



QUILEUTE TRIBAL COUNCIL

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Testimony regarding 2014 Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act ("Magnuson Act")

By Mel Moon, Director of Quileute Natural Resources, Quileute Tribe, La Push, Washington

Thank you for inviting me to speak to you today. I am the Director of Quileute Natural Resources within the Quileute Tribe. I will be speaking about the reauthorization of the Magnuson Act modifications and recommendations which the Quileute Tribe, a signatory in 1856 of the Treaty of Olympia, recently presented to the PFMC. My talk is about fair and equitable tribal roles in the fisheries management scheme. I would also like to include some additional information and topics of interest I feel are relevant to the Magnuson Act reauthorization from the perspective of the four treaty tribes on the Pacific Coast of Washington, all of whom have reserved treaty fishing rights that extend into the ocean beyond state limits. At the PFMC of November 2013 in Costa Mesa, the Quileute Tribe addressed two issues that we feel would impact and affect all four of these treaty tribes as well as the PFMC. The first concerns the tribal seat on the PFMC—how it is selected and operates. The second regards the Essential Fish Habitat review process. Further, I would also like to mention our concerns over U.S. trustee support and responsibility towards the west coast ocean treaty tribes, including timely notice and communication of matters directly affecting our treaty rights. These concerns cover a number of issues; for example:

- climate change;
- increased role in groundfish management decisions
- increased role in sustainability issues regarding fisheries of economic importance to tribes
- recognition of need for Disaster Relief

In the 1970s, the state of Washington was still arresting Indians for fishing in their treaty areas, but off-reservation. So in 1974, the tribes filed an injunction against the state, which was interfering with their treaty rights. This is the landmark case many of you know as the Boldt decision, formally called *United States v. Washington* (384 F. Supp. 312, W. D. Wash.) affirmed that the tribes with treaties negotiated by Isaac Stevens in the mid-1850s had *reserved, off-reservation* fishing rights in their Usual and Accustomed Fishing Grounds and each tribe was entitled to 50% of the fishery passing through its treaty area. Further, the treaty tribes were co-managers of the fishery with the state of Washington. This case was fully affirmed by the United States Supreme Court in 1979 (under a different name after joinder: *Washington v. Washington State Commercial Passenger Fishing Vessel Association et al.*, 443 U.S. 658).

This is a living case; Paragraph 25 at the end leaves it open for subproceedings to keep refining our understanding of the treaty fishing rights because of their importance and complexity. Although the original case was about wild salmon and river fishing, subsequent subproceedings made it clear that hatchery fish and all the ocean species, finned or shellfish, are “treaty fish” as well.

Under the Boldt decision provisions, the Yakama, Quinault and in 1998 the Quileute are formally recognized as self-regulatory, having demonstrated their sufficient capacity. The Boldt decision opened the door for a formal tribal role in fisheries management—in fact, ordered it (field surveys, regulations), but despite this, it has been a struggle for the treaty tribes to have a meaningful role in decisions regarding their treaty rights and to protect their fishery.

For example, in the 1970s, the state of Washington was aggregating the salmon from seven major rivers or estuaries within the Treaty of Olympia (Quillayute, Hoh, Queets, Quinault, Humptulips, Grays Harbor, and Chehalis), in determining the allowable harvests for the ocean troll fishery. The state totaled all the needs of the coastal treaty tribes and then averaged them with a combined escapement goal. This was resulting in overharvest of some runs by as much as 70%. *Hoh v Baldrige* (522 F. Supp. 683 (W.D. Wash. 1981) was the federal court case that put an end to that practice so that now salmon must be managed on a river by river basis within this area. The tribes had tried to resolve this problem through PFMC, but it proved necessary to resolve the matter in federal court.

The result is the annual North of Falcon process, which gives tribes full representation with the state in determining fishing seasons and developing a management plan founded on technical analyses by all parties, discussion, and negotiation. This is a good model for other forums. Because of this ruling and the required management terms presented and argued by the coastal tribes, the salmon within the *Hoh v Baldrige* case area enjoy a non-ESA status, unlike many of the Puget Sound and Strait of Juan de Fuca stocks.

North of Falcon is held just before PFMC in the spring. Representation of tribal interests at PFMC has been more difficult. Only one tribal seat exists at present, from all states on the Pacific Coast and Idaho, regardless of distinctions between treaty tribes with ocean rights and tribes that fish under different circumstances. Over the years, we have had four tribal representatives to the PFMC: Guy McMinds of Quinault, Bill Yallup of Yakama, Jim Harp of Quinault and today Dave Somes of Makah. I personally know and have respect for all of these representatives but need to point out the misconception that all tribes are the same and have similar policy, so that one person can represent them. This is not the case for the states. Coming from different widely geographic areas, with different languages and customs, and fishing for entirely different stocks of fish, tribes have different needs. Some tribes operate under executive orders; some have treaties with reserved off-reservation fishing rights, and four in Washington have treaties with off-reservation reserved rights in the ocean beyond three miles. The various treaties reflect and derive from these differences. Some tribes are still trying to obtain their original sovereign identity or restore it due to the termination policies of the U.S. government in the 1950s. While we are joined by the commonality that we are all-fish-eating people, the rights and concerns are vastly different.

In its earlier years, PFMC created an Indian Advisory Board. This was not workable because it was structured for west coast non-Indian discussion and did not include the ocean treaty tribes as members of that board. The Indian Advisory Board was later terminated after the PFMC consulted with the tribes and realized that the treaty tribes wanted to be on the Board. The state of Washington then offered one of its seats for one of the ocean treaty tribes to occupy. Since at least 1996, the PFMC, in accordance with 16 U.S.C §1852, has provided for a tribal seat (1 of 14 voting seats overall). Before North of Falcon, this was the only forum and process for ocean salmon management between the co-managers (State and Tribes). The PFMC has a far larger role than North of Falcon, incorporating a much larger area. It is critical for the diverse (more than 25) tribes to have a larger role in the process, as significant a role as they do have in North of Falcon. To that end the Treaty of Olympia tribes presented statements in Costa Mesa this past fall.

If the tribal representation remains limited to one person, then:

- At the least, all tribes with jurisdictions with the PFMC's jurisdiction should be able to present nominations for the seat;
- the PFMC may evaluate them and reduce the final number for a vote, but all tribes need to have an opportunity to comment on the nominees;
- Because so many tribes are represented by one person, a provision regarding conflict of interest should be developed and implemented.

The Quileute Tribe, however, believes that one tribal representative does *not* adequately reflect the existence of four sovereign tribal governments with fishing rights extending into federal waters of the Washington Pacific Coast, or the existence of over 25 tribes in four states. Just as PFMC technical processes have evolved through the years to accommodate changing resource knowledge and the nature of fisheries, so should the structure of representation. Federal and state seats allow for rotation of individual representatives at the Council Table, based on expertise. Tribal representation might well parallel this procedure.

We suggest that PFMC create a process inclusive of the affected treaty tribes and our federal trustees, to discuss a more equitable tribal representation in the PFMC forums (Council and Advisory Committees).

Regarding the topics of concern at the beginning, other than the tribal seat: Quileute has been following the Essential Fish Habitat process, to update the designated areas after five years and to evaluate the Requests for Proposals. We submitted a statement on that matter in November at the PFMC as well. It is important when making these decisions to have clarity on what factors create the EFH, what factors might "off-ramp" it. In addition, for each EFH created to protect an area, how might that delineation shift fishing pressures unduly to another area?

On another note, as Samuel Rauch of NMFS has testified in March of 2013, central to the Council decisions are fishing jobs, the "lifblood" of many coastal communities. To protect the jobs of our tribal members in our own coastal communities, we need to be able to fully engage. For that, we need to be assured that the federal trustee will have the time and funds to fully engage with the treaty tribes:

- on EFH;
- on evaluation of the halibut stocks and distribution in Area 2A;
- on working with the International Pacific Halibut Commission;
- on the need to have data such as bycatch in a timely way to plan for our fisheries;
- on sustainability concerns for commercially important fisheries such as black cod and Dungeness Crab—helping us with monitoring programs;
- on climate change vulnerabilities; and
- for disaster relief when stocks crash.

It is important for the federal trustee to recognize, in working with tribes on all of the issues covered by the Magnuson-Stevens Act, the PFMC, the North of Falcon process, and treaty negotiations in general, that each tribe is a sovereign government, and that consortia should only be consulted in their place if the tribe has delegated its position to the consortium, for that purpose.

Thank you for the opportunity to present these issues of concern.

Sincerely,

Mel Moon, Jr., Director of Quileute Natural Resources,

On behalf of the Quileute Tribe of La Push, Washington