?

8 MR. PIERSON: Yes.

9 MR. CONIFF: Do you want to refer to
10 the minutes in answering the question?

11 A Obviously there is an answer to it. Do you want me to
12 read through this and pick it out or do you want this
13 as part of the record?

14 Q (BY MR. PIERSON) You don't recall offhand right now?

15 A Not without reading through it and refreshing my memory
16 exactly what it was.

17 Q To switch a little bit, I am looking at a copy of a
18 letter of December 20, 1972, addressed to you, Mr.
19 Crouse, while I was Assistant United States Attorney
20 which requested that you provide the following notices
21 to this office and the Office of the Regional Solicitor
22 of the Department of Indian Affairs including notice of
23 intention of your agency to discuss any matters relating
24 to fishing by Western Washington Indians; a notice of
25 determination whether in the form of a ruling in a

1 contested case, rules, regulations, or other determina-
2 tions of your agency; and notice of all meetings of the
3 Washington State Game Commission. Then I gave you the
4 addresses. On January 22nd I sent a supplemental letter
5 in this regard. The list which I attached included the
6 Colville Business Council, the Lower Elwha Council, the
7 Lummi Business Council, the Makah Tribal Council, the
8 Muckleshoot Council --

9 A Don't you have a record?

10 Q This is the only one I have. There are approximately
11 25 or 30 Indian tribal groups and there are also the
12 Superintendent of the various Bureau of Indian Affairs
13 Agencies. My question, Mr. Crouse, is why those tribal
14 organizations are not on the list in answer to the
15 letter while Mr. Dysart and my names are.

16 A I think you probably get back to playing the degree game
17 again. We would be glad and probably would notify I
18 think without question the affected Indians as we set
19 fishing seasons that pertain to them. I guess what I
20 am getting back to, Mr. Pierson, is it seems to me it is
21 not unreasonable for the specific tribes to ask specifi-
22 cally to be put on this list. We would not under any
23 circumstances take a list of blank sportsmen's organiza-
24 tions, if somebody sent in a roster, and put them on a
25 list. I think there is a degree of reason in here. If

1 these people would ask us to do this, we would. You as
2 their representative we have on the list. If we had a
3 meeting we'd be glad to notify those the meetings pertain
4 to. We are back to the one fish one net. Where do you
5 go in notifying people and do you take a roster of ten
6 names, a hundred names, a thousand names, a voting
7 registration in the State or where do you stop. This is
8 the reason. Certainly if these people want to ask to be
9 put on the list, we would be glad to do it. We would
10 be glad to notify them when we set seasons that affect
11 them. Like the Puyallup decision, the one you refer to
12 where there has been some criticism because the Puyallup
13 Indians were not invited directly to this meeting because
14 it did have to do with a decision as to whether there
15 would be consideration of a net fishing on the Puyallup
16 River in accordance with Rummel's decision. Past that,
17 again anyone that wants to be notified of these meetings
18 can let us know. Do you have correspondence from these
19 people saying they all want to be notified? I am sure
20 you can generate it if you don't have.

21 Q Let me ask the questions. Did you to your recollection
22 respond to the United States indicating you would not
23 furnish the notices we requested to the tribal councils?

24 A In my recollection, I am not sure whether we did or not.
25 I am not sure of this. I am sure when we set fishing

seasons we would let the Indians reasonably expected to be interested in this, let them know this year. Again I can say this. When we get a request for notice of a meeting, it is not our practice to respond and tell the fellow, yes, we will send it out. My general practice is to file that in with other people who have requested notices of this meeting and automatically send them out.

Q Could we agree, Mr. Crouse, that you will look through your files and see if there is any such letter responding to our request of January 22nd?

A Yes.

Q Appended to your deposition if there is such a response?

A Again I would say that very frankly whether it be you or anyone else, I don't feel a responsibility under the existing law of taking an arbitrary list, regardless of the total number of names that we have no indication that these people are at all interested, and put them on a list for all the meetings. I guess you get back to the same thing. This is not directed toward any particular group of people. If they express individually an interest, I presume that within the tribes, the Yakimas for instance, they could send me a copy of the rolls and say each individual wants to be notified.

Q Is it accurate to say, Mr. Crouse, you rejected my request of January 22nd?

1 A No, I don't think that is accurate. It seems to me
2 by your being on the list and being notified, this is
3 not a rejection. It seems to me the people we invite
4 when we get down to fishing which the rationale really
5 pertains to would be the ultimate decision which will
6 come at the August or October meeting. You have had no
7 different treatment than anyone else.

8 Q My question was whether you rejected our request to add
9 to my name and Mr. Dysart's name the tribal councils
10 which we listed.

11 A If this would make you more comfortable, I would say at
12 this time I would prefer to hear from the tribal
13 councils directly and would immediately put their names
14 on so we know they have an interest.

15 Q Let me see if I can rephrase it. Did you reject our
16 request of January 22nd to add to the list which we
17 have been talking about here in answer to Interrogatory
18 71, to add to that the Bureau of Indian Affairs Agencies
19 and tribal councils which we listed?

20 A We have not added them for all Commission hearings.
21 I gather your letter, if you break it back out and let
22 me take a look at it again, it was my impression it
23 related to meetings pertaining to fisheries. I think
24 you have some place down in there any and all meetings
25 relating to fisheries and so forth and so forth.

1 Q I am showing Mr. Crouse the first letter of December 20
2 where there are three items. The third item is the
3 notice of all meetings. The letter I was referring to
4 specifically was the one of January 22nd which includes
5 a receipt of certified mailing by Lorene Bafus in which
6 we asked the same notice being sent to Mr. Dysart and
7 myself be sent to the various Indian tribal councils
8 and the Superintendent of Indian Affairs in the various
9 agencies. Is it accurate to say you rejected our
10 request of January 22nd?

11 A It is accurate to say you and Mr. Dysart and Mr. Nash
12 are on the list. It is accurate to say if any other
13 group wants to be on the list, we would like to hear
14 from them directly.

15 Q I am not going to direct the witness to answer in any
16 manner he doesn't see fit. There are at the bottom of
17 the list we sent to you along with the names of the
18 Indian tribal organizations the names of nine federal
19 agencies or divisions. My question is why you rejected
20 our request to include those people on the same list with
21 myself and Mr. Dysart?

22 MR. CONIFF: I object on the basis this
23 is so repetitive. He has answered your question.

24 MR. PIERSON: Mr. Crouse said he would
25 like to hear from the tribal councils.

1 MR. CONIFF: I will withdraw the

2 objection.

3 A The answer is basically the same. If these people
4 wanted, they can request it. I don't feel obligated to
5 accept from any individual a long list of names to send
6 these notices. If they are interested, I think they are
7 capable people and they can send the request. If you
8 feel you would like to use our notification to notify
9 them, which is a common way to do it, this is proper.
10 Either yourself or George Dysart or anyone else that is
11 on this list can do it. I think you are only talking
12 about degree. If these people want to be put on, we
13 would add them to the list if they would write a letter
14 and express an interest. I have no reason to believe
15 they have any interest except your implied interest.
16 They may not themselves.

17 Q (BY MR. PIERSON) Is it sufficient for attorneys for
18 interested parties to request that you send them notice?

19 MR. CONIFF: The witness has answered
20 these questions.

21 MR. PIERSON: He hasn't answered the
22 question.

23 MR. CONIFF: He has explained the basis
24 previously upon which he has placed your name and Mr.
25 Nash and Mr. Dysart and has explained the reasons he has

1 not placed the 30 some odd names on the list you are
2 talking about. He answered the questions, Mr. Pierson.

3 Q (BY MR. PIERSON) Mr. Crouse, do you have in your files
4 requests from the various Washington State Sportsmen's
5 Councils listed in answer to Interrogatory 71?

6 A Do I have in my files what?

7 Q Listed in answer to Interrogatory 71 on pages 23 and 24
8 of your answer, there are approximately 15 to 20
9 indicated members of the Washington State Sportsmen's
10 Council to whom you send notices as a general matter
11 which list, of course, does not include any Indian
12 tribal governments or organizations. My question is
13 whether you have letters from these agencies individually
14 asking to send them notice?

15 A I doubt that we would at this time. This goes back over
16 many years and I doubt that I could find in the file
17 a copy of any request at this time from these people.
18 I would suspect that these files have long since been
19 destroyed.

20 Q Mr. Crouse, looking at the list I sent to you on
21 January 22nd I have counted 23 tribal governments or
22 organizations which we asked you to put on the list.
23 Looking at your list of the Washington State Sportsmen's
24 Council members I see 22 indicated members. My question
25 is, would it be any more burdensome to you to send the

1 notices we asked to the tribal council and organizations
2 than it is to send it to the sportsmen's councils?

3 A I have told you we have no objection to sending notices
4 to anyone who asks for it. I do object to people sending
5 me lists and I would not do it for the sports council
6 or the Sierra Club. I would not do it for any group
7 that arbitrarily sent a list of names. I would like to
8 know the people individually who want to be on this list
9 and they can get on it. I didn't say it was any burden
10 to put them on. The point I am trying to make is where
11 do you begin and end on a list? I want to know the
12 people that are interested in it.

13 Q Is it enough they speak through an agent?

14 A I would think very easily they could write an individual
15 letter if they have that much interest. If they don't
16 have that much interest, they don't have much interest
17 in getting on the list. Is it possible for them to
18 write a letter in requesting this, each of the 22?

19 Q Mr. Crouse, you are asking the questions. Go ahead.
20 Do you have any reason to doubt the Indian organizations
21 which we listed have a fundamental interest in regulations
22 of Indian net fishing?

23 A I don't know. I presume there has to be some that don't
24 have an interest.

25 Q Do you have any information that would indicate that?

1 A I said I'd presume.

2 Q Do you have any information you base your presumption on?

3 A My presumption would be based on the location of the
4 tribes. I am sure that some of the tribes would have no
5 interest in the white tail deer season we are setting
6 for the same reason.

7 Q If you have a regulation which would prohibit or a
8 statute you are considering recommending prohibiting net
9 fishing outside reservations in the entire State, isn't
10 it true every Indian tribe which has such a treaty would
11 be interested?

12 MR. CONIFF: State law presently prohibits
13 the off reservation commercial fishing for steelhead
14 which your question refers to. I object to the form. I
15 object to the basis of the question.

16 Q (BY MR. PIERSON) Mr. Crouse, do you know whether the Game
17 Department sent notice to any Indian tribe is a plaintiff
18 or plaintiff intervenor in this case of its action of
19 October 2nd, 1972?

20 MR. CONIFF: I object to the question.
21 It is repetitive. He has answered it.

22 MR. PIERSON: All my questions have
23 been directed to notice of the actual proceeding.

24 A Not to my knowledge.

25 Q (BY MR. PIERSON) Do you know whether current State

1 statutes and regulations under the Administrative
2 Procedure Act require you to send notice of such rules
3 to interested parties?

4 A It is my impression that the Procedure says public notice
5 has to be given. Certainly public notice is given.
6 Beyond this we have sent notice to anyone who has
7 requested it.

8 Q As Director of the Department of Game would you have the
9 responsibility to send to the code reviser notice of
10 proposed rule making?

11 A We do.

12 Q Did you send to the code reviser notice of the proposed
13 rule making of October 2nd, 1972?

14 MR. CONIFF: I object to the form of the
15 question because it assumes a rule making activity was
16 contemplated at that meeting.

17 A It was not my impression we were doing that. This was
18 to be my answer.

19 Q (BY MR. PIERSON) Did you send notice to the code reviser?

20 A This would not require the code reviser be notified.

21 Q Did you send to the code reviser any notice of the action
22 that you were intending to take with regard to Indian
23 net fishing on October 2nd, 1972?

24 A It was my opinion in developing what we did at that
25 meeting it was necessary to notify the code reviser and

1 on that basis we did not notify him on October 2nd.

2 MR. CONIFF: Or prior thereto should be
3 the answer. The law requires 10 or 20 days notice, X
4 number of days so October 2nd isn't the key date.

5 Q (BY MR. PIERSON) At no time prior to or on the date
6 of October 2nd, 1972 meeting did you send any notice to
7 the code reviser of intention to consider the issue of
8 Indian net fishing?

9 A We didn't consider rule making as it pertains to Indian
10 net fishing or we would have sent him notice as properly
11 necessary. What we did consider was not a rule.

12 Q Was it an order?

13 A No, it was not an order.

14 Q Looking at the minutes of the October 2nd meeting, next
15 to the last page, it says Mr. Crouse pointed out in
16 light of these presentations and evidence given, the
17 Department would recommend to the Commission that they
18 pass by motion an order saying that for conservation
19 purposes there will be no fishing on areas of the rivers
20 in the State for steelhead that come under the Game
21 Commission jurisdiction other than under the present
22 regulations in effect. Therefore that motion carried
23 with Mr. Galbraith abstaining from voting.

24 A My only comment is it is probably an order of policy
25 for conservation there would be no fishing for steelhead.

1 The Commission doesn't make orders. They make
2 regulations and they develop policy. I think maybe the
3 choice of that word and the way you are hanging on it
4 probably it should be policy.

5 Q Are you saying, Mr. Crouse, that even though you called
6 it an order in your motion, it wasn't an order within
7 the Administrative Procedures Act or the Administrative
8 Regulations?

9 MR. CONIFF: I object to the form of the
10 question. Only members of the Commission may make
11 motions.

12 Q (BY MR. PIERSON) Mr. Crouse, the word order which you
13 used as the minutes disclosed in your motion as Director
14 of the Department of Game, was that an order as the term
15 order is used in the Administrative Procedures Act of
16 the State of Washington and the regulations thereunder?

17 A Clarify what an order means in that so I know what I am
18 answering.

19 Q The reference I have, Mr. Crouse is, to RCW 34.04.025
20 entitled "Notices of Intention to Adopt Rules --
21 Opportunity to Submit Data -- Noncompliance, Effect."
22 Without reading the entire thing, Subpart A requires
23 the agency shall give at least 20 days notice of its
24 intended action by filing the notice with the code
25 reviser, mailing the notice to all persons who have made

1 timely requests of the agency for advance notice of its
2 rule making proceedings, and giving public notice.

3 A No, I would not and I did not consider this an order
4 under the Administrative Procedures Act. If I had
5 obviously we would have carried out the necessary
6 requirements under this Act. It was not considered.
7 This is my judgment decision on it.

8 Q I am referring also to RCW 34.04.010 entitled "Defini-
9 tions."

10 "(2) 'Rule' means any agency order, directive or
11 regulation of general applicability (a) the
12 violation of which subjects a person to a
13 penalty or administrative sanction . . . "

14 A I think you are getting back to what is my judgment
15 determination of what an order is and again our Game
16 Commission does not make orders as I interpret them.
17 They make rules and regulations.

18 Q It is accurate to say then I guess, Mr. Crouse, that no
19 notice was sent to the code reviser or other interested
20 persons of that particular order, its issuance or its
21 intention to consider it because you did not consider
22 it an order?

23 A It is accurate to say I did not consider this something
24 that would come under the Administrative Procedures Act.

25 Q Directing your attention, Mr. Crouse, to your answer to

1 Interrogatories 149 and 150. Interrogatory 149 says:

2 "Has the Game Department established procedures
3 pursuant to RCW 34.04 to fulfill the following
4 directive:

5 . . . It is incumbent upon the Department of
6 Game to provide, annually, regulations for
7 a Puyallup Indian net fishery of steelhead
8 when it is determined by the Department,
9 upon supporting facts and data, that an
10 Indian net fishery would not be inconsistent
11 with the necessary conservation of the
12 steelhead fishery. Department of Game versus
13 Puyallup Tribe, 80 Washington Second 561,
14 571 (1972).

15 A Yes.

16 Interrogatory 150. If the answer to Interrogatory
17 149 is affirmative,

18 a. What are the procedures;

19 A RCW 34.04.

20 b. Do they apply to other plaintiff tribes in the
21 same manner as the Puyallup Tribe;

22 A Yes, if they are treaty tribes.

23 c. When do the procedures take effect?

24 A When the matters are placed on the agenda and
25 the Game Commission determines that such special
consideration is warranted."

A Do you have a question with that?

Q Yes, my question is whether in light of your answers
to those interrogatories at the time they were answered,

1 you did not consider what you were doing on October 2,
2 1972, was considering a regulation or order or rule as
3 those terms are defined in the Administrative Procedures
4 Act, specifically RCW 34.04?

5 A No, we did feel that this fell within the Procedures Act.
6 I think my answer up above here, first we had not
7 determined that an Indian net fisheries would be
8 consistent with conservation. I think that is what we
9 were attempting to arrive at at the time. If Indian
10 net fisheries was not inconsistent, obviously we would
11 have followed the procedures of the Administrative
12 Procedures Act and attempted to establish it.

13 Q Were you considering whether or not to attempt such a
14 regulation?

15 A No. What we were considering was whether an Indian net
16 fishery would be inconsistent with the conservation of
17 steelhead. We determined that Indian net fisheries,
18 the establishment of Indian net fisheries would be
19 inconsistent with conservation. If we had determined the
20 other way, we would have followed the Administrative
21 Procedures Act and established one.

22 Q You would have followed the Administrative Procedures
23 Act if you had adopted the regulation permitting the
24 fishing.

25 A If we had adopted a policy, we would have followed the

1 Act.

2 Q If you rejected it, you weren't going to follow the
3 Administrative Procedures Act?

4 A Well, your question -- if we were not, we would certainly
5 follow the Administrative Procedures Act if it was
6 necessary. In my opinion it was not at that time. We
7 had not reached the state where we were considering it
8 based on conservation.

9 Q One or two other questions in this regard and I will pass
10 it over. The passage in Interrogatory 149 which we
11 quoted from the Department of Game versus the Puyallup
12 Tribe, the first part says "It is incumbent upon the
13 Department of Game to provide, annually, regulations."
14 The question is, was what you were doing on October 2nd,
15 1972 the fulfillment of that requirement from the
16 Supreme Court?

17 A What we were attempting to do at that time on the basis
18 of this Court's determination was to review the facts
19 and data we had to determine if an Indian net fisheries
20 would not be inconsistent with the necessary conservation
21 of steelhead. The decision made was it would be
22 inconsistent with conservation of steelhead fisheries
23 so we did not proceed past this point.

24 Q Let me try one more time. Is it accurate to say the
25 first two lines of that quote obligate the Department to

1 provide annual regulations?

2 A I think you have to take the whole statement rather than
3 one bit out of context. The whole statement states in
4 effect it is incumbent upon the Department if data and
5 facts indicate this would not be inconsistent with
6 conservation. If this is not inconsistent with
7 conservation, we would follow this. Our judgment
8 decision based upon the facts at this time, we felt it
9 was inconsistent so we did not proceed past this point.

10 Q It was your determination not to provide regulations?

11 A This is correct. I might say further that the run on
12 the Puyallup River in this particular year has borne out
13 that contention was completely and totally correct from
14 supporting data we had at this time which admittedly is
15 very meager data but indicates the run on the Puyallup
16 River was a minimal run as pertains to steelhead in the
17 year 1973, the winter run steelhead fisheries.

18 Q Did the low level of that run result from Indian net
19 fisheries?

20 A Again I will have to go back and review all of them. As
21 has been pointed out previously, any given run of fish
22 is subject to many things. Certainly if there is an
23 Indian net fishery, it has a decided impact.

24 Q Were you citing to me information you had about the
25 Puyallup run however meager, does your information

1 include data showing there was an Indian net fishery
2 on that run?

3 MR. CONIFF: Are we talking about a
4 fishery on the returning run or upon the brood year?

5 MR. PIERSON: However he defines run.
6 He was using the term.

7 A I am talking about the run that returned in 1973 proved
8 to be a run that was not a substantial run. On the
9 basis of the facts and information we had in October,
10 the indications were that it would not be a good run
11 and admittedly the information we have on these is not
12 good. Your information as it pertains to a steelhead
13 fisheries, really the proof is after the fish are in the
14 river. There is no other place on steelhead you can
15 gather data. On other species there are, but there is
16 no prior commercialization. There is no prior sports
17 take. Our best guesstimate and best data at that time
18 indicated it would be a low run. It was a low run. At
19 this time we were correct that it would not sustain this
20 type of fisheries.

21 Q My only question is whether the data now available to you
22 indicates that low run was entirely or just partially
23 or at all the result of Indian net fishery?

24 A I think this would take a considerable biological
25 analysis to determine exactly what caused the low run

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at this time.

Q Have you undertaken that analysis?

A We did undertake an analysis of the number of fish in December in the Puyallup River based upon sports catch and the analysis at that time indicated a low run of fish.

Q Did the analysis include any data about an Indian net fishery?

A There was some Indian net fisheries at that time on the Puyallup River.

Q Has your analysis concluded the low level of run is the result of that fishing?

A I have not been able to gather any specific information on the number of steelhead taken in Indian net fishery on the Puyallup River.

Q So your answer is no to the question?

A My answer is we don't have enough information to make this determination.

MR. PIERSON: That is all I have.

MR. ZIONTZ: I have some questions.

EXAMINATION

BY MR. ZIONTZ:

Q Can you tell me whether there is an established steelhead run in the Hoko River?

1 A I think you had best get the information off of our
2 catch reports that would indicate by streams what the
3 take of fish is within the parameters of our information.

4 Q I am sure I could. Do you have any personal knowledge
5 of it?

6 A Personal knowledge of the Hoko? No, I don't have personal
7 knowledge of the Hoko River. My personal knowledge of
8 the Hoko River is it has been a bit of a problem at
9 times for anadromous fish as I try to jar my memory back.
10 No, I don't have any personal knowledge of the Hoko.

11 I have seen the river. I have been on it. I have never
12 really had any personal background on it.

13 Q I hope I am not repetitive. How long have you been with
14 the Washington State Department of Game?

15 A Thirty-two years.

16 Q You have been a member of the staff before becoming its
17 Director?

18 A Yes.

19 Q During the course of that 32-year period, have you not
20 known of steelhead activity in the Hoko River?

21 A The Hoko River like any river has anadromous fish run.
22 I am confident there are steelhead in it. If my memory
23 is correct, I think we have a season established on the
24 Hoko. The Hoko is not a big river.

25 Q Does the Department engage in any planting of steelhead

1 on that river?

2 A I would have to check the record.

3 Q You don't have any present independent knowledge?

4 A Not independent knowledge.

5 MR. CONIFF: One of the problems, I
6 think, is the agreement that probably your partner,
7 Mr. Morisset, would know about that we are making
8 available to all of the plaintiffs' counsel the planting
9 records and so forth and so on. All of this information
10 has been gathered by Mr. Getches and Mr. Nash and I
11 believe Xeroxing is occurring today or tomorrow. We
12 will have to make sure about that so that some of the
13 areas that you are inquiring of the Director, when he
14 is referring to the records that are available for you,
15 copies are being made. I wanted to inform you of that.
16 I know Mr. Morisset is aware of it. I wasn't sure
17 whether you were aware of the arrangement.

18 Q You are aware, Mr. Crouse, that there is an Indian net
19 fishery on the Hoko?

20 A Yes.

21 Q Are you aware as to whether that net fishery is in
22 existence during the period when the steelhead are
23 running in the Hoko?

24 A My recollection is the Hoko is on the reservation. I
25 believe it is on the Makahs.

1 Q You are incorrect. It is not on the reservation.

2 A I am not aware of Indian net fisheries in there during
3 the winter steelhead run. I believe you are probably
4 referring to the Department of Fisheries, the commercial
5 take of salmon.

6 Q So at the present time you have no independent recollec-
7 tion of whether there is an Indian net fishery during
8 the winter steelhead run or not?

9 A No, I don't. I know of none on the river.

10 Q You don't have any present recollection whether your
11 Department is attempting to augment that run on that
12 river or not?

13 A Off the top of my head, I would have to look at the
14 record.

15 Q Do you have any present recollection whether your
16 Department has had any activity with respect to loggers
17 or other groups that have damaged the Hoko watershed
18 and harmed the fish environment in that river?

19 A I think I have a great knowledge of rivers in this State
20 and I think probably by some quirk of fate you have
21 picked a river about which I have as little knowledge as
22 possible both because of its size and location. No
23 directly I don't recall the Hoko. I think because of the
24 way it lays it is liable to have less effect and because
25 of the terrain than it would in some other areas.

1 Q Let's move to the Sekiu River. Are you aware whether
2 or not there is a steelhead run in the Sekiu River?

3 A There is a run. I can't tell you the magnitude of it.

4 Q There is a sports fishery on the Sekiu River, steelhead
5 sports fishery?

6 A I am sure there is.

7 Q Are you aware whether there is any Indian net fishery
8 on the Sekiu River during the time the steelhead are
9 running?

10 A No, I am not.

11 Q Let's move to the Nooksack River. Is there a steelhead
12 run on the Nooksack River?

13 A Yes, there is.

14 Q Has the Department operated a program of augmenting that
15 run?

16 A Yes, we have.

17 Q How long has that program been in operation?

18 A This is the second year in recent years.

19 Q Is there some reason why there was no such program prior
20 to the commencement two years ago?

21 A Yes, there was a strong feeling by people there because
22 of the Indian fisheries that we should not attempt to
23 build up the runs of steelhead in the river.

24 Q What people, Mr. Crouse?

25 A People in Whatcom County. I think it went even beyond

1 that. In doing this we finally made a determination
2 in the Department after looking at the problem and
3 suggesting a plan for either one or two years, in the
4 light of this opposition we still went ahead and planted
5 the stream. Before we did this we met with the Lummi
6 Indians and discussed the situation with them, discussed
7 the number of days they fished, what they did. I can
8 recall the Lummis in the past showing very little
9 interest in steelhead in a commercial take. The
10 indications are the interest is based generally on the
11 price of the fish.

12 Q Just a moment. You are kind of rambling.

13 A Am I? My apologies.

14 Q I will get to the things you are interested in in a
15 moment. Maybe I can cover those. You said you met with
16 the Lummis. Was that prior to inaugurating the planting
17 program in the Nooksack?

18 A My recollection is it was prior or about the same time.

19 Q As a result of your meeting with the Lummi tribe or
20 people, was there any understanding reached as to what
21 would be a reasonable net fishery for them consistent
22 with the maintenance of that run?

23 A We were talking about a reservation fisheries by the
24 Lummis and our interest. Again this was no commitment
25 by the tribe. I recognized this and would not expect one.

1 We rather asked they maintain it at the same level
2 they were presently maintaining it. In maintaining it,
3 if there was an increased number of fish, if they
4 maintained the same level it would increase proportion-
5 ately their take. The thrust of the meeting being if
6 we attempted through our management techniques and
7 knowledge to build up the total run of the steelhead,
8 that in effect the Indians on the reservation there
9 where they do their fishing would share in this but
10 would not take all of it.

11 Q How has that worked out in the past two years?

12 A I can tell you better next year. This is predicated on
13 the basis that the run from this type of management will
14 be entering the river next year and at that time what
15 the success of this plant is going to be, we do not know
16 and the other people do not know until they come back.

17 Q Did you personally attend the meeting you are referring
18 to?

19 A No, I did not.

20 Q Do you know which members of your Department did?

21 A Yes. A Mr. Scott, a Mr. Miggs who is not a member of
22 this Department was was a member in the past and Chief
23 of Fisheries Management Division.

24 Q Did they come to the meeting with any specific recommend-
25 ations to make to the Lummi concerning the number of

1 nets, the length of nets, the mesh size, the hours when
2 the nets should be in the river, the approximate dates?

3 A Nothing but a verbal determination what they had in the
4 river and then us pressing home that it would not again
5 be an increased fisheries. We also came out of the
6 meeting with an understanding what the Lummis were
7 attempting to do in their management up there. We did
8 as a result of the meeting haul a number of steelhead
9 fish they desired to raise on the reservation and gave
10 these to the Lummis. I believe we had one or two of
11 their people who worked part time for a while under our
12 program.

13 Q Excuse me. We are getting off the subject. Let me get
14 back on the point. You say your people did not come
15 there with these kinds of specific recommendations but
16 rather a general recommendation that they not intensify
17 their net fishery. Is that it?

18 A The Indian people I am sure, at least this is my candid
19 judgment, are not about to bind themselves on reservations
20 and we have no right or reason to ask them to bind
21 themselves on their reservations as to what they will do
22 with the fisheries.

23 Q I understand.

24 A We are asking for cooperation. No, we didn't say
25 specifically you do this or we won't plant. We said we

1 are going to plant, we hope you will recognize this
2 and keep within the parameters you now are and it is
3 hopeful you as Indian people will benefit and the
4 resource will benefit.

5 Q You made a general statement to the effect you hoped they
6 would not fish a greater fishery at any greater intensity
7 than they are presently fishing?

8 A That is right.

9 Q Do you know how intensely they were fishing?

10 A They made statements as to what the regulations were
11 on the river. The only thing we know is the statements
12 they made. I believe they fished four days a week
13 during the steelhead season. I am talking from memory
14 now. I believe it was four or five days a week that
15 they netted steelhead on the river during the winter
16 season.

17 Q Mr. Crouse, apart from what the Lummis may have told you
18 or showed you, isn't it true that you did have data
19 furnished by your own employees and officers as to the
20 approximate size and intensity of the Lummi River net
21 fishery?

22 A We have information that is worth about what you put into
23 it based on fish receipts and buyers insofar as we can
24 cover them as to what has been sold. This is I would
25 say very rough information. I alluded to this type of

1 information earlier, I believe.

2 Q Mr. Crouse, let me inquire into this question of data
3 gathering. Isn't it true that your local Game officers
4 do observe Indian nets in the rivers of this State and
5 take note of the nets?

6 A I would say that -- well, I guess you are talking degree.
7 I would say that our people do not attempt in any manner
8 to work the reservation. We have always felt it was the
9 prerogative and purpose of the Fish and Wildlife Service
10 Indian Studies. I cannot recall of any time any of our
11 people going down say the Quinault and trying to deter-
12 mine the number of nets on the reservation.

13 Q Let me narrow it down. You treat the Nooksack as a
14 reservation?

15 A The Nooksacks have a reservation.

16 Q Do you treat the Nooksack River as a reservation river,
17 that is, one within the jurisdiction of the Lummi
18 reservation?

19 A Within the jurisdiction of the Lummi reservation, yes.
20 I am sure this is correct.

21 MR. CONIFF: May I ask is the Lummi
22 reservation on the Nooksack River?

23 MR. ZIONTZ: Adjacent. It is the boundary.

24 Q (BY MR. ZIONTZ) Let me go to the Hoko or in general
25 referring to sustained steelhead runs not located within

1 the boundaries or adjacent to an Indian reservation.
2 Isn't it correct your Game officers do observe and record
3 Indian fishing activity in those rivers?
4 A Would you clarify that a little bit.
5 Q If you have a Game officer who has a certain district
6 assigned to him and in that district there is a steelhead
7 river, he visits the river to see the activities in the
8 river, sports and otherwise?
9 A Yes.
10 Q If he spots a net in that river, does he not take note
11 of the net, attempt to determine whether it is an Indian
12 net and report this fact?
13 A On a reservation or off?
14 Q Off the reservation.
15 A Off a reservation if he determines there is a net in the
16 river, the normal procedure is to determine whose net
17 it is and make an arrest.
18 Q Are you saying that there have been no cases during your
19 32 years in the Department where Game officers had not
20 made an arrest after determining it was an Indian net?
21 A If you are referring to the Puyallup River or the
22 Nisqually River, this is correct. To the best of my
23 knowledge they have either taken the net or made an
24 arrest in the other cases.
25 Q Have there not been periods when there has been a tacit

1 policy of nonenforcement?

2 A In no place in the State I know with the possible
3 exception of the Puyallup and Nisqually Rivers.

4 Q With respect to the Quileute River upstream of the
5 reservation, have there not been periods when your
6 officers did not seize Indian nets or arrest Quileutes?

7 A Not outside of federal land.

8 Q In every case?

9 A To the best of my knowledge this is true.

10 MR. PIERSON: Might I indicate outside
11 the reservation there is also a stretch of the
12 Quileute River within the national park.

13 A I think probably you are right and what you are getting
14 back to is what the National Park Service did in this
15 particular case. Again as a federal government, it
16 oftentimes does preempt the State's prerogative and takes
17 over the management. Certainly the management in the
18 national park as pertains to wildlife and fish in the
19 Olympics, the State has no jurisdiction. I think this
20 is what you are getting at.

21 MR. PIERSON: I was trying to clarify
22 the record on the boundaries.

23 A (Continuing) We do not claim jurisdiction within the
24 national park because the State has ceded jurisdiction
25 both as it pertains to fish and wildlife.

1 Q Now going over this entire period of your involvement
2 with the Game Department, has the Department's policy
3 been uniform on the question of interfering with and
4 stopping Indian net fisheries during the time of the
5 steelhead runs?

6 A I believe our Department policy has been uniform as it
7 pertains to net fishing by people where it is illegal to
8 fish with nets.

9 Q There has been no period of time when you have instruct-
10 ed your officers to not interfere with Indian nets?

11 A With the exception of these particular cases on the
12 Puyallup and the Nisqually.

13 Q Going to those two rivers, Mr. Crouse, is it not correct
14 that Indians have maintained net fishing activities
15 at night in those rivers and have pulled their nets out
16 before daybreak?

17 A It is correct in the Puyallup River that prior to the
18 case that went before Judge Goodwin this year, and I
19 believe this is what you are leading up to, I want to be
20 sure I am on the right track.

21 Q Prior to this Puyallup case, this latest Puyallup case,
22 yes.

23 A We had asked the Indians, depending upon clarification
24 and a court order of this case, to not openly defy and
25 drift nets in front of bank fishermen and we would not

1 then force ourselves in the position of attempting to
2 make an arrest hoping we would have a court determination
3 that would clarify it for both groups. Since this court
4 determination or clarification, to my knowledge the
5 Indians have not been fishing the Puyallup River.

6 Q Maybe we drifted off the point. My question was had the
7 Indians on the Puyallup River in the past five or six
8 years not engaged in net fishing during the steelhead
9 run?

10 MR. CONIFF: Have they not or have they?

11 MR. ZIONTZ: Well, either one.

12 A If they have engaged in net fishing on the Puyallup
13 River, it has not been with any agreement with myself
14 or the Game Commission.

15 Q I understand. I am talking about surreptitious fishing
16 to avoid surveillance.

17 A I presume there has been some law violations on many
18 rivers of the State and the Puyallup could be one.
19 Violations of law are not necessarily confined to Indians,
20 believe me.

21 Q I am talking about fishing activity contrary to your
22 interpretation of the law, fishing activity which would
23 be stopped if you came upon it.

24 A If there has been, we would attempt to stop it.

25 Q Has your Department operated air boats on the rivers of

1 this State? That is boats propelled by propellers in
2 the rear, air propellers.

3 A You are talking about jet boats. Yes, we have I suppose
4 a half dozen in the Department, maybe more.

5 Q You operated those on the Puyallup or Nisqually?

6 A We have on the Nisqually.

7 Q Have you run any of the boats downriver at night?

8 A I couldn't answer that.

9 MR. CONIFF: Mr. Neubrech is noted for
10 deposition and I presume he would possibly be in a better
11 position to respond to your questions along those lines.

12 Q (BY MR. ZIONTZ) During your tenure with the Department,
13 Mr. Crouse, are you aware of any occasion when the
14 Department has received any advice, legal advice from
15 Mr. Coniff or anyone else on the Attorney General's
16 staff that Indians have a treaty right which requires
17 special regulations by this Department?

18 MR. CONIFF: I think we are in a position
19 to claim an attorney-client relationship. If you are
20 asking him what advice I gave him as a lawyer, I think
21 I can claim privilege so I am going to claim it.

22 MR. ZIONTZ: I am not going to ask him
23 what advice you gave him.

24 Q (BY MR. ZIONTZ) Has there ever been any difference of
25 opinion whether or not this Department has had any

1 obligations to recognize Indian treaty rights?

2 A Difference of opinion between us and the Indians or the
3 federal government?

4 Q Between this Department and legal advisors for the State
5 government.

6 MR. CONIFF: You mean him as Director?

7 MR. ZIONTZ: No, I am asking about his
8 entire tenure. During that time he is aware of whether
9 there have been any differences of opinion between the
10 Department and the legal advisors for the State govern-
11 ment including his present.

12 A What is difference of opinion? I reserve the right to
13 question any lawyer as pertains to my opinion, and
14 certainly they reserve the right to convince me or
15 give me their best opinion. I would say this, that I
16 attempt to get in all cases the best and most information
17 I can. The Commission likewise does this before making
18 a decision, whether it is a legal question or whether it
19 is a conservation question.

20 Q Do I understand then that there have been differences
21 of opinion between you and your legal advisors?

22 A I can't think of any, but I presume there has. It
23 depends on what you determine a difference of opinion.

24 Q I stated the difference between legal advisors telling
25 you Indians have special treaty rights that have to be

1 respected by this Department and your disagreeing with
2 that?

3 A I don't recall of any disagreement we have had that would
4 pertain to this area.

5 Q In the entire 32-year period?

6 A To the best of my knowledge, no.

7 Q At the present time is there conflict between your
8 Department and other branches of State government whether
9 this Department has any obligation to respect Indian
10 treaty rights?

11 MR. CONIFF: I object to the question.
12 I don't think it is a proper question. What is relevant
13 is this Department's position. I have been very quiet
14 these last two days and made few objections until this
15 morning and actually withdrew all of them. I am going
16 to object to this question and ask the witness or hope-
17 fully instruct the witness not to answer.

18 THE WITNESS: I presume in the light
19 of that statement and my previous statement, I can't
20 be in disagreement with my counsel.

21 MR. ZIONTZ: For the record, Mr. Coniff,
22 you asked for and received permission from the Court
23 and the parties plaintiff to answer separately and appear
24 in two separate capacities and at your urging and at the
25 urging of the Fisheries Department, that was granted.

1 That may well be in issue in the formation of the
2 final decree whether or not this branch of State
3 government is going to bound by a decree binding on the
4 State.

5 MR. CONIFF: There is no question in
6 my opinion if we lose we are bound.

7 MR. ZIONTZ: I have nothing further.
8

9 EXAMINATION

10 BY MR. HOVIS:

11 Q What has your relationship with the Yakima Indian Nation
12 been in regard to the management of fish and game?
13 Has it been a good relationship?

14 A I think it has been an outstandingly good one. I don't
15 know when I first got to know some of the people on the
16 Yakima reservation. It has been a number of years ago.
17 Some of those have passed away now. I would say over
18 the years the relationship of the Game Department and the
19 Yakima Indian Nation has been a good relationship and
20 a cooperative relationship. I think it has been a very
21 healthy one.

22 Q Particularly the agreement between the Yakimas and Game
23 and Fisheries and the Bureau of Indian Affairs regarding
24 the fishery on the Klickitat?

25 A Any agreement we had been into on the Klickitat, we have

1 followed it. The Klickitat as you know, the lower part
2 of the river is outside of any reservation. The upper
3 part of the Klickitat climbs back into the Yakimas.
4 I think the latest addition they got included more of
5 the Upper Klickitat.

6 MR. CONIFF: May I ask a question, Jim?
7 What is the date of the agreement? You asked about it
8 yesterday. Do you have an idea of the date?

9 MR. HOVIS: The first agreement was in
10 September of 1952. I am not sure of the last date.
11 I think it was somewhere in 1959 perhaps, 1958 or '59.

12 A My recollection is the agreement built itself around
13 salmon and a fisheries hatchery and the latter was
14 really the basis for it. Again I am speaking from
15 memory. I didn't have a direct piece of action when the
16 agreement was written but I was aware of it.

17 Q One of the things on the Columbia River, you talked
18 about the landings on the Lower Columbia, landings of
19 steelhead being limited so there would be more landings
20 for the Indian people in the Upper Columbia. Perhaps
21 we are not material to this particular cause. I didn't
22 realize there were sizeable steelhead runs in the Upper
23 Columbia, of winter steelhead I am speaking.

24 A Winter steelhead, no. Summer steelhead, yes. I am
25 a little foggy on it and the record can be brought out.

1 I believe the escapement goal is 50,000 or something
2 passed all fisheries.

3 Q Of summer steelhead?

4 A Of the steelhead run above Bonneville.

5 Q For both the summer and the winter season?

6 A You have some winter fishing up there but primarily it
7 is a spring and summer fish. It is your long run fish.

8 Q Do you run any test net fishery of your own on any
9 rivers?

10 A No, sir. I say this advisedly. I know of none. We do
11 run an occasional net fisheries of trout in lakes in the
12 early spring to determine the population.

13 Q Not for your steelhead trout in streams?

14 A No.

15 Q Carl, you have been basically particularly for the last
16 22 years engaged in overall management of this Depart-
17 ment. Is that a fair statement?

18 A Yes.

19 Q In that regard who, for example, has handled your
20 legislative representation for legislation say the last
21 ten years?

22 A The people we have that handle our legislative represent-
23 ation?

24 Q If we can start now and work back.

25 A They have varied from the Director, the Assistant

1 Director, and this goes back, to including specifically
2 such people as Stan Scott who has spent some time up
3 there and Jack Whalen is spending a considerable amount
4 of time appearing on hearings, preparing statements,
5 the physical note. A lot of it is prepared right here
6 without people going up. We have a lot of requests from
7 the Legislature. Generally it entails everyone in the
8 Department but the specific people that they call that
9 respond to them at this time are Jack Whalen and Ron
10 Andrews normally. I appear at some of them. Specifically
11 our division chiefs appear at some. Occasionally we
12 will have a hearing where we will bring in someone from
13 out in the field if there is a particular field that
14 particularly pertains to what they have done or their
15 expertise.

16 Q But generally you have a legislative program where you
17 have requests from the legislative leaders to the
18 Department of Game for information. Who are they
19 generally?

20 A Generally through Jack Whalen and Ron Andrews.

21 Q And through you when you were Assistant Director. Is
22 that correct?

23 A I never worked the Legislature near as much as the other
24 Assistant Director. He was primarily involved in this
25 area.

1 Q In that work, in your legislative program, it has been
2 the policy of this Department for a good number of years
3 during the period when the Legislature is not in session
4 to take requests from the public and prepare them into
5 legislation for departmental requests?

6 A I can't recall of -- yes, there has been, I suppose,
7 some public requests. I don't know who has an idea and
8 who doesn't have, Jim, but a public request for a piece
9 of legislation does not mean that this Department is
10 going to introduce it. The public has ways of getting
11 legislation introduced either through what has been
12 established as Game or Fish Interim Committee and
13 appearing before them and requesting it or through
14 their individual legislators. Anything that we would
15 have as a departmental request would be something that
16 would be our basic legislation or our housekeeping bills
17 or a change we wanted to make. Certainly you are not
18 going to put anything through that doesn't have a broad
19 public support, whether it is something that has to do
20 with hunting or fishing or women's liberation.

21 Q The thing I am talking about, Carl, over the course of
22 the years I have heard people who have been working on
23 legislative preparation. I would like to get some
24 understanding of this or the Department. They talk about
25 generally "these are our bills." Ones that we are

1 taking a position on. Then we have bills that you go
2 up and testify on. Now what has been the determination
3 that you make within the Department how you follow that?

4 A Normally we testify on any bill regardless of where it
5 is from that has an impact on the resource or the
6 responsibilities of this Department. We will not testify
7 on bills that fall past that. Some other department has
8 got the responsibility on that. We don't have any
9 departmental request bills in at this time to my
10 knowledge although we have one or two we should have put
11 in and I am sure we will have several in the next
12 session.

13 Q Isn't it true that you have in past sessions, if not in
14 this session, one bill, two bills that have to do with
15 the management of game throughout the State of Washington
16 or fisheries that you generally consider your bills and
17 your legislative representation from this Department
18 has been shepherding through the Legislature, trying to
19 move those bills forward toward final passage?

20 A I think probably if we are getting down to cases, I can
21 give you one.

22 Q Give me one.

23 A Personalized license plates which is a bill that, without
24 going into the complete ramifications of three years of
25 development, I rather considered was our bill. We

1 attempted and did shepherd it through the Legislature.
2 The Game and Fish Interim Committee felt it was their
3 bill and it properly was and they introduced it and
4 held hearings on it. The Sierra Club, Audobon Society,
5 garden clubs, a whole list of people felt it was their
6 bill and they supported it strongly. I guess the
7 Executive Department didn't quite agree with it because
8 they vetoed it. I think this is the procedure on all
9 bills like that and it would have been a departmental
10 request bill except the Interim Committee heard the
11 hearings on it. They decided to make it an Interim
12 Committee bill to which certainly we have no objection.
13 That is in effect a bill that has been conceived and which
14 we spent a considerable amount of time working it through
15 the Legislature.

16 Another example would be the steelhead
17 transportation bill.

18 Q Clarify that a bit more.

19 A I am thinking of a couple of years ago of attempting to
20 put through the Legislature a bill to make it unlawful
21 to transport steelhead within the exterior boundaries
22 of the State of Washington that were harvested within
23 the boundaries of the Indian reservations.

24 Q How long ago?

25 A I am thinking of four years ago. You know how time

1 passes.

2 MR. PIERSON: Are you talking about
3 77.16.040, Jim?

4 THE WITNESS: Yes, that would be about
5 right.

6 MR. PIERSON: 1961.

7 Q (BY MR. HOVIS) I thought you were on a better horse than
8 I can remember. That would be twelve years ago?

9 A I think so. As I said earlier, I wasn't deeply involved
10 at that time in legislative processes and really have
11 become only deeply involved in the last two and a half
12 years.

13 Q Do you know of any bill in your 32 years in which the
14 Department legislative program took as its purpose the
15 liberalization or the clarification of Indian treaty
16 fishing rights to be presented to the Legislature?

17 A Did we take one?

18 Q That you took and ran with.

19 A I presume we could. I can think of nothing I would
20 rather see adjudicated or a legislative determination
21 of than this question. Certainly I would hope that there
22 could be a judicial determination out of what we are
23 doing here. Specifically I don't know what you are
24 referring to or which one. I don't recall in my time
25 that we took a position although it is certainly possible

1 because it has been a problem that will be determined,
2 I presume, either by congressional or judicial determina-
3 tion. I don't think the State can settle it now.
4 The State can only settle it by indirection now.

5 Q So as far as you recall, there has been no legislative
6 part of this Department's legislative program during
7 your term?

8 A No, I would not preclude the fact we would make every
9 effort to clarify the area. Obviously it is badly in
10 need of clarification.

11 Q But you have not done it up until this point?

12 A I don't recall any.

13 Q If I might talk a little bit about federal management
14 programs of Fish and Game, as I understand the firm
15 policy of this Department is that they do not wish and
16 firmly represent the intrusion of the Fish and Game
17 Departments of the federal government doing anything in
18 regard to the propagation or the management of fish
19 and game within the exterior boundaries of the State of
20 Washington except on federal land and federal Indian
21 reservations.

22 A I think your statement was a little broader than I agree
23 with.

24 Q Tell me what is the policy.

25 A In the first place the federal government doesn't have a

1 Fish and Game Department. They have a Bureau of Sports
2 Fisheries and Wildlife. They neither have the personnel
3 nor the expertise to manage or regulate resident
4 species of wildlife or the fisheries resources of the
5 State which fall within the State jurisdiction. I
6 don't think there is any conceivable way without
7 duplicating in every state in the Union the type of
8 organization the states have built up and by taking
9 their people they can attempt to manage it. I can give
10 you a lot of examples outside of the Indian reservations,
11 not federal land, outside of Indian reservations which
12 we have always treated as separate on resident fish and
13 wildlife. I don't think the federal government should
14 manage it. I feel strongly that way. Nor do I think
15 they can do a proper job without liquidating the State
16 Department. This is where the expertise is. This is
17 where the knowledge is.

18 Q I have heard the past Director say the federal government
19 should keep their nose out of the business. Is that
20 pretty generally your feeling?

21 A I think that is rather a blunt statement.

22 Q He is a rather blunt man.

23 A I feel rather strongly that the federal government and
24 their track record points to it, if they preempt the
25 State in these various fields, they are doing it

1 certainly to the detriment of the resource and they
2 have not in my humble opinion with examples I can point
3 out done otherwise.

4 Q I don't want to pursue the matter. I want to get out to
5 lunch but I would like to say one thing, that the question
6 of jurisdiction in this fisheries matter is an important
7 one to you, is it not, I suppose as well as to all user
8 groups?

9 A The question of jurisdiction of anadromous fish is
10 probably not nearly as important to this Department as
11 it is to the Fisheries Department because steelhead are
12 a game fish and are not taken commercially so salmon
13 actually and the capability of taking these at various
14 points in the ocean. I am not sure Fisheries has the
15 same rationale, but I am sure they are arriving at this.
16 It is more important to them than it is to this
17 Department.

18 Q Let's talk about the difference between the salmon and
19 the trout. They fall within the jurisdiction of
20 different departments here in the State of Washington.
21 Would you say that the Fisheries Department is very
22 jealous about their management of the salmon?

23 A I would not purport to talk for the Fisheries Department
24 in any way.

25 Q Let's go to the trout.

1 A I would say this, that I think the Department of Game
2 which manages trout does have the capability and has
3 for 40 years demonstrated its capacity to manage this.
4 I think we have done an acceptable job which we are
5 striving for, an acceptable job for the people of this
6 country and an acceptable job for the resource. I think
7 we have done this.

8 Q Based upon that experience you have that as far as this
9 Department is concerned when it comes to the management
10 of trout, you want that to be particularly your business
11 and without any coordination with any other fisheries
12 department in the State of Washington?

13 A I think in the management of any wildlife resource, if
14 you are going to manage the resource and manage it as a
15 whole, it can probably best be managed with one depart-
16 ment doing it. I think if you split any resource, and
17 predatory animals are classic examples, I think that
18 really the management of any resource should be in one
19 department. I can't see any future for the resource if
20 on one hand the federal government manages it and on the
21 other hand the State manages it. Unless one department
22 has the clear-cut responsibility, the resource has always
23 suffered in the past.

24 Q You would feel the same way in regard to management within
25 the State of any other department managing say for

1 example the steelhead resource?

2 A Yes, but the Legislature in their wisdom if they would
3 take steelhead away from us and give it to the Department
4 of Natural Resources, I presume in their wisdom they
5 would transfer our expertise and people over there to
6 their department to have a continuous management. I
7 don't say the Game Department is God. I say the people
8 here and the system of doing this has been of one agency
9 with one responsibility to do the best job.

10 Q What is your opinion in regard to the management state-
11 wide by one department, the advisability of managing all
12 fisheries to one department by the State of Washington?

13 A I think this is something that would be determined by
14 the Legislature if they feel it is correct. If such is
15 in the Legislature and comes up for a hearing, I will
16 develop a position on it.

17 Q You do not have a position on it?

18 A At this time I would not get overwhelmed with a possi-
19 bility of one agency managing commercial and non-commer-
20 cial fishing resources. My rationale on that is based,
21 I suppose, on the way the wheel has turned over in other
22 states and ours has worked for us and has been a satis-
23 factory system. The federal government has been back
24 and forth splitting it in and taking it out. I can't
25 see any of the changes has enhanced it. It has detracted

1 from it.

2 Q Basically the Fisheries Department has mainly as its
3 constituent group, they are mostly interested in the
4 commercial fishermen of the State, are they not?

5 A The Department of Fisheries is oriented toward commercial
6 fisheries and this is their business, their constituency.
7 They can speak for themselves. They have a rather
8 substantial constituency on the other side.

9 Q Your constituency and the prime interest in this
10 Department is toward the recreational user and recreation-
11 al harvester?

12 A Our primary interests are the people as it pertains to
13 the fisheries, not the resource, or again what use we
14 can make of it and the user groups. This is getting
15 past your first resource I have addressed myself to.
16 We likewise have reached the stage where we have a
17 responsibility to a non-user group also. This is a
18 rapidly growing group. This is the people in the urban
19 areas that would like to see the steelhead spawning in
20 a creek where they can look at it. There are many people
21 who would like to do this.

22 Q Back to your primary function, your primary concern is
23 the sports and user groups?

24 A Primarily it is the resource. The next interest is if
25 there is some way to have some of these that can be

1 taken, and most of the wildlife is totally protected,
2 fish being wildlife too, but the largest number is
3 totally protected. Those that we can we attempt through
4 a recreational use. Again if we go past that you go
5 to complete closure. Our interest is the people who will
6 have the capability of taking some, once we get past the
7 resource protection. Our interest now has reached an
8 equal number of people who like to see and look at the
9 resource and know it is there and not use it. It is
10 becoming a factor to us.

11 Q If we can go to harvesting particularly steelhead, your
12 prime interest when it comes to the landings that can be
13 made is that they shall be devoted to recreational
14 sportsmen's use?

15 A This is right, yes.

16 Q In that regard, what is the largest representation of
17 that user group, what is the strongest organization?

18 A Well, probably the Northwest Steelheaders if you are
19 talking about steelhead. I assume this is where you are
20 going. I assume the Northwest Steelheaders at this time
21 is the strongest group.

22 Q Do members of the Department of Game attend as part of
23 their official duties every meeting of the Steelheaders
24 group's annual convention? Is that a general practice
25 of this Department?

1 A I doubt it. I don't really know. I don't know how
2 many annual meetings they have had. I have attended I
3 believe one of them. I would presume -- no, I wouldn't
4 even presume that. I was trying to think of the one I
5 attended.

6 Q Were you there in your official capacity?

7 A I was there at an invitation to come to the banquet.
8 That is all I attended. I didn't participate in any of
9 the meetings. I don't know of anyone who attended the
10 deliberations or meetings that particular time.

11 Q When it comes to an all over sports use, what is the
12 strongest organization when we get away from steelhead?

13 A Probably the Washington State Sports Council. They take
14 a rather broad approach to all resources.

15 Q At their annual meetings has it been the policy of this
16 Department to have members of the Department available
17 during this annual meeting to furnish any information
18 that the Council might request?

19 A We are requested to attend every meeting as are a number
20 of other State departments. I cannot recall for a number
21 of meetings we have not attended and had someone at
22 their meetings. The same is true of the cattlemen's
23 groups. I have attended theirs for I don't know how
24 many years.

25 Q Now as you were talking about jurisdiction, you said the

1 Fisheries Department probably had more of a jurisdiction
2 problem, but at least in the management of migratory
3 birds you do work with international treaties, do you
4 not?

5 A Yes, when I referred to wildlife I used the term
6 resident not migratory.

7 Q Right. In regard to working within the boundaries of
8 international treaties, this Department generally follows
9 the recommendations of the federal government in regard
10 to other nations?

11 A What we do, Mr. Hovis, because an international treaty
12 takes precedence over other laws, the Fish and Wildlife
13 Service gives us a framework on which we can establish
14 the season on migratory birds. We must fall within the
15 framework and certainly way within this we do it. Our
16 Commission sets a season within this. We would not have
17 to set a season on water fowl and it would still be a
18 season. If the State didn't do that, for example our
19 State, there would be no enforcement. Within this
20 framework the federal government would do it. Without
21 the cooperation of the State it would be an impossible
22 situation for the government.

23 Q But within general guidelines which are established by
24 the federal government, your Department works out rules
25 and regulations and seasons?

1 A Yes.

2 Q That will handle the conservation of that resource and
3 provide for harvesting?

4 A Yes, I can give you an example. Last year we set a
5 rather substantial season on mallards which we agree was
6 a good season. The season was closed on canvasback which
7 I think was a major error on the part of the government.
8 Because of their overriding jurisdiction we had no
9 choice. In my opinion this was in error. They closed
10 it completely for conservation purposes. I think it was
11 an error because they were reading in something that
12 happened in other flyways into ours. Likewise we make
13 restrictions within their framework and we recognize
14 their limits. I have expressed myself on this to them.

15 Q Surely. I would presume, Mr. Crouse, that it would be
16 a fair statement to say that in your criticism of the
17 federal government, perhaps the Department of Game has
18 sometimes been criticized in its management program as
19 well. The management of fish and game isn't an exact
20 science.

21 A It depends on whether you are talking to a biologist or
22 a layman.

23 Q I am talking to the Director of the Department.

24 A No, not in the terms of H₂O always coming up water. The
25 science of game management has not reached the stage of

1 perfection where I can tell you how many deer are in
2 Unit 5. You come within the parameters of the knowledge
3 you have which is improving all the time. I don't
4 suppose anybody can tell me how many people are in this
5 building. This is what we get into when we are in
6 numbers.

7 Q Sometimes not being an exact science there is underharvest
8 or overharvest?

9 A We tend to err on the conservative side and probably
10 have in almost all cases.

11 MR. HOVIS: That is all.

12
13 EXAMINATION

14 BY MR. GETCHES:

15 Q Mr. Crouse, you have indicated that there is some
16 significance and importance attached to the purpose for
17 which game fish is used once it has been taken and have
18 indicated that there is some responsibility within the
19 Department to sports fishermen. Is that not right?

20 A Yes.

21 Q Have you established as a policy of the Department or
22 do you have a personal opinion on the relative importance
23 of uses to which fish are put once they are taken?

24 A It is a personal use, not a commercial use. Outside of
25 that there is a wastage law on fish or anything. If you

1 take one, you can't throw it out in the street and let
2 it rot. You have both wastage and non-commercialization.
3 Outside of this the use of the fish is generally to the
4 discretion of the individual.

5 Q It is immaterial whether it is used for a trophy or used
6 for a person's diet, is that correct?

7 A It can be used for both, the same fish.

8 Q But it doesn't matter to you or to the Department in
9 setting policies whether the fish is put to a dietary
10 use?

11 A No, we assume when it is personal use, it is eaten.
12 They can't be wasted. Maybe you don't like them but
13 you give them to me. You can also have it as a trophy,
14 but still eat it.

15 Q You mention the wastage law. That prohibits the throwing
16 away of the fish after it is caught?

17 A That is right. It pertains to any wildlife.

18 Q I assume that there are many threats of harm from man
19 made activities to the steelhead resource other than
20 fishermen? What are some of those threats with which
21 this Department deals?

22 A Well, the classic one is the upper dam the government
23 built on the Columbia River, the Coulee Dam. I think
24 probably this was the greatest anadromous fish killer
25 constructed or devised by anyone. They go back from

1 there and anything that affects the environment adversely
2 would have a detrimental affect on steelhead. These
3 could be either natural or man made somewhere as is
4 again Coulee Dam is a classic example everyone recognizes.
5 Certainly there is pollution in many forms. Certainly
6 temperature variables that are caused by either natural
7 or man's activities. Certainly the way men use the
8 river themselves and the gear they use has an effect
9 on it. There are many activities that affect any of our
10 wildlife. Some of them are always there. Some of them
11 have been created in the past several years.

12 Q Do you have special programs that attempt to deal with
13 these man made problems that endanger steelhead?

14 A Yes, I presume the next question is what they are.

15 Q That is right.

16 A I guess I probably wouldn't be capable of reaching all
17 of them. We have attempted with the private power
18 companies and the federal government to receive mitigation
19 from the various hydroelectric developments on the
20 various rivers. Mitigation is an attempt to maintain
21 the resource at the level it was at. We have attempted
22 and developed many ways this could be done. We have
23 our spawning channels, fish ladders in the dams. There
24 is a multitude of research that has gone on in this area,
25 virtually ad infinitum. Under the hydrolics code we

1 attempt to regulate the removal of gravel from rivers
2 or gravel bars or the contamination of rivers through
3 the channel changes and things such as this. Through
4 pollution which comes directly under the Ecology
5 Department which we monitor, we attempt to hopefully
6 have pollution problems reached and this Department had
7 a direct interest in this up to two years ago. Now it
8 is a direct interest but through the Ecology Department.
9 We have brought a number of lawsuits in a number of
10 areas because of losses of fish. We have attempted to
11 work with them. We have attempted rehabilitation
12 programs. I think these are all broad but I think our
13 track record in attempting to protect the resources
14 has been outstandingly good. Our success and really
15 being able to accomplish it and particularly in such
16 things as some of the major impoundments on the main stem
17 has been particularly bad.

18 Q Do you have a division or section within the Department
19 of Game that deals specifically with preventing the
20 destruction of fishery resources other than by fishermen?

21 A By fishermen you are referring to?

22 Q All types of fishermen.

23 A You are referring to destruction by taking?

24 Q That is right.

25 A Okay, I don't know that the fishermen bothers me a little

1 bit. I assume it is not part of the question except
2 to eliminate personal or commercial take as a reason.
3 Our Enforcement Division is active in enforcing these.
4 Our Environmental Division is active in this. It
5 crosses basically three divisions depending on the
6 particular area and the particular expertise working in
7 the area. Fisheries management is coordinated through
8 the Fisheries Management Division. Some of the phases
9 are carried out by environmental management.

10 Q Turning now to your activity in attempting to propagate
11 the steelhead resource, you gave testimony to the
12 Joint Committee on Natural Resources on February 8,
13 1973, concerning Senate Bill 2141 and its companion
14 bill House Bill 140. That has been marked Exhibit 1 to
15 the deposition. You indicate in that testimony on page 3
16 that 50 percent of the steelhead caught in the State
17 are of hatchery origin. What is the source of that
18 figure?

19 A That is a biological figure and I am sure Cliff
20 Millenbach can explain it. It is based on information
21 we have gathered through various experiments. I don't
22 presume you want me to get into those since he will be
23 here.

24 Q I thought perhaps you would have the data but if you
25 don't, we will ask him about that. It is indicated in

1 the statement.

2 A Data supporting the statements I have made are available.

3 Q I thought perhaps you had it. I will hand you a document

4 entitled "Hatcheries and Rearing Ponds" put out by the

5 Game Department dated July 1, 1971, to June 30, 1972.

6 On page 26 there is a long list of hatcheries and rearing

7 ponds. The rearing ponds listed, I believe, all are

8 used for propagation or rearing of steelhead. Is that

9 correct?

10 A I think it is not correct.

11 Q It is not correct?

12 A Yes.

13 Q What are the indications in the far right column? SR.

14 A That stands for searun cutthroat.

15 Q I see this listed in several places.

16 A These rearing ponds are all steelhead.

17 Q Where the funding of those rearing ponds is indicated

18 in the second column, with the exception of three of

19 the ten rearing ponds each is supported in varying

20 degrees, 50 percent to 100 percent by the federal

21 government. Isn't that correct?

22 A You know I haven't read this. I hate to raise this. I

23 think maybe they have a small error on it. I think

24 under the one with the asterisk, and I am guessing,

25 that is probably searun cutthroat rather than steelhead.

1 I don't think it is particularly germane. I am making
2 that as a guess. On your direct question as to funding,
3 the funding under this is under moneys either as
4 mitigation where it says PUD. This is mitigation money
5 as a replacement for what has been lost. You want
6 these one by one?

7 Q No. The question is are not seven of the nine rearing
8 ponds all supported at least 50 percent by the federal
9 government? We are excluding standstill now.

10 A I assume you included the Douglas and Tacoma PUD's
11 which is not federal government.

12 Q Right.

13 A Yes, they are and again they are back to mitigation
14 projects or attacks under the Dingle Johnson Act. Would
15 you like me to explain that one?

16 Q I think I understand that Act.

17 A This is money put in by people who fish for this purpose.
18 It is only collected and distributed by the federal
19 government.

20 Q Excluding the standstill rearing pond which you have
21 indicated is for cutthroat --

22 A Possibly.

23 Q All right, well excluding that one is it not true that
24 every one of the rearing ponds is supported primarily
25 by other than State money?

1 A There are other moneys that go into it other than
2 fishing license money, yes. I think all of them are
3 either under the Dingle Johnson or under the mitigation
4 programs.

5 Q Is it fair to say then that the rearing pond program
6 is primarily supported by federal funds?

7 A No, because you do have some other funds in here. Again
8 the Tacoma and Douglas County PUD's are not federal funds.
9 These two types of projects are mitigation projects that
10 they paid for because the county as far as Douglas County
11 built the dam so it is paying it. In Tacoma the city
12 did it so they are paying for the mitigation. The ones
13 that the federal government, they are paying for it
14 with the exception of the Dingle Johnson program which
15 again is a tax on fish tackle which is distributed
16 and comes through the federal government. That is paid
17 75 percent. Some to a hundred percent, some to 50.

18 Q Judging from these figures, it appears that there is
19 no rearing pond that is supported more than 50 percent
20 by the State. Is that correct?

21 A Yes, I think that is correct.

22 Q All right then, there are two rearing ponds supported
23 100 percent under the mitigation program by two public
24 utility districts?

25 A Yes.

1 Q And the rest being primarily federal, I ask the question
2 whether or not the rearing pond program is not primarily
3 a federal program?

4 A No. Again the Dingle Johnson fund is not a federal
5 program per se. I have made that point many times to
6 many people.

7 Q I don't mean to intimate the federal government is doing
8 the rearing, but the federal government is funding
9 through Dingle Johnson and other federal funds such as
10 the Columbia River Development funds?

11 A I think you missed the point I am trying to make.

12 Q What is that point?

13 A The point I am trying to make is the Dingle Johnson Act
14 is a tax placed on sports fishing gear and is only
15 collected by the federal government but it is a State
16 program. The State has not only fostered this, they
17 have put the federal government in the business and
18 asked them to do it because it is collected at the
19 manufacturer level but not at the State level. You
20 don't contribute to this in your tax money in any way
21 unless you are a fisherman. This is the point I am
22 trying to make. The money comes through the federal
23 government.

24 Q The origin of the funds for most of the rearing pond
25 programs come from the federal government?

1 A Yes, it does.

2 Q Are you aware of any situations in which a net fishery
3 for steelhead has resulted in destruction of a run or
4 endangering its existence?

5 A I think we covered that, didn't we?

6 Q I wondered if you in your 32 years experience were aware
7 of such an instance?

8 A Off the top of my head I would not allude to any. If
9 you jarred my memory, I'm sure I could come up with one.

10 Q I am including in the question your knowledge of net
11 fisheries for steelhead which are present on the
12 Columbia River, which are present on Indian reservations,
13 which are present in federal enclaves such as the
14 national forest, national parks and which have taken
15 place illegally. Considering all those things, do you
16 know of any instance in which net fishing for steelhead
17 has eliminated the run or seriously endangered the run?

18 A I think again if we wanted to break out the records,
19 they speak for themselves. Off the top of my head I
20 would not allude to any at this time. I assume again
21 when you are talking about park service, you are talking
22 about the narrow strip on the Quileute River. I know of
23 no other place there is an unregulated Indian net
24 fisheries in a national park.

25 Q Are you aware the Indian historically took steelhead by

1 net for their own use?

2 MR. CONIFF: Could we give a time on
3 historical?

4 Q (BY MR. GETCHES) Dating back as far as you have any
5 knowledge. I am directing the question primarily at
6 the mid-1800's.

7 A I have no recollection of what the Indians did in the
8 late 1800's. I can theorize a bit. Would you like me
9 to theorize? Say in the year 1500 --

10 Q No, I want to know if you are aware through your studies
11 and readings, I presume you have studied historic
12 fishing practices of people, various places in this
13 country and throughout the world, I am asking if you
14 are aware of historical fishery for steelhead?

15 A I am not an anthropologist. I suppose I could work it
16 out. I would say this is a general statement and a
17 judgment statement. I have seen no records that
18 indicate that steelhead amounted to not even a signifi-
19 cant number of fish the Indians took historically.

20 Q Do you have any knowledge of the importance of fishing
21 in an Indian society before say 1850?

22 A I would rather guess that these things are worked out
23 with people who spent a lifetime of studying. I can
24 only recognize that the importance of any people before
25 white man came here which I presume is what you are

1 basically talking about, what is the availability to
2 get and have enough food to eat and this was a limiting
3 factor on the people as well as the animals. I would
4 only presume that his ability to take whatever was
5 necessary for food, and some of these coastal streams
6 in the summer when the salmon were coming in had to
7 have salmon.

8 Q Have you read or studied or been informed about the
9 fishing practices in the early days of the Northwest?

10 A I wouldn't in any way put myself up as an expert in
11 anthropology.

12 Q I am not asking as an expert. I am getting into what
13 personal knowledge you have about this subject.

14 A Yes, I think that the Indians in the early days virtually
15 lived off shellfish and salmon. I think they had done
16 this because obviously when the white people had come
17 they had virtually eliminated the major big game animals
18 they had in this country. This is the primary source
19 of food and I am talking about the West Coast in the
20 State of Washington which I assume you are directing
21 your question at.

22 Q Yes, that is right. Do you know of any conservation
23 practices or regulation practices that those Indian
24 people indulged in in that period?

25 A Conservation practices, in my opinion and I presume I am

1 a rosy road, I would like to not describe myself as an
2 anthropologist. Again this is a personal opinion and
3 personal knowledge. Their conservation practices would
4 be based again on their feeling for salmon and it had
5 to be primarily salmon because this is the only fish
6 in large numbers anadromous that come in the rivers
7 at a desirable time for taking. Certainly they would
8 have to build a reverence around this and have to
9 appreciate the salmon. From a conservation standpoint,
10 there is no reason for the Indians to attempt to save
11 any numbers of fish because they were there. They were
12 coming. Because of the population of the Indians and
13 because they were used for personal use. This is where
14 they had really gotten in a ball with their environment.
15 They had lost it as far as such things as elk are
16 concerned in Western Washington. These had been
17 eliminated and it must have been through the taking of
18 these animals by the aboriginal people. To the best of
19 my knowledge again and as a judgment decision the Indian
20 people were around the salt water because of the food
21 that was there. I try to transport myself back to
22 living in those days. I would have been in the same
23 position of living where the food was. People are that
24 way now.

25 Q Have you read of or are you informed of commercial

1 fishing by Indians in the early days we are referring
2 to?

3 A Well, again it would depend on what you mean by
4 commercial.

5 Q Trading fishing surplus.

6 A There is no question I think because of the lack and
7 probably because they lost any supply and the land was
8 not capable of supplying animal protein here, that they
9 had virtually been eliminated I am sure by the aboriginal
10 people. They would trade these back and forth with
11 Indians on the other side of the mountains and I think
12 some of the trading may have gone as far as the buffalo
13 country which was certainly the world's greatest source
14 of animal protein.

15 Q Are you aware of or do you have an opinion on whether
16 or not members of the tribes who are plaintiffs in this
17 lawsuit have during the time you have been involved with
18 game in the State of Washington regulated fishing by
19 their tribal members?

20 A On reservations they certainly have as far as this
21 Department is concerned the complete right to do anything
22 they want. I presume they have done this in certain
23 cases for certain reasons. We neither approve nor deny
24 any regulations they make. They don't have to ask us.

25 Q But you are aware of their council having regulation

1 activites with respect to fishing?

2 A Yes, I think I alluded to the Lummis. My memory in
3 talking off the top of my head is that they had five
4 days a week. If I think back on the Quinaults, at one
5 time at least they didn't net after the first of March.
6 I don't know what their regulations are. They are
7 changed from time to time. That is their prerogative.
8 Others have had no restrictions. Maybe they have some
9 now.

10 Q So allowing the resource to be partially regulated by
11 the Indian tribes themselves does not necessarily
12 destroy the recreational fishery. Is that not correct?

13 A If you are getting back again, and you are getting back
14 to the old question of dividing up the waltz, the Indians
15 can regulate on the reservations and to the best of my
16 knowledge some do and some don't. If they regulate off
17 the reservations on a fisheries which is only taking in
18 this area and has no other numbers of fish taken any
19 place else, yes, I think it would be disastrous to the
20 resource.

21 MR. CONIFF: We are getting into
22 repetitive answers, Mr. Getches, to the questions you
23 are asking. They are repetitive of the line of inquiry
24 which was undertaken quite extensively by Mr. Pierson.

25 MR. GETCHES: I don't think they are.

1 Q (BY MR. GETCHES) I would like to find out whether you
2 feel that it necessarily follows that it would eliminate
3 the recreational fishery for there to be regulation of
4 part of that fishery by Indians?

5 A Off reservations? Yes, I think it would.

6 Q In response to Mr. Ziontz questioning, you indicated
7 that the Game Department had talked together with the
8 Lummi Indian tribes concerning a fishery there and had
9 expressed the hope that there could be management such
10 that the recreational fishery wouldn't be destroyed
11 outside the reservation. I am asking you whether you
12 think that that is a practical way to deal with the
13 management of the resource?

14 A I think using again that question as an example, we
15 talked to the Lummis. They have a certain level of
16 fishing now. As an example five days a week they have
17 nets in the water. Our thrust in talking to them is if
18 we put the river under management and planted X thousand
19 steelhead in the river, we'd hope on the reservations
20 where they have the complete control that they would not
21 raise this level of intensity either as to numbers or
22 days fishing, that we felt that the additional emphasis
23 we'd give to the river would increase their take on the
24 reservation, but we would hope the same percentage would
25 still come downriver for the sports fisheries. I think

1 this is the thrust of the answer I attempted to give
2 to that question. This would be true on the Quileute,
3 any of the river systems that have an Indian reservation,
4 net fisheries for steelhead. We would hope that they
5 wouldn't take the added emphasis we put on the river.

6 Q In the Lummi situation, has there been a destruction of
7 the recreational fishery outside the reservation?

8 A I think I answered that before. The Nooksack River is
9 not a great producer. What effect this is going to have
10 is not going to be evidenced until the brood year of the
11 fish coming back which is next year. I can't tell you
12 what that is going to be or what the increase or decrease
13 of the recreational fishing is going to be until we get
14 a brood year back.

15 Q You have no indication there is going to be a serious
16 decline or destruction of the run though?

17 A We have no indication of anything at this time.

18 Q Does it necessarily follow then that the fact that the
19 Lummi manage part of the run and the State Game Depart-
20 ment manages part of the run, there will be a serious
21 decline or destruction of the resource?

22 A It necessarily follows if the Lummi tribe desires they
23 can virtually destroy the run down there. What we are
24 trying to do is to have I guess a gentleman's agreement
25 with them by increasing their take we can increase the

1 recreational take. A gillnet fisheries has that
2 capability.

3 MR. GETCHES: Would you read back the
4 question I asked?

5 (Previous question was reread.)

6 A No. There could be.

7 Q I realize there could be, but it doesn't necessarily
8 follow. That is what I am trying to get at.

9 A These depend on the individual Indian tribes.

10 Q Hasn't there been a combined fishery on the river for
11 some years?

12 A Yes, the commercial value of steelhead for a number of
13 years, and again if you ask for the whereas's, I can't
14 tell you but I have heard the people up there. The
15 Indian people state that, number one, steelhead are
16 wormy and number two they are not a good eating fish.
17 They are only good for selling on the market. They have
18 not had an intensive attempt to net steelhead until the
19 price has reached a stage where it is economically feas-
20 ible to do this. So I think if the price of steelhead
21 reaches a level, you will have a more intense fishery
22 on it. Then I think it is going to really behoove the
23 Indian people on the reservation to take a better look
24 at it, too. I don't think they have had the responsi-
25 bility to face up yet.

1 Q Do you think they have the capability to meet that
2 responsibility?

3 A This is something they would have to answer. I wouldn't
4 purport to speak for them on this. I think they have
5 the capability if they have the desire and want to do
6 it. It would vary. I have a lot of respect for Indian
7 people.

8 Q The reason I am asking you this, I am trying to find out
9 the basis for what you have repeatedly expressed, the
10 feeling that there is a necessary harm or impending
11 disaster for steelhead resource if there is a dual
12 management. I find in Exhibit 1 on page 3 that you
13 state "The dilution of State authority to regulate its
14 wildlife by allowing other agencies or tribes to
15 establish independent regulations, primarily for
16 commercial purposes, could only result in a serious
17 decline or complete elimination of our wildlife
18 resources."

19 A I agree with that statement completely.

20 Q You said it doesn't necessarily follow it will happen?

21 A No, I have said that if you have regulations at what
22 is commonly termed usual and accustomed places which is
23 the complete thread of the river as I interpret it,
24 if you have regulations jointly by one group commercial-
25 izing on it and another group sports fishing on it,

1 you are going to end up with the destruction of that
2 resource. I am extremely confident and this is my
3 judgment. I can see no other way for it to go. It
4 just plain has to go that way. You might Mickey Mouse
5 around a while and get some ups and downs. In my
6 opinion you are going to do nothing but completely
7 destroy the resource. When you are talking about
8 steelhead again you are talking about a very limited
9 resource, a very finite resource, a small one and a
10 small one in numbers. We are not talking about the
11 large runs of salmon or the capability of them to come
12 back.

13 Q Has the Department instituted any study or investigation
14 of the feasibility of an Indian net fishery for steel-
15 head?

16 MR. CONIFF: Where?

17 MR. GETCHES: Anywhere.

18 A Well, certainly there have been Indian net fisheries
19 and there are now on all of the reservations that have
20 steelhead runs.

21 Q (BY MR. GETCHES) Has that been studied by your Department?

22 A No, but this again I understand the Fish and Wildlife
23 Service in the federal government have been studying
24 this for ten years with a large number of people. I
25 think the leader of that study is here now.

1 Q Have you obtained any data from that?

2 A He can answer that better than I can. If it has, it
3 has been extremely limited and I know of none. We
4 have on several occasions and again I say recently I
5 have asked these people if they have any records as to
6 the number of steelhead taken off the reservations.
7 They do not appear to be available. We would like to
8 have them.

9 Q Have you asked people within the Department to look
10 into what regulations of an Indian net fishery could be
11 designed in order to make the Indian net fishery
12 compatible with conservation goals?

13 A On reservations?

14 Q Well, you have indicated you don't regulate on
15 reservations. I am really referring to off reservation.

16 A I know of no study we have made that would lead toward
17 the interpretation of Indian off reservation fisheries
18 being compatible with conservation.

19 Q Have you asked any people for that information or to
20 develop it?

21 A I don't know where you would develop it or how you
22 would develop it, no. Again I think this is the thrust
23 of what the federal government is attempting to do.

24 Q When you asked the State Game Commission to take action
25 pursuant to the mandate of the Washington Supreme Court,

1 at their October meeting with respect to considering
2 the Puyallup net fishery, was there any special data
3 obtained to determine whether or not a Puyallup net
4 fishery would not be inconsistent with conservation?

5 A We used the best data available which is in Mr.
6 Millenbach's report which I assume you have a copy of.
7 That is the basis of the data and this is the basis of
8 my judgment. If you don't have a copy --

9 Q Yes, we have a copy. That is an oral report, is that
10 right?

11 A Yes, I believe it was. There was not a formal written
12 report sent out after that meeting.

13 MR. PIERSON: Larry, did you have some
14 clarification?

15 MR. CONIFF: I have one question for
16 the Director if Mr. Getches has completed.

17 MR. GETCHES: I am finished.

18 MR. CONIFF: I will cut out the less
19 important questions so we can get to sustenance.
20

21 EXAMINATION

22 BY MR. CONIFF:

23 Q In response to a series of questions propounded to you
24 this morning by Mr. Pierson, I believe you indicated
25 that -- there is at least some confusion in the record

1 concerning your instructions given to your staff
2 regarding the notices to the list of tribes attached
3 to Mr. Pierson's letter. Could you clarify what you
4 intended to say in that regard.

5 A On this list of people here?

6 Q Right.

7 A I thought I made it clear, but apparently I didn't.

8 The Department per se is not going to accept a list of
9 names from any group that says send all of our people
10 this. We would like to know that they have an individual
11 interest. Likewise the people on the list that you
12 sent will be notified when we consider anything of
13 importance to fisheries because it is my humble judgment
14 opinion this is what you wrote on and not all meetings
15 and all things if there were no consideration of
16 fisheries by the Commission.

17 Q You have instructed your staff to give notice to the
18 people and entities listed for the Game Commission
19 meetings where fishing seasons would be on the agenda?

20 A That is correct.

21 MR. CONIFF: I have nothing further.

22
23 EXAMINATION

24 BY MR. PIERSON:

25 Q So I understand what Mr. Crouse is saying, if in the

1 future you engage in consideration of the same issue
2 that you considered and we have been talking about on
3 October 2nd, 1972, will you furnish notice in advance
4 of that consideration to the named tribes and tribal
5 organizations which I listed in my letter of January 23rd?

6 A. Our fishing season will be established in August of this
7 year. Yes, what I am saying is you will receive a
8 notification ahead of that meeting and any other meetings
9 where we consider really problems that are germane to
10 this. We would be happy to do it. What I objected to
11 and still object to and I would object to any one of the
12 tribal council sending a tribal role in for this. I
13 would object to this on any basis. I don't think there
14 is any real purpose served by informing them on every
15 meeting and the paperwork involved. Anything germane to
16 it we will be glad to. You will receive all of them.

17 Q. When you are speaking of setting fishing seasons, do you
18 include within that term --

19 A. I include within that term anything that has to do with
20 fisheries and particularly the anadromous fisheries.

21 Q. Do you include within that term the type of consideration
22 that you engaged in and we have been talking about
23 regarding Indian net fishery in your October 2nd meeting?

24 A. Certainly.

25 MR. ZIONTZ: I would like to ask a brief

1 question following the answers elicited by Mr. Getches.

2
3 EXAMINATION

4 BY MR. ZIONTZ:

5 Q Mr. Crouse, you testified that the Indians in aboriginal
6 times had depleted the elk population of the Western
7 Washington region.

8 A No, I said in my judgment this had happened because the
9 historical data indicates that the elk in Western
10 Washington were in small pockets and they were away from
11 where the aboriginal people were normally found.
12 An example is by and large they were in the high Olympics
13 with the wintering ground a long way from the Coast.
14 These animals apparently had the capability of summering
15 in the high Olympics and wintering high enough that
16 they kept away from the range where the primary Indian
17 populations were. I think an example is the area up
18 around Bellingham. Historically elk were in there.
19 They disappeared before the white people came. I rather
20 suspect, again this is a judgment decision, this
21 disappearance is based upon weather conditions that
22 allowed the aboriginal people to get to these elk during
23 one or two seasons and they had the capability of taking
24 them to the point that they were eliminated. This was
25 true in the State with moose, mountain sheep. These

1 things are now coming back. It was certainly true with
2 a number of big game animals in Eastern Washington.
3 The elk population historically were pretty well
4 regulated as they pertain to the mountain areas. There
5 are remote areas in the Blue Mountains.

6 Q Do you have specific references for these statements?

7 A No, this is just things over the years I have picked
8 up and read and things that I tie back in the early
9 history of game in this country. There is no record
10 of moose in this country historically. I would rather
11 suspect that moose had been here naturally because
12 they are coming back in now. There are old records of
13 antelope in some of the digs such as the Marmes dig.
14 There is no record now or historically of this. I
15 read one report in 1940 or '42 in what comes to mind as
16 one of the readings where the writer described a
17 successful hunt on deer, I believe it was, where they
18 killed in excess of 600. They killed in excess of 600
19 because conditions were conducive to taking deer. That
20 is, the snow was at the time quite deep and it was a
21 winter hunt. The people hunting had the capability of
22 walking on top and the deer went through. These are the
23 situations I refer to. Then you look at the present
24 population. You look historically at what there was in
25 the State and draw a judgment. I have never seen this

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put in a book.

MR. GETCHES: Thank you, Mr. Crouse.

We have nothing further.

(The deposition was thereupon completed
at 1:15 o'clock p.m.)

(Hereafter on the 16 day of
July, 1973, the witness read and signed the
foregoing deposition.



(CARL N. CROUSE)

C E R T I F I C A T E

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

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

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

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

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

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

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


25 I further certify that the deposition, as transcribed,

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

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 24th day of April, 1973.


Notary Public in and for the State
of Washington, residing at Olympia

In re: USA vs State of Washington
Cause No. ~~9216~~ 9213

The attached exhibits should be included in the deposition of Carl Crouse, but were inadvertently omitted.

FILED IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

JUN 14 1973

EDGAR SCOFIELD, CLERK

By *Edgar Scofield* Deputy

Dep. Exhibit 1

February 8, 1973

TO: Chairman, Joint Committee on Natural Resources

MR. CHAIRMAN and MEMBERS OF THIS JOINT COMMITTEE ON NATURAL RESOURCES :

For the record, I am Carl Crouse, Director of the Washington State Department of Game.

I appreciate the opportunity to appear before you and comment on Senate Bill 2141 and its companion bill, House Bill 140. I am deeply concerned about this legislation and the potential effect it would have on the fish and wildlife resource and consequently on all citizens of the State of Washington. My remarks will be in opposition to this proposed legislation. The Washington Department of Game is responsible to the Legislature and the citizens of the State of Washington for preserving, protecting and perpetuating the wild animals, wild birds, and game fish of the State of Washington. I have often been asked and sometimes demanded to abdicate these responsibilities to special interest groups for their exclusive commercialization of the state wildlife resources. Directors before me have experienced similar requests and demands. Most of these have come from Indian people or from groups representing them. For obvious reasons, superior rights cannot be granted to any special groups of citizens under existing legislative statutes. The Legislature can change the present jurisdictional statutes and should this proposal be enacted into law, it would in essence remove from the Department of Game its capability to protect the state's valuable wildlife resources.

As I interpret this proposed act, it would allow persons of native American ancestry to take fish and wildlife throughout the State without restriction by the state. While this may have been the case prior to the white man's entry into the Washington territory, it must be understood that Indians in a complete nomadic society took wildlife, including fish, only with weapons and equipment available during those times and it was the only means then available to maintain their living standard. Hunting equipment did not include high powered rifles and automobiles and fishing did not include the use of highly efficient nets and power boats. Fish and wild animals were allowed to roam their entire natural ranges during all seasons of the year and a natural balance was established between wildlife and the ability of the Indian people to take them which was the limiting factor of both Indian and wildlife populations of this area. Wildlife is constantly being crowded into smaller geographical areas by man's present level of agricultural and industrial development. To remove the present state authority which preserves these natural resources and determine the future impact is incalculable. The impact on this resource would affect all citizens statewide. Within the U.S. and the State of Washington legal authorities have held that the states are responsible for conservation of resident species. These resources by law are the property of the State and therefore the property of all its citizens. The only exception to this is the 2,600,000 acres of Indian reservations in the State where the Department of Game has never questioned the superior rights of various tribes to regulate these wildlife resources for Indian people free from State regulations.

The dilution of State authority to regulate its wildlife by allowing other agencies or tribes to establish independent regulations, primarily for commercial purposes, could only result in a serious decline or complete elimination of our wildlife resources. Wildlife resources require professional management by proven principles.

The Department of Game, primarily through the use of hunting and fishing license monies, has acquired and developed many areas of prime big game wintering areas, waterfowl nesting grounds and wildlife habitat areas on which wildlife concentrates during critical seasons. These areas have been preserved for wildlife, and in many instances animals are concentrated by modern management practices in far greater numbers than ever occurred or could be maintained naturally, such as the winter feeding of elk in southcentral Washington where as many as 6,000 elk have been maintained on winter feed stations. They could not exist with hunting of any kind during this critical winter food shortage period. Similar examples could be cited for all wildlife species within the State. Records indicate that over 90% of the trout populations have their origin in a State hatchery and 50% of the steelhead caught in the State are of hatchery origin. The enhancement of our fisheries management program and the acquisition of shorelands statewide, allowing public access to the resource, have gone hand in hand. This fishery resource is extremely vulnerable to net fishing within the river systems and could not be maintained should this legislation become law. Examples of the effect of net fishing in our rivers can be illustrated by the following:

Verified but not complete records show that Indians sold 6,454 steelhead from the Nisqually River in 1972. These fish were

legally taken by Nisqually tribal members from within the boundaries of their reservation. Sport fishermen during the same time period took 1,600 steelhead from the river. The Department has no jurisdiction over any Indian fishery within the boundaries of any reservation.

Unrestricted net fishing by treaty Indians at all "usual and accustomed places" that was not in common with all other citizens of the State, for all practical purposes would eliminate the recreational fishery and would place the resource in serious jeopardy.

In conclusion: Millions of public dollars have been invested over the years in the management, conservation, preservation, and perpetuation of these valuable natural resources. This public investment could be rendered meaningless should persons of native American ancestry or any single group be granted absolute immunity from State conservation regulations. Data supporting any statement I have made is available at the request of the Committee. Our legal position has been summarized and is included with these remarks in your folder.