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Docket Entry 413 - Filed and entered Declaratory Judgment and Decree

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FILED IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

FEB 12 1974

EDGAR SCOFIELD, CLERK
By *[Signature]* Deputy

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10	UNITED STATES OF AMERICA,)	
11	Plaintiff,)	CIVIL NO. 9213
12	QUINAULT TRIBE OF INDIANS on its own)	HON. GEORGE H. BOLDT
13	behalf and on behalf of the QUEETS)	SENIOR UNITED STATES
14	BAND OF INDIANS; MAKAH INDIAN TRIBE;)	DISTRICT JUDGE
15	LUMMI INDIAN TRIBE; HOH TRIBE OF)	PRESIDING
16	INDIANS; MUCKLESHOOT INDIAN TRIBE;)	
17	SQUAXIN ISLAND TRIBE OF INDIANS;)	
18	SAUK-SUIATTLE INDIAN TRIBE;)	
19	SKOKOMISH INDIAN TRIBE; CONFEDERATED)	DECLARATORY
20	TRIBES AND BANDS OF THE YAKIMA)	JUDGMENT AND
21	INDIAN NATION; UPPER SKAGIT RIVER)	DECREE
22	TRIBE; STILLAGUAMISH TRIBE OF INDIANS;)	
23	and QUILEUTE INDIAN TRIBE;)	
24	Intervenor-Plaintiffs,)	
25	v.)	
26	STATE OF WASHINGTON,)	
27	Defendant,)	
28	THOR C. TOLLEFSON, Director, Washington)	
29	State Department of Fisheries; CARL)	
30	CROUSE, Director, Washington Department)	
31	of Game; and WASHINGTON STATE GAME COM-)	
32	MISSION; and WASHINGTON REEF NET OWNERS)	
	ASSOCIATION,)	
	Intervenor-Defendants)	

DECLARATORY JUDGMENT AND DECREE - #1.

[Handwritten: 413]
1515

1 This judgment and decree is based upon the Findings of
2 Fact, Agreed Facts, Conclusions of Law and Decision of the
3 Court entered in this case, all of which by this reference
4 are hereby made a part hereof as though set forth in full
5 herein, and close and detailed consideration by the Court.
6 No language herein shall be interpreted as superseding the
7 Decision of the Court, which shall control if in any respect
8 it appears to be in conflict with any Finding herein.

9 DECLARATORY JUDGMENT AND DECREE

10 In order clearly to delineate the off-reservation fish-
11 ing rights held by certain Indian entities in this district
12 under treaties made with the United States, it is hereby

13 ORDERED, ADJUDGED AND DECREED that the right of each of
14 the plaintiff tribes in this case to harvest anadromous fish
15 in waters within the Western District of Washington, outside
16 the boundaries of Indian reservations and areas of exclusive
17 federal jurisdiction, is declared to be as follows:

18 A. Definitions

19 All definitions contained in the Glossary of Terms
20 of the Joint Biological Statement (Exhibit JX-2a) are hereby
21 incorporated by reference. In addition and specifically for
22 the purposes of interpreting all provisions of this decree,
23 the following definitions shall be controlling:

24 1. Anadromous fish: Any fish which spawns or is
25 artificially produced in freshwater, reaches mature size while
26 rearing in saltwater and returns to freshwater to reproduce,
27 and which spends any portion of its life cycle in waters
28 within the Western District of Washington.

29 2. Adequate production escapement: In an approximate
30 number of anadromous fish, that level of escapement from each
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32 DECLARATORY JUDGMENT AND DECREE - #2.

1 fishery which will produce viable offspring in numbers to
2 fully utilize all natural spawning grounds and propagation
3 facilities reasonable and necessary for conservation of the
4 resource, as defined in the Decision of the court.

5 3. Harvestable stock: The approximate number of
6 anadromous fish which is surplus beyond adequate production
7 escapement and Indian needs as defined in the Decision; that
8 is, the number remaining when the adequate production
9 escapement and Indian needs are subtracted from the run
10 size.

11 4. To preserve and maintain the resource: Upon a full
12 consideration of (a) the history of State anadromous fish
13 management, (b) the level of catch within the Western District
14 of Washington in recent years, (c) the quality of freshwater
15 and artificial production environments, (d) the most recent
16 facts and data concerning anadromous fish production potential,
17 (e) the potential for interspecific competition, and (f) the
18 prospects for improvement of anadromous fish production, to
19 perpetuate the runs of anadromous fish at least at their
20 current level.

21 5. Run: A group of anadromous fish on its return
22 migration, identified by species, race and water of origin.

23 6. State: The State of Washington, its agents, officers,
24 agencies, assigns and subdivisions.

25 7. Stevens' treaties: Those treaties identified in
26 the findings of Fact and Conclusions of Law as having been
27 negotiated between Isaac I. Stevens, for the United States,
28 and certain Indian tribes and bands who lived in Washington
29 Territory during the 1850's.

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32 DECLARATORY JUDGMENT AND DECREE - #3.

1 8. Treaty Tribe: One of the Indian entities described
2 in paragraph 10 below, or any other entity entitled to
3 exercise treaty fishing rights under the treaties construed
4 herein within the Western District of Washington.

5 9. Usual and accustomed places: Those areas in, on
6 and around the freshwater and saltwater areas within the
7 Western District of Washington, which were understood by the
8 Indian parties to the Stevens' treaties to be embraced within
9 the treaty terms "usual and accustomed" "grounds," "stations"
10 and "places."

11 B. Treaty Fishing Rights

12
13 10. Each of the plaintiff tribes listed below is a
14 Treaty Tribe. The list given below is a declaration only as
15 to those 14 Indian entities which have been represented on
16 the plaintiff side in this case. A Treaty Tribe occupies
17 the status of a party to one or more of the Stevens' treaties
18 and therefore holds for the benefit of its members a
19 reserved right to harvest anadromous fish at all usual and
20 accustomed places outside reservation boundaries, in
21 common with others:

22 Hoh Tribe of Indians;

23 Lummi Indian Tribe;

24 Makah Indian Tribe;

25 Muckleshoot Indian Tribe;

26 Nisqually Indian Community of the
27 Nisqually Reservation;

28 Puyallup Tribe of the Puyallup Reservation;

29 Quileute Indian Tribe;

30 Quinault Tribe of Indians;

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32 DECLARATORY JUDGMENT AND DECREE - #4.

1 Sauk-Suiattle Indian Tribe;
2 Skokomish Indian Tribe;
3 Squaxin Island Tribe of Indians;
4 Stillaguamish Tribe of Indians;
5 Upper Skagit River Tribe;
6 Confederated Tribes and Bands of the
7 Yakima Indian Nation

8 11. The right of a Treaty Tribe to harvest anadromous
9 fish outside reservation boundaries arises from a provision
10 which appears in each of the Stevens' treaties and which,
11 with immaterial variations, states:

12 The right of taking fish, at all usual and
13 accustomed grounds and stations, is further
14 secured to said Indians, in common with all
15 citizens of the Territory

16 12. It is the responsibility of all citizens to see
17 that the terms of the Stevens' treaties are carried out, so
18 far as possible, in accordance with the meaning they were
19 understood to have by the tribal representatives at the
20 councils, and in a spirit which generously recognizes the
21 full obligation of this nation to protect the interests of
22 a dependent people.

23 13. From the earliest known times, up to and beyond
24 the time of the Stevens' treaties, the Indians comprising
25 each of the treating tribes and bands were primarily a fish-
26 ing, hunting and gathering people dependent almost entirely
27 upon the natural animal and vegetative resources of the region
28 for their subsistence and culture. They were heavily
29 dependent upon anadromous fish for their subsistence and for
30 trade with other tribes and later with the settlers.
31 Anadromous fish was the great staple of their diet and
32 livelihood. They cured and dried large quantities for year

DECLARATORY JUDGMENT AND DECREE - #5.

1 around use, both for themselves and for others through sale,
2 trade, barter and employment. With the advent of canning
3 technology in the latter half of the 19th Century the
4 commercial exploitation of the anadromous fish resources
5 by non-Indians increased tremendously. Indians, fishing
6 under their treaty-secured rights, also participated in this
7 expanded commercial fishery and sold many fish to non-
8 Indian packers and dealers.

9 14. The taking of anadromous fish from usual and
10 accustomed places, the right to which was secured to the
11 Treaty Tribes in the Stevens' treaties, constituted both
12 the means of economic livelihood and the foundation of native
13 culture. Reservation of the right to gather food in this
14 fashion protected the Indians' right to maintain essential
15 elements of their way of life, as a complement to the life
16 defined by the permanent homes, allotted farm lands,
17 compulsory education, technical assistance and pecuniary
18 rewards offered in the treaties. Settlement of the West
19 and the rise of industrial America have significantly
20 circumscribed the opportunities of members of the Treaty
21 Tribes to fish for subsistence and commerce and to maintain
22 tribal traditions. But the mere passage of time has not
23 eroded, and cannot erode, the rights guaranteed by solemn
24 treaties that both sides pledged on their honor to uphold.

25 15. The treaty-secured rights to resort to the usual
26 and accustomed places to fish was a part of larger rights
27 possessed by the treating Indians, upon the exercise of
28 which there was not a shadow of impediment, and which were
29 not much less necessary to their existence than the atmosphere
30 they breathed. The treaty was not a grant of rights to the
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32 DECLARATORY JUDGMENT AND DECREE - #6.

1 treating Indians, but a grant of rights from them, and a
2 reservation of those not granted. In the Stevens' treaties,
3 such reservations were not of particular parcels of land,
4 and could not be expressed in deeds, as dealings between
5 private individuals. The reservations were in large areas
6 of territory, and the negotiations were with the tribes.
7 The treaties reserved rights, however, to every individual
8 Indian, as though described therein. There was an exclusive
9 right of fishing reserved within certain boundaries. There
10 was a right outside of those boundaries reserved for exercise
11 "in common with citizens of the Territory."

12 16. The Stevens' treaties do not reserve to the Treaty
13 Tribes any specific manner, method or purpose of taking fish;
14 nor do the treaties prohibit any specific manner, method or
15 purpose. Just as non-Indians may continue to take advantage
16 of improvements in fishing techniques, the Treaty Tribes
17 may, in exercising their rights to take anadromous fish,
18 utilize improvements in traditional fishing methods, such for
19 example as nylon nets and steel hooks.

20 17. The exercise of a Treaty Tribe's right to take
21 anadromous fish outside of reservation boundaries is limited
22 only by geographical extent of the usual and accustomed
23 places, the limits of the harvestable stock and the number of
24 fish which non-treaty fishermen shall have an opportunity to
25 catch, as provided in the Decision of the Court.

26 18. Because the right of each Treaty Tribe to take
27 anadromous fish arises from a treaty with the United States,
28 that right is preserved and protected under the supreme law
29 of the land, does not depend on State law, is distinct from
30 rights or privileges held by others, and may not be qualified
31

32 DECLARATORY JUDGMENT AND DECREE - #7.

1 by any action of the State.

2 19. The treaty phrase "in common with" does not secure
3 any treaty right or privilege to anyone other than the
4 Treaty Tribes, nor does that phrase qualify any Indian's
5 treaty right to fish, except as provided in the Decision of
6 the Court.

7 20. Except for tribes now or hereafter entitled to self-
8 regulation of tribal fishing, as provided in the Decision of
9 the Court, the right of a Treaty Tribe to take anadromous
10 fish may be regulated by an appropriate exercise of State
11 power. To be appropriate, such regulation must:

12 a. Not discriminate against the Treaty Tribe's
13 reserved right to fish;

14 b. Meet appropriate standards of substantive and
15 procedural due process; and

16 c. Be shown by the State to be both reasonable and
17 necessary to preserve and maintain the resource. When
18 State law or regulations affect the volume of anadromous
19 fish available for harvest by a Treaty Tribe at usual and
20 accustomed places, such regulations must be designed so as
21 to carry out the purposes of the treaty provision securing
22 to the Tribe the right to take fish.

23 21. If any person shows identification, as provided in
24 the Decision of the Court, that he is exercising the fishing
25 rights of a Treaty Tribe and if he is fishing in a usual
26 and accustomed place, he is protected under federal law
27 against any State action which affects the time, place,
28 manner, purpose or volume of his harvest of anadromous
29 fish, unless the State has previously established that such
30 action is an appropriate exercise of its power.

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32 DECLARATORY JUDGMENT AND DECREE - #8.

1 22. The application of currently effective laws and
2 regulations of the State of Washington specified in the
3 Conclusions of Law which affect the time, place, manner
4 and volume of off-reservation harvest of anadromous fish
5 by Treaty Tribes is unlawful for the reasons also stated
6 in the Conclusions of Law.

7 23. All Findings of Fact and Conclusions of Law
8 pertinent to the nature, scope and effect of the fishing
9 rights of the Treaty Tribes are specifically incorporated
10 by reference herein.

11 24. The court retains jurisdiction of this case for
12 the life of this decree to take evidence, to make rulings
13 and to issue such orders as may be just and proper upon
14 the facts and law and in implementation of this decree.

15 25. Appointment of a Master, technical experts and
16 an Advisory Committee on Treaty Right Fishing will be
17 considered and determined as provided in the Decision of
18 the court.

19 26. Plaintiffs' application for an injunction will
20 be considered and determined upon hearing thereof at the
21 earliest practicable date following entry of this judgment
22 and decree.

23 Dated as of the date of entry hereof.

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25 
26 SENIOR UNITED STATES DISTRICT JUDGE

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32 DECLARATORY JUDGMENT AND DECREE - #9.