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Docket Entry 344 - Filed Deposition of Harold Eugene Ikebe

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FILED

NOV 22 10 04 AM '73

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

THE UNITED STATES OF AMERICA, et al.,
Plaintiffs,
vs.
THE STATE OF WASHINGTON, et al.,
Defendants.
No. 9213

DEPOSITION OF HAROLD EUGENE IKEBE

The deposition of Harold Eugene Ikebe was taken
on the 12th day of June, 1973, in the Federal Building, 11th
and A Streets, Tacoma, Washington, before Elinor A. Holloway,
Notary Public.

Said deposition was taken in behalf of the
Defendants by:

Earl R. McGimpsey
Assistant Attorney General
Temple of Justice
Olympia, Washington

The Plaintiffs were represented by:

George D. Dysart
Assistant Regional Solicitor
U. S. Department of the Interior
P. O. Box 3621
Portland, Oregon

344

1 MR. MCGIMPSEY: Let the record
2 show that this deposition is being taken pursuant to agree-
3 ment with counsel, and that I will be representing all
4 Defendants in this deposition, and that it will be taken in
5 accordance with the Federal Rules for Civil Procedure.

6
7 HAROLD EUGENE IKEBE, having been first duly sworn by a
8 Notary, deposed and testified as
9 follows:

10 EXAMINATION

11 BY MR. MCGIMPSEY:

12 Q Could you state your full name and spell it?

13 A Harold Eugene Ikebe, I-K-E-B-E.

14 Q What is your address?

15 A Post Office Box 234, Yelm, Washington.

16 Q What is your age?

17 A Twenty-two.

18 Q Are you a member of the Nisqually Tribe?

19 A Yes, I am.

20 Q An enrolled member?

21 A Yes.

22 Q Are you a full-blood Nisqually, or --

23 A No.

24 Q Do you know what proportion?

25 A Three-eighths.

1 Q Do you live on the Nisqually Reservation?

2 A No, I reside in the town of Yelm.

3 Q In Yelm. Could you identify for me what the governing body

4 of the Nisqually Tribe is?

5 A The governing body consists of five elective council members,

6 a chairman, a vice-chairman, a secretary, and a fifth

7 council member. (Re Correction Sheet: The fifth member is
the treasurer)

8 Q And are you a member of the council?

9 A Yes, I am the chairman of that council.

10 Q How long have you held that position?

11 A I have held that office for approximately eighteen months

12 now.

13 Q Is that an elective position?

14 A Yes, it is.

15 Q Are the members of the council also elective?

16 A Yes, all members are, all five members.

17 Q Now, has your tribe adopted tribal fishing regulations?

18 A Yes, we have a fishing ordinance that was adopted in 1968.

19 Q And other than that 1968 ordinance, has the tribe ever

20 adopted annual regulations?

21 A Starting last year we started adopting seasons, rather than

22 regulations.

23 Q Okay.

24 A We have, there is a set regulation that the fishermen abide

25 by, and also there are seasons that are set on a year to

1 year basis.

2 Q I see, the set regulations would regulate mesh size, etc?

3 A Right.

4 Q And the seasons would just regulate the time of fishing?

5 A Right.

6 Q Did you bring with you copies of the regulations that you

7 have from last year, or the seasons?

8 A That is the ordinance that governs the fishermen, how they

9 will fish. This year's season hasn't been officially

10 adopted as of yet, but we will be appearing before the

11 general council in the near future, probably sometime before

12 August.

13 Q Now, this is the 1968 --

14 A Right.

15 Q --regulation. When you set a season, do you do that in a

16 written ordinance?

17 A No, this is established by our fisheries committee, the time,

18 the area, the place, and then it is presented to the general

19 council for adoption by a show of hands vote, usually.

20 Q Now, is this ever formalized in a written memorandum that

21 is published?

22 A Right, this is.

23 Q The seasons are?

24 A It is typed up, voted on, submitted to the BIA, and sub-

25 mitted to the fishermen.

1 Q Do you have a copy of the seasons for 1972?

2 A No, I don't.

3 Q Do you know from your own memory, just what seasons there

4 are, what runs are fished on?

5 A There are basically four runs. What the tribe has done is

6 opened up our season in approximately mid-August, and it

7 continues on until mid-April.

8 Q What would be the four runs that you would be fishing on?

9 A The first is the kings and the silvers and the dogs, and

10 then the steelhead, dog salmon and steelhead.

11 Q The dog salmon, is that the chum salmon?

12 A Yes.

13 Q Now, are you a fisherman?

14 A I have only fished one year.

15 Q What year was that?

16 A That was last year.

17 Q Did you fish on the reservation, or off the reservation?

18 A I fished on this year.

19 Q Now, to fish on the reservation, does an Indian have to

20 register a site, or how is it determined where tribal

21 members can fish?

22 A Presently this has been carried on, more or less, of a

23 gentleman's agreement. There is a lot of, I guess, at

24 least, this type of agreement between fisherman. A fisher-

25 man will not fish a site that has been used by anyone else.

1 If it has been used within the last year or two, he usually
2 gets consent of the original owner of that site before fish-
3 ing.

4 Q There would be no formal registration of sites with the
5 tribe?

6 A That hasn't been carried out by the tribe in the past few
7 years, but we hope to start this within the next year or
8 two.

9 Q Now, are sites passed down through families?

10 A Yes.

11 Q Up through the present it has been informal arrangements
12 that have been abided by, by the tribal members?

13 A Yes, by the fishermen.

14 Q Do you know how many fishermen there are in the tribe?

15 A No, I only have approximate. -- I don't have any exact
16 numbers.

17 Q Just approximate?

18 A I would say around twenty.

19 Q How many of these twenty men would make their full time
20 living from fishing?

21 A Roughly 33 per cent to 50 per cent of them fish year round,
22 straight through from the beginning of the season. Others
23 fish during the heavier runs, like our first runs in the
24 summer are usually smaller runs, so it is not fished
25 heavily by a lot of fishermen. There is not a lot of money

1 being made in these runs.

2 Q Some seven to ten would be, roughly, full time fishermen?

3 A Right.

4 Q Who made their living that way?

5 A This is my estimate, yes.

6 Q The other ten to thirteen would be part time fishermen who

7 would fish the heavy part of the runs?

8 A Right.

9 Q How many families are there in the Nisqually Tribe?

10 A How many families?

11 Q Families, yes.

12 A I don't have any idea. Approximately?

13 Q Just approximately, that is all I have been asking.

14 A I would say about four families can make up a large per cent

15 of the roll, but there are more than four.

16 Q That would be four family, related family units? I was

17 thinking in terms of mother, father, children type family?

18 A I wouldn't have any idea.

19 Q Do you know how many people live on the reservation?

20 A Approximately five families on the reservation.

21 Q And when you say "Families", are you talking about the

22 immediate family unit?

23 A Right.

24 Q Then, how many families live off the reservation?

25 A Well, there are quite a few families living -- excuse me --

1 off the reservation.

2 Q Do they generally live in the area around Yelm and the
3 Nisqually River?

4 A Right, most of the people are scattered between Olympia,
5 Lacey, some in Tumwater, maybe, and Yelm, and some other
6 small communities within the area.

7 Q Now, the people that fish on the reservation, I take it that
8 some of the full time fishermen don't live on the reserva-
9 tion, is that --

10 A Yes, this is correct.

11 Q And they just fish on the reservation for their livelihood?

12 A Right.

13 Q These twenty fishermen that are in the tribe, do they all
14 fish on the reservation, or do some fish off the reservation?

15 A No, some have to fish off.

16 Q Why do they have to fish off?

17 A The reason, this is limited, because there aren't enough
18 sites on the reservation.

19 Q What percentage, what number of those twenty would fish on
20 the reservation?

21 A I would say it is almost a 50 per cent split.

22 Q So about ten fish on and ten fish off?

23 A Right.

24 Q Now, the ten that fish off, can you just describe generally
25 where they fish?

1 A Well, most of them fish between what the state has set up
2 as an off reservation boundary line up to the reservation.
3 There are others who are fishing below, but because of the
4 conflicts involved, not too many go outside of the boundary
5 lines, because of financial problems and this type of thing
6 in doing so.

7 Q Do you know geographically where that boundary is located,
8 either by place name or --

9 A It is approximately a mile and a half down from the reserva-
10 tion. It is referred to as the railroad bridge.

11 Q The railroad bridge. Do you know, for those men who are
12 fishing full time, do you have any idea of what kind of an
13 income they earn?

14 A We keep no statistical data at all on our fishermen.

15 Q Do you have, just from your general knowledge of the
16 individuals, any idea?

17 A No, I don't have any idea.

18 Q Would any of them that fish full time also work at other
19 occupations?

20 A A few men, one or two or three out of those, but when you
21 -- well, it is a full time occupation almost. When it is
22 a heavy run it is very difficult to carry two jobs.

23 Q I mean, do they ever engage in seasonal employment during
24 the months that they are not fishing?

25 A Oh, yes, some of them do. There is farm labor in the area

1 available.

2 Q How about yourself, when you are not fishing, are you

3 engaged in any full time occupation?

4 A I work for the tribe.

5 Q And you spend all of your time representing the tribe?

6 A Yes.

7 Q Now, is it necessary for the BIA to approve your regulations,

8 do you know?

9 A Yes, copies are sent to them for their approval.

10 Q Now, before you adopted your set seasons last year, did the

11 tribe at all seek to regulate informally the times when its

12 fishermen fished, or how was that handled?

13 A Last year we worked with the Bureau of Sport Fisheries and

14 Wild Life, and we had statistical data from the State, and

15 we looked at their data and presented it to the Bureau of

16 Sport Fisheries for their concurrences. This was how it

17 was handled last year.

18 Q This was how it was handled last year. How about in years

19 prior to that, did you ever have set seasons?

20 A Well, under the ordinance it states that -- when the river

21 will be opened, which was kind of, it was just closed on

22 Fridays, Fridays at 7 o'clock and opened up at 4 pm Sunday.

23 We found that this was somewhat restricting and too tight,

24 and had no flexibility, so this last year or two we changed

25 it somewhat as far as setting up our seasons, so that we

1 have an emergency opening and closures.

2 Q Do you still fish roughly a five day week?

3 A Right.

4 Q Before, did the 1968 ordinance, did it establish the time

5 when they could begin fishing?

6 A I believe it is number 9, section 9 of the ordinance, which

7 states that they will close at 7 pm Friday and re-open at

8 4 pm Sunday.

9 Q I was thinking in terms, prior to the last year when you

10 adopted season regulations, how did you determine whether

11 or not what day you began fishing?

12 A Usually just by the rules themselves. The fishermen, you

13 know, knew when the fish were coming up the river, you know.

14 They knew when it was financially feasible to set a net out

15 there, with their efforts to collecting it and running this.

16 Q So then before the seasons that were set last year, you had

17 the regulations which limited the weekly amount of time

18 that they could fish?

19 A Right.

20 Q And then they just fished during those limits throughout the

21 run when the run was coming up?

22 A Right.

23 Q Now, you indicated that you had received certain information

24 from the State last year, and then in consultation with the

25 Bureau of Sport Fishery and Wild Life you fashioned the

1 regulations?

2 A UmHum.

3 Q Did you discuss your regulations with any State Department

4 of Fisheries people?

5 A We had one meeting with Mr. Al Lassiter (phonetic), biolo-

6 gist, from his department, which neither party could come

7 to any type of an agreement, but we did meet with them and

8 they presented some statistical data and biological data

9 that they felt was somewhat accurate or valid, and wanted

10 us to set our seasons accordingly to those, and we did take

11 them into consideration.

12 Q I see, when you say you took them into consideration, do

13 you think that on the basis of the data that was presented

14 to you you restricted the fishery anymore than you might

15 have restricted it had the data not been presented to you?

16 A Well, after looking at it with the Bureau of Sport Fisheries

17 and Wildlife, we did request that the season be cut from

18 five to four days during the summer run of king salmon,

19 because this was one that they felt was very low, and wanted

20 us to close the river completely. We could not see doing

21 this, you know, restricting our fishermen that much, so we

22 asked for an extra day of closing time.

23 Q How has the level of cooperation between the Department of

24 Fisheries and your tribe been in the last couple of years?

25 Has there been cooperation between the two of you, even

1 though you might have differences of opinion?

2 A Well, we have been able to discuss the issues. As of yet

3 we have not come to any type of an agreement on fishing

4 seasons, or areas, or times. There is a working relation-

5 ship, so to speak.

6 Q Was there any discussion with the department or with the

7 Bureau of Sport Fisheries with regard to the percentage of

8 fishing that should be on the reservation, versus that off

9 the reservation?

10 A No.

11 Q You indicated there is a Fish Committee?

12 A Right.

13 Q Who is the chairman of the Fish Committee?

14 A I sit on that committee.

15 Q You do. Now, do you sit in an ex officio position, or are

16 you a voting member of that committee?

17 A No, ex officio, as a chairman, more or less as a co-ordina-

18 tor.

19 Q That is the committee then that would recommend regulations

20 to the governing council?

21 A Right.

22 Q Are the members of the Fish Committee all fishermen?

23 A All but -- out of five, I believe we have one lady who used

24 to fish sometime ago, but who is a member of that Fisheries

25 Committee, she no longer fishes, actually now.

1 Q So four out of the five are fishermen?
2 A Right.
3 Q Are they full time fishermen by and large?
4 A I would say all of them are.
5 Q Then, how about in the governing council, are there five
6 members?
7 A Right, out of the governing council only two fish, one who
8 has fished for quite some time, and then myself.
9 Q When the governing council passes its fishing regulations
10 is a hearing held that anyone could come into, or any tribal
11 member could come in?
12 A The procedure that was used last year was the Fisheries
13 Committee drafted up regulations. They were presented to
14 the general council for adoption, and then presented to all
15 the fishermen, also, at a second meeting.
16 Q When they were presented to the fishermen, could the fisher-
17 men voice their opinions?
18 A Yes, they were given the opportunity to, but at that time,
19 it was already adopted.
20 Q I see, so really at the time it was presented to the fisher-
21 men, the Fish Committee on the governing council had al-
22 ready decided what the regulations would be. It was just
23 kind of to advise the fishermen what the regulations were?
24 A That's right.
25 Q Now, in order to fish in the tribal fishery, do you have to

1 be an enrolled member of the tribe?

2 A No.

3 Q Is there any qualification that the tribe requires in order
4 to fish in the tribal fishery?

5 A A person has to have some, at least be a member of the
6 community, so to speak, and also be able to prove that he
7 or his family has been fishing in that area. The only way
8 it is restricted is from just, you know, say somebody from
9 another reservation who has never been part of the community
10 or part of the tribe.

11 Q But you don't have to be a tribal member to fish?

12 A No, the tribe recognizes many fishermen who aren't enrolled
13 in the tribe.

14 Q If you were a Yakima Indian, if a Yakima Indian were to come
15 over and fish, would you be allowed to fish?

16 A It depends upon the situation. If he was just, if he was
17 single, came over here and tried to fish a river, he wouldn't
18 be eligible. He would be asked to leave the river.

19 Q If he had married a Nisqually girl, could he then fish in
20 the Nisqually fishery?

21 A If he was living in this area, if they resided --

22 Q What if he, say, lived on the Yakima Reservation, but came
23 over for part of the year?

24 A We don't -- the situation has never come up before.

25 Q And does the tribe consider as its tribal fishery both its

1 on reservation and off reservation fishing?

2 A Right.

3 Q Do you know, other than this area between the railroad
4 bridge and the reservation, do you know of any other areas
5 on the Nisqually where tribal members fish at usual and
6 accustomed places off the reservation?

7 A I know there are fishermen down at Frank's Landing.

8 Q Frank's Landing, okay. Do they ever fish up river off the
9 reservation?

10 A Not to my knowledge.

11 Q Do you have any knowledge of, historically, where the tribal
12 members have fished?

13 A No, only the fishermen know that. I haven't any idea.

14 Q Do you recognize any other tribe's rights to fish on the
15 Nisqually River; for example, if some Puyallups wanted to
16 come down and fish the Nisqually River, would you recognize
17 their right to fish the river?

18 A I think one of the informal regulations, I think, is
19 residency, something that isn't in any ordinance or law,
20 but I don't think that fishermen have allowed other non-
21 community members, to my knowledge, but as far as any tribal
22 regulations, there is nothing written down.

23 Q Is this kind of a historical thing, that historically you
24 have not allowed non-tribal members, Indians from other
25 tribes that are away from your tribe to come and fish in

1 your fisheries?

2 A This appears to be the situation, yes.

3 Q Now, do your tribal regulations govern both the fishery on

4 the reservation and off the reservation?

5 A Yes.

6 Q And do they govern the fishery down at Frank's Landing?

7 A Yes.

8 Q How are these regulations enforced?

9 A At present they aren't.

10 Q They are not?

11 A No, not with any judicial or legal law enforcement program,

12 no.

13 Q I see, has there been general observance of them?

14 A Right.

15 Q Have you ever requested State or Federal enforcement agencies

16 to enforce your tribal regulations?

17 A No.

18 Q If there were breaches of your tribal regulations, would

19 that just be ignored, or how would that be dealt with?

20 A Well, the instances I have seen have usually been settled

21 by the fishermen themselves, you know, by just discussing

22 it, or, you know --

23 Q What is the tribe's relationship with the Frank family, and

24 with people that fish at Frank's Landing?

25 A Well, Bill Frank, Sr. and Jr. both are enrolled members. I

1 know that there are others, they are probably eligible for
2 enrollment, that are fishing down there, but I am not sure
3 exactly who all is fishing down there, just the ones that
4 are appearing in the rolls.

5 Q If there were Indians fishing at Frank's Landing that were
6 not part of the community as you described, and as far as
7 the tribe is concerned, they would be fishing illegally in
8 the tribal fishery?

9 A Right.

10 Q To be a member of the community as you described it, would
11 it be sufficient if an Indian from the Yakimas or something
12 came over and just plotted down and lived there for a while?

13 A No.

14 Q What would he have to do to actually enter the community?

15 A Part of the residency is being from that area, having, you
16 know, the family's history being from that area. It is not
17 a matter of someone who is coming over.

18 Q Residence doesn't mean just living there at the present, it
19 means having a historical tie?

20 A Ancestral background.

21 Q And would the ancestral background be to the Nisqually tribe?

22 A Members of that community.

23 Q Is your enrollment, tribal enrollment, up to date?

24 A No, it isn't. The last time it was brought up to date was,
25 I believe, in 1965.

1 Q Is there any attempt now to bring it up to date or keep it
2 current?

3 A We hope to open enrollments in the next six months to a
4 year.

5 Q How does that work, how does an Indian go about becoming
6 enrolled in the tribe if he is not presently enrolled in the
7 tribe?

8 A The tribe has to open up its rolls, and then an individual
9 must file for enrollment through the agency, and this is
10 done in conjunction with the agency.

11 Q This would be the Bureau of Indian Affairs?

12 A Right.

13 Q Now, do your regulations for your off reservation fishery
14 differ in any way from your regulations for your on reser-
15 vation fishery?

16 A No.

17 Q Last year when you were setting your seasons, did you make
18 any attempt to predict what the returning runs, the size
19 of the returning runs would be, at least on that information
20 that you received from the State?

21 A The only information was their biological and statistical
22 data.

23 Q Now, when you say "Biological and statistical data", did
24 that include spawning ground counts?

25 A Whatever method that they use.

1 Q You, yourself, weren't personally involved with analyzing
2 that data?
3 A No.
4 Q Did you rely primarily on the Bureau of Sports Fishery to
5 analyze that?
6 A Right.
7 Q And you accepted their advice. Is there a Nisqually Tribal
8 Court System at all?
9 A No, not at present.
10 Q Do you allow non-Indians to fish either on the reservation
11 or in the tribal fishery at all?
12 A To my knowledge, I can't think of anyone who has.
13 Q Do you know, and I don't mean this as a limitation, to
14 limit your tribe as far as the claims that you make, do you
15 know of any Washington statutes or administrative rules
16 that you feel are not necessary for conservation?
17 A No, I can't think of any offhand.
18 Q And do you know what the historical off reservation fishing
19 stations were for your tribe?
20 A Well, we have some information. I don't know how valid it
21 is. This was an affidavit that was given by some older
22 members of the community, which have passed away by now,
23 and this lists what they felt, at that time, that they were.
24 Q Other than the stations listed in this affidavit, which we
25 will mark as Deposition Exhibit number 1 --

1
2
3 Q (Continuing) Other than the stations that are listed in
4 the affidavit, do you know of any other historical fishing
5 stations that are located off your reservation?

6 A Other than this, I don't know of any. Maybe the other
7 fishermen would know.

8 Q I realize that. This is not to limit you. Do you know
9 whether your tribe ever fished on other rivers than the
10 Nisqually?

11 A Not to my knowledge.

12 Q Has your tribe developed any resource management program, or
13 any program to build up fish runs or --

14 A Well, we are presently involved in the feasibility study for
15 a hatchery on the river through the Bureau of Sport Fisheries
16 and Wildlife.

17 Q This would be a hatchery built by the Federal Government?

18 A Correct.

19 Q Do you know whether there are any State hatchery fish that
20 are planted in the river?

21 A I have heard mention that they have planted at times, but
22 recently, no, I haven't heard anything from their office.

23 Q Other than the hatchery feasibility study that is being
24 conducted by the Bureau of Sport Fisheries and Wildlife, is
25 there any other resource management enhancement program

1 that you know of?

2 A No.

3 Q Now, do you know the number of the families that would rely
4 on the fishery, on your tribal fishery, for either food or
5 personal use or because one of their family members makes
6 a living from it?

7 A Would you --

8 Q Do you know how many families in your tribe rely on the
9 fishery, either for personal use fish, food for their own
10 family's use, or because one of their members makes a liv-
11 ing, makes it~~s~~ living from fishing?

12 A Well, all the fishermen use some of the fish, some of their
13 catch for their own personal use.

14 Q Of these twenty fishermen that we were talking about, do
15 they each represent a different family, or are there some
16 families where the husband and the wife could be fishing,
17 or a father - son, or something like that, in the same house-
18 hold?

19 A To my knowledge they had each, one.

20 Q That would be twenty families?

21 A Yes, right.

22 Q And they use some of the fish that they catch for their own
23 personal use?

24 A Right.

25 Q Also they would sell --

1 A Yes.

2 Q -- some of it commercially?

3 A Yes.

4 Q Would they give any of the fish for personal use, or do they
5 sell it among other tribal members?

6 A Most of the catch is sold to commercial buyers.

7 Q But do you know of any time when, say, on the reservation
8 or off the reservation, let's say on the reservation, a
9 fisherman would sell fish to an Indian who didn't fish, a
10 tribal member who didn't fish, rather than to the fish
11 buyer?

12 A They usually give it to someone if someone wants it.

13 Q Do they give fish for personal use to other members of the
14 tribe who don't fish on a regular basis, or is this some-
15 thing --

16 A If someone, part of their family, requested it, this is
17 done.

18 Q Do you know how frequently that is done?

19 A No.

20 Q When you fished last year, did anyone ever make any request
21 of you?

22 A You know, I gave some to my relatives, my family, this type
23 of thing.

24 Q Do you have any idea of how much you might have given them?

25 A Well, I am sure it wouldn't be over ten.

1 Q And then do you use fish in ceremonies also?

2 A I have never participated in this at all, but there are
3 some members in the community who are going back to the
4 old religious beliefs, so they might. I can't say yes or
5 no to that.

6 Q Were there any ceremonies, other than the old traditional
7 religious ceremonies, where salmon was used, like to
8 celebrate a wedding?

9 A Yes, this is done for social gatherings, of this nature.

10 Q That is still --

11 A Yes, that is still practiced quite often now.

12 Q Does salmon have a role in those ceremonies besides just
13 being a food to eat, or is it just the food to eat?

14 A Well, I am not aware of any specific role that it may play
15 in such a ceremony.

16 Q Do you have any idea to what extent the tribe still prac-
17 tices its traditional ceremonies?

18 A It is just becoming known to me that more people are moving
19 back to the old traditional ways and trying to restore them
20 and get them down so that they aren't lost completely, but
21 there aren't a lot of families that are doing it. Most of
22 them are living just a standard commercial life. Like I
23 say, there are members of the community who have moved back
24 toward the old ways.

25 Q Are you saying that most of the Indian families in your

1 tribe live a pretty westernized type of existence?

2 A Right.

3 Q And I believe your testimony was that only four families

4 actually live on the reservation?

5 A Well, I think it is five families, I think.

6 Q Then the rest would live in normal communities in that area?

7 A Yes, the surrounding communities.

8 Q Now, to your knowledge has your tribe ever fished with a

9 fish trap that went completely across the river and would

10 catch all the fish, and then you would divide it up among

11 the tribal members?

12 A I have just heard talk about this, that it was done quite

13 some time ago. I have never seen it on record, or, you

14 know, I have heard some of the older Indians mention that.

15 Q Kind of a hearsay sort of thing?

16 A Yes.

17 Q Do you think that that is a very feasible way to fish now

18 for your tribe?

19 A No.

20 Q And why?

21 A It is too, the fishing now, it is too individualized. Each

22 one, you know, prefers to tend his own gear rather than one

23 say, fish trap everybody worked on.

24 Q Do you think that if it were put up to a vote to your tribal

25 members, whether to set up a fish trap or to continue on

1 doing individualized fishing, as they are doing now, which
2 way would they vote?

3 A I would think they would prefer to stay with the individu-
4 alized setting of nets.

5 Q Could you just describe the methods that are used by tribal
6 members to fish?

7 A There are only two now. One is the set net, which is a gill
8 net set in a net, and the other is a drift net, which the
9 fisherman takes his net up the river, usually a straight
10 stretch of river, and he stretches his net out and then just
11 drifts, pulls down the river, follows his net along beside
12 the boat. He goes so far down and then he pulls it out.

13 Q Now, do you have any estimate as to what percentage of the
14 fishermen fish with set nets and what percentage fish with
15 drift nets?

16 A I haven't any accurate information. I believe that all the
17 fishermen use set nets, just that some do drift more than
18 others, I think, but now, this is my --

19 Q When you fished last year, you used a set net?

20 A Right.

21 Q Would the set net be staked into the river bottom and
22 attached?

23 A Yes, tied to something on shore, usually, or a snag or some-
24 thing like that.

25 Q Is there any restriction as to how far across the stream

1 the net can go?

2 A I believe the furthest it goes is either 200 feet or no
3 further than one third of the way across the river.

4 Q Do you think that your tribal members are getting a fair
5 share of the fish that originate in the Nisqually River?

6 A Percentage wise?

7 Q Percentage wise.

8 A No.

9 Q Okay, what percentage do you think that you are getting now?

10 A Well, I have heard figures of less than three per cent of
11 the total catch. This includes commercial, sports and
12 Indian fisheries.

13 Q Would this also include the fish that are caught out in the
14 ocean, the Nisqually fish that go out to the ocean?

15 A Yes.

16 Q And also those caught on the sound, and so on?

17 A (Nods head affirmatively)

18 Q Do you have any idea of how it could be determined to assure
19 your tribe of a fair share?

20 A Do I have any proposal?

21 Q Yes, just any idea as a tribal officer, what do you think
22 would be a fair share?

23 A I think it is difficult to define what is a fair share and
24 what isn't, you know. What is a fair share to us might not
25 be the same thing for the State and vice versa.

1 Q Would you think that a higher percentage --

2 A Oh, definitely. That would be a good start.

3 Q Do you think the percentage formula would be a fair way of

4 doing it, like if you were guaranteed a certain per cent of

5 the fish?

6 A I don't say it would be the proper way, but it would be, it

7 would probably be better for our fishermen. We would have

8 an opportunity to catch more fish. Whether that would be the

9 proper procedure to go by, I don't know.

10 Q And you are not acquainted, as I understand, with the income

11 that any of your fishermen receive?

12 A No.

13 Q How about yourself, did you fish commercially --

14 A Right.

15 Q -- when you fished last year?

16 A I fished with one other gentleman, and we ran two sets. We

17 only fished for approximately a month and a half, and we

18 didn't have that good of sets anyway. I think we made

19 approximately, grossed between 7 and \$900 for about a month,

20 but this was two small sets, one small set, probably one

21 medium sized set. That is compared with what the other

22 fishermen were using that we saw, but they weren't the best

23 sets either.

24 Q The other fishermen were probably doing better than you, is

25 that it?

1 A I would think so. Of course they knew what they were doing,
2 too. They knew the technique much more than we did.

3 MR. MCGIMPSEY: That is all the
4 questions I have.

5
6 EXAMINATION BY MR. DYSART:

7 Q Harold, what is the official name of the Nisqually Tribal
8 entity today as it is organized under its constitution?

9 A The Nisqually Community Council.

10 Q So when you used the term "community" earlier -- there was
11 some discussion about whether a person had to be a member
12 of the community -- how were you using that term? What did
13 you mean by the "community"?

14 A Presently the governing body considers as its population of
15 the community, all those Indians within the valley adjacent
16 to the reservation, the Indians living within Olympia, Lacey,
17 Tumwater, Yelm, who are descendants from this area, from the
18 Nisqually area.

19 Q All right, now, let me go through it this way, and correct
20 me if I am wrong in any aspect of this. To be a member of
21 the community then you would consider that they have to
22 first be an Indian?

23 A Right.

24 Q In some way connected with the Indians who inhabited the
25 Nisqually River area or adjacent surrounding areas?

1 A Right.

2 Q So you are not limiting it to Nisqually members in the
3 current Nisqually tribal organization; is that correct?

4 A For fishing purposes, no, we are not.

5 Q What I am trying to get at is that the name of the tribe has
6 the word "community" in it and I wanted to see whether when
7 you spoke about community a moment ago and being a member of
8 the community, you meant that they had to be a member of
9 that entity, or were using it in a somewhat broader sense
10 that you are now describing the community?

11 A (Nods head)

12 Q How long have you been associated with the tribal govern-
13 ment? You said you were chairman for eighteen months, but
14 how long have you been associated with the government?

15 A Eighteen months.

16 Q When you speak about approximately twenty fishermen fishing
17 in the tribal fishery, again you are referring to those
18 whom you consider members of this Nisqually community?

19 A Yes, those that are recognized by the tribe.

20 Q Recognized by the tribe. Are there other persons fishing
21 the Nisqually River who are doing so under claim of Indian
22 treaty rights that you do not include in this twenty?

23 A Well, like I say, I don't know everyone who is fishing on
24 the lower part of the river. Most of them are from the
25 community as we recognize it for exercising these rights,

1 and some are individuals who have married into the tribe and
2 have resided within the community.

3 MR. DYSART: I have no further
4 questions.

5
6 RE-EXAMINATION BY MR. MCGIMPSEY:

7 Q You said for fishing purposes you did not have to be an
8 enrolled member of the tribe, but just to be within the
9 community as you defined it?

10 A Many members of the community are either on the tentative
11 rolls or on the rolls of the Puyallup Tribe. Because they
12 are a member of the same treaty that we are, which is the
13 Medicine Creek Treaty, and they haven't resided within that
14 Puyallup area, reservation area, but have always lived
15 within the Nisqually Reservation area, and they are recog-
16 nized as having a right.

17 Q For other purposes, for example, to hold a position on the
18 community council, or to be on the Fish Committee, would
19 you have to be an enrolled member?

20 A To hold tribal office you have to be an enrolled member.
21 The fish committee does consist of individuals who are not
22 enrolled in the tribe, because there are other fishermen
23 who are recognized by the tribe as legally being able to fish,
24 and they are also welcome to sit on the committee.

25 Q Now, when you have a non-enrolled member who is fishing, or

1 sitting on the Fish Committee, is this with the consent of
2 the enrolled members, or the community council?

3 A This is more or less accepted. I have never seen anyone,
4 as of yet, challenged by the tribe, or members of it, as to
5 having legal rights.

6 Q But you aren't saying that somebody from outside this
7 community, as you have defined it, who either demanded the
8 right to fish or --

9 A I am sure that there would be some type of complaints aired
10 by the fishermen themselves, because this would be infring-
11 ing upon their rights.

12 Q And these Puyallups who sit on your Fish Committee, they
13 have generally lived in the Nisqually community?

14 A Yes.

15 Q For fairly long periods of time?

16 A Yes.

17 Q You indicated there are twenty fishermen. Is this
18 approximately the number of people who are interested in
19 fishing, or is there some restriction that the tribe puts
20 on people?

21 A No, there are no restrictions of the number of fishermen
22 on the river. These are the only ones I can think of off-
23 hand, approximately.

24 Q Do you know of any reason why there aren't more than twenty
25 fishermen?

1 A There are some limitations, but the only one I can think of
2 is that there might not be enough room on the river for
3 everyone to fish.

4 Q When you say, not enough room?

5 A Not enough natural sites.

6 Q Good sites, natural sites on the river itself to fish?

7 A Yes, they have established steady job employment somewhere
8 else, and being that fishing is somewhat seasonal they
9 can't afford to go back and fish. I know that some have
10 had to give it up and work for a steady job.

11 Q Some of them are not fishing because they hold other types
12 of jobs?

13 A That is all.

14 MR. MCGIMPSEY: We will enter this
15 deposition exhibit number one into evidence.

16
17 (Witness Excused)

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20 (Signature of Witness)

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I, ELINOR A. HOLLOWAY, Notary Public
in and for the State of Washington,
residing at Tacoma in said County
and State, do hereby certify:

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Deposition Ex. 7

REPORT
ON SOURCE, NATURE, AND EXTENT
OF THE
FISHING, HUNTING, AND MISCELLANEOUS RELATED RIGHTS
OF
CERTAIN INDIAN TRIBES IN WASHINGTON AND OREGON
TOGETHER WITH
AFFIDAVITS SHOWING LOCATION
OF
A NUMBER OF USUAL AND ACCUSTOMED
FISHING GROUNDS AND STATIONS

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS
DIVISION OF FORESTRY AND GRAZING
LOS ANGELES, CALIFORNIA
JULY, 1942

JOINT AFFIDAVIT OF ALLEN YELLOUT,
PETER KALAMA AND GEORGE BOBB,
NISQUALLY INDIANS

STATE OF WASHINGTON)
COUNTY OF THURSTON) SS.

Allen Yellout, 70 years of age, Peter Kalama, 80 years of age, and George Bobb, 68 years of age, each being first duly sworn and put upon oath, severally depose and says:

That they are Nisqually Indians and citizens of the United States of America and residents of the State of Washington;

That they have spent all of their lives in the country formerly owned by the Nisqually Indians and sold to the United States pursuant to the treaty of 1855 and that during the course of their respective lives they have had occasion to visit the various places where the Nisqually Indians at one time had permanent villages or temporary camps for the purpose of utilizing their usual and accustomed fishing grounds; that they have fished at these places and have seen other Indians fishing there; that such places have always been used by the Indians from as long back as they can remember as a source of their food supply of fish; that when affiants were small boys and young men they were told about these places by their parents and the older members of their tribe and that aside from their personal knowledge of such places gained from actual use and observation, affiants believe that the things that were told to them as to such places always having been used by the Indians were true and confirmatory of their own knowledge gained during their respective lifetimes.

Affiants further depose and say that they are familiar with the location of old Nisqually village sites and fishing grounds as follows:

1. WINDY CANYON - That there was an old Indian village known as Spoo-y-ails located on the Nisqually River at a point about 300 yards from the present railroad bridge on the main line between Seattle and Portland; that the Indians caught fish at this place with spears and an Indian fish trap made out of cedar boughs and which stretched all the way across the river; that they heard this was at one time quite a large village; that

when the Indians had sufficient fish for their needs they would open the trap so that the fish could proceed upstream to their spawning grounds; that when the water conditions did not permit the use of the trap they caught fish in a net which was operated from two canoes; that this was a good fishing place from which the Indians obtained considerable quantities of fish for immediate consumption as well as for curing and storage for future use.

2. YELM CREEK - That there was a village located on both sides of what is now known as Yelm Creek where it entered the Nisqually River; that the Indian name for this village was Dop-shet; that it was not a permanent village but only a temporary village site used during the fall of the year when the dog salmon were running; that the place was used by the Indians of the various permanent villages for about 5 or 6 weeks at a time; that the fish were caught with spears and a trap shaped like a corral which was emptied each morning.

3. WALKER PLACE - That there was a temporary fishing place known as Keh-culs-duts located on the Nisqually River about 2 miles above the county road bridge on the road between Yelm and McKenna, Washington; that the place was utilized by most of the different Nisqually bands where they would camp and fish for as long as the fish were running which was about 2 months.

4. MUCK CREEK - That there was a permanent Indian village known as Yell-whahlse located about 8 miles above the mouth of the creek which at one time was known as Douglas Creek; that this place was used by Indians from the other Nisqually villages during the time the fish were running; that this village was the home of Leshi, the Nisqually chief, who signed the treaty with Governor Stevens; that Muck Creek along its entire length was a fishing ground of the Nisqually Indians who caught their fish with spears and traps; that at Yell-whahlse the Indians caught fish by constructing a small dam; that the Indians have not used this place since the army took over Fort Lewis in about 1918.

5. McALLISTER CREEK - That this place was known as She-nah-dah-dob where the Nisqually treaty was signed*; that the Indians fished all along this creek using spears and Indian gaff hooks; that the Indians established temporary camps at the mouth of the creek and from these camps

* In English known as Medicine Creek and in treaty referred to as "She-nah-nam."

they would go out into the bay when the tide was out to catch flounders and dig clams; that they also used this place as a sort of headquarters from which they would go over to what is now known as Anderson Island to dig clams; that they would stay at the Island for several weeks at a time until they had sufficient clams for their future needs.

Affiants further depose and say that the foregoing were the more important of the many Misqually fishing places and that they are no longer used as they were in the old days because the Indians cannot fish in their old accustomed manner; that like the other Indians in the Pacific Northwest, fish was their most important article of food although they supplemented the fish with roots and berries which they obtained at the proper places when the time of the year in which they ripened arrived.

Further affiants sayeth not.

(Sgd.) Allen Yellout
Allen Yellout

Subscribed and sworn to before me this 9th day of June 1942.

(Sgd.) Merle Hagmann
Notary Public

(Seal)

(Sgd.) Peter Kalama
Peter Kalama

Subscribed and sworn to before me this 9th day of June, 1942.

(Seal)

(Sgd.) Merle Hagmann
Notary Public

(Sgd.) George Bobb
George Bobb

Subscribed and sworn to before me this 9th day of June, 1942.

(Sgd.) Merle Hagmann

(Seal)

EUGENE IKEBE DEPOSITION

Corrections: Deposition of Harold Ikebe Taken June 12, 1973,
Federal Building, Tacoma, Washington.

Re: The United States of America vs. The State of Washington.

** Signature of deposition was reserved rather than waived.

1) Page three, line seven "..... and a Fifth Council Member....."
the Fifth Council member is the treasurer.

2) Page thirty one, line twenty one should read, "The fish
committee.....".

(Corrected in Original)