

FILED  
Court of Appeals  
Division II  
State of Washington  
9/10/2020 3:58 PM

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

MAKAH INDIAN TRIBE,

Appellant,

v.

COMMISSIONER OF PUBLIC LANDS  
HILARY FRANZ (in her official capacity), the  
WASHINGTON STATE DEPARTMENT OF  
NATURAL RESOURCES, and the  
WASHINGTON STATE BOARD OF  
NATURAL RESOURCES,

Respondents.

No. 54945-0

AFFIDAVIT OF  
FRANK GEYER

I, Frank Geyer, hereby declare under penalty of perjury under the laws of  
the State of Washington as follows:

1. I am over the age of 18, have personal knowledge as to the matters  
stated herein, and am competent to testify.
2. I am the Director of the Quileute Tribe Department of Natural  
Resources. I have worked at the Quileute Tribe Department of  
Natural Resources since February 20, 2002.
3. In my role as the Department of Natural Resources Director, I have  
received numerous documents over a number of years from the  
Washington Department of Fish and Wildlife ("WDFW") relating  
to traditional use treaty hunting rights.

4. In 2007, WDFW rescinded a Memorandum of Understanding (“MOU”) allowing hunting in the Treaty of Olympia ceded area due to objections of other tribes, including Quileute. It communicated its decision in a letter to the Makah Tribe that was also sent to affected tribes, including Quileute. A true and correct copy of the letter rescinding the MOU is attached hereto as Exhibit A.
5. WDFW has since published multiple drafts of a document titled “WDFW Procedural Guidelines for Responding to Assertions of Tribal Traditional Hunting Areas.” The most recent version of this document is dated April 1, 2019. WDFW has been soliciting feedback from treaty tribes on this document since April of 2019, and most recently sent the document to treaty tribes in Washington State by WDFW on July 2, 2019. A true and correct copy of the July 2, 2019 cover email I received from WDFW is attached hereto as Exhibit B.
6. In its July 2, 2019 email to tribes, WDFW attached its April 2019 WDFW Procedural Guidelines for Responding to Assertions of Tribal Traditional Hunting Areas. A true and correct copy of this attachment is attached hereto as Exhibit C.
7. The last time WDFW updated its Procedural Guidelines prior to sending updated Guidelines in April of 2019 was in July of 2009. In its July 2, 2019 email to tribes, WDFW attached its July 2009 WDFW Procedural Guidelines for Responding to Assertions of

Tribal Traditional Hunting Areas. I originally received those Guidelines from WDFW in 2009. A true and correct copy of the July 2009 WDFW Procedural Guidelines for Responding to Assertions of Tribal Traditional Hunting Areas is attached hereto as Exhibit D.

8. Each version of the Procedural Guidelines states on page 4 that WDFW did not renew its MOU with Makah in 2007 and that in 2008 it “was left that WDFW would develop a process to evaluate a tribe’s claim and we discussed interim enforcement guidance for the 2008 hunting season.”
9. Since the 2007 MOU was rescinded, I have not seen any MOU between Makah and WDFW that purports to allow Makah hunting in the Treaty of Olympia ceded area.
10. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED at La Push, Washington this 10th day of September, 2020.

By:   
Frank Geyer

### DECLARATION OF SERVICE

I, Sandra D. Lonon, declare under penalty of perjury under the laws of the State of Washington that I am now and at all times mentioned herein, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On September 10, 2020, I caused to be served in the manner noted copies of the foregoing through the Court's electronic court filing upon the designated parties below:

Wyatt F. Golding  
[wgolding@ziontzchestnut.com](mailto:wgolding@ziontzchestnut.com)  
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Attorneys for Respondents

Executed in Bremerton, Washington on September 20, 2020.



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Sandra D. Lonon  
Legal Practice Assistant

# **EXHIBIT A**



State of Washington  
DEPARTMENT OF FISH AND WILDLIFE

Mailing Address: 600 Capitol Way N • Olympia, WA 98501-1091 • (360) 902-2200, TDD (360) 902-2207  
Main Office Location: Natural Resources Building • 1111 Washington Street SE • Olympia, WA

July 10, 2007

Mr. Ben Johnson, Jr., Chairman  
Makah Tribe  
Post Office Box 115  
Neah Bay, Washington 98357

Dear <sup>Ben</sup>Mr. Johnson:

We submitted a draft Memorandum of Understanding (MOU) to Rob McCoy, Makah Wildlife Program Manager, on June 11, 2007, for the Makah Tribe's consideration. This draft MOU was similar to the 2005 and 2006 Washington Department of Fish and Wildlife/Makah MOU to cooperatively agree to the geographic scope of the Makah Tribe's hunting area. Differences in the draft MOU for 2007, from the two previous MOUs, included a request for regulation and harvest sharing and a commitment by both parties to work toward adopting a comprehensive agreement. We also shared our concern about including Game Management Units (GMUs) in an MOU that are outside of a tribe's ceded area without supporting evidence to justify inclusion. We also requested that, over the course of the next year, the Makah Tribe provide evidence and documentation of traditional use in GMU 602-Dickey and GMU 603-Pysht. We had requested similar evidence and documentation at our original meeting where we negotiated the MOU for the 2005 hunting season.

Shortly after sending the draft MOU, we received phone calls and correspondence from the Quileute Tribe regarding its objection to the Department entering an agreement with the Makah Tribe (or any other tribe) that provides hunting access within the Quileute Tribe's ceded area, specifically GMU 602. The Quileute Tribe requested that it be part of any discussion regarding another tribe entering into the ceded area of the Treaty of Quinault.

The State Supreme Court ruled in *State v. Buchanan* (138 Wn.2d 186) that treaty hunting can occur within the Makah Tribe's ceded area and "may include other areas if those areas are proven to have been actually used for hunting and occupied by the [Makah Tribe] over an extended period of time." Unfortunately, the opinion did not provide the state or the treaty tribes guidance on the type of evidence that is needed for a claim and what entity would evaluate and approve, or deny, a tribe's claim.

One of the reasons we proposed the regional management approach for a comprehensive agreement at our meeting with the Olympic Peninsula treaty tribes on April 10, 2007, was to help have the appropriate state and tribal representatives in the room to address traditional hunting

Mr. Ben Johnson, Jr., Chairman  
July 10, 2007  
Page 2

areas and other management issues. In addition to the state's interests in GMU 602, there are three tribes party to the Treaty of Quinault and four tribes party to the Treaty of Point No Point that have ceded land within a portion of this GMU. Given the change in circumstances, and without documentation and appropriate discussions with all of the affected parties, we have no basis to proceed in light of another tribe lodging an objection and requesting to be part of those discussions.

If the Department's enforcement officers encounter tribal hunters in areas outside of a tribe's ceded area or in an area where traditional use by a tribe has not been established, the tribal member may be at risk for prosecution for hunting outside of state regulation, depending on the decision of the affected county prosecutor.

We feel that we have maintained a good working relationship with the Makah Tribe during the past few years for hunting and wildlife management. We hope the Tribe will enter into the appropriate process to have the Makah's traditional hunting area be recognized by all affected parties prior to opening GMUs outside of the Treaty of Neah Bay ceded area. We stand ready to work with the Tribe in a constructive and defensible manner to resolve this issue.

If you have further questions, please contact me at 360.902.2720 or Nate Pamplin, Wildlife Policy Coordinator, at 360.902.2693.

Sincerely,



Philip Anderson, Assistant Director  
Intergovernmental Resource Management

PA:dak

cc: Jeff Koenings  
Bruce Bjork  
Dave Brittell  
Michele Culver  
Nate Pamplin  
Rob McCoy

# **EXHIBIT B**



## Lauren King

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**From:** Frank Geyer <[frank.geyer@quileutetribe.com](mailto:frank.geyer@quileutetribe.com)>  
**Sent:** Tuesday, July 02, 2019 3:18 PM  
**To:** Lauren King  
**Subject:** FW: Comment period extended to July 31, 2019 - WDFW DRAFT Traditional Hunting Procedural Guidelines  
**Attachments:** BuchananReport\_20150611.pdf;  
TraditionalHuntingArea\_ProceduralGuidelines\_DRAFT\_July6\_2009.pdf;  
TraditionalHuntingArea\_ProceduralGuidelines\_DRAFT\_April1\_2019.doc;  
TraditionalHuntingArea\_ProceduralGuidelines\_DRAFT\_July6\_2009.pdf  
**Importance:** High

FYI.

Frank Geyer  
Director  
Quileute Natural Resources  
(360) 374-2027  
[frank.geyer@quileutetribe.com](mailto:frank.geyer@quileutetribe.com)

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**From:** Woods, James R (DFW) <[James.Woods@dfw.wa.gov](mailto:James.Woods@dfw.wa.gov)>  
**Sent:** Tuesday, July 02, 2019 2:36 PM  
**To:** [prigdon@yakama.com](mailto:prigdon@yakama.com); Frank Geyer <[frank.geyer@quileutetribe.com](mailto:frank.geyer@quileutetribe.com)>; [frances.charles@elwha.org](mailto:frances.charles@elwha.org); Herrera, Dave <[dherrera@skokomish.org](mailto:dherrera@skokomish.org)>; Chris Madsen <[cmadsen@nwifc.org](mailto:cmadsen@nwifc.org)>; Rob McCoy <[rob.mccoy@makah.com](mailto:rob.mccoy@makah.com)>; [patrick.depoe@makah.com](mailto:patrick.depoe@makah.com); [bernard.afterbuffalo@hohtribe-nsn.org](mailto:bernard.afterbuffalo@hohtribe-nsn.org); [gmacwilliams@nooksack-nsn.gov](mailto:gmacwilliams@nooksack-nsn.gov); [gmiller@skokomish.org](mailto:gmilller@skokomish.org); [wendy.largent@hohtribe-nsn.org](mailto:wendy.largent@hohtribe-nsn.org); Jeromy Sullivan <[jeromys@pgst.nsn.us](mailto:jeromys@pgst.nsn.us)>; [paulm@pgst.nsn.us](mailto:paulm@pgst.nsn.us); kurt grinnell <[k\\_grinnell@msn.com](mailto:k_grinnell@msn.com)>; Allen, Ron <[rallen@jamestowntribe.org](mailto:rallen@jamestowntribe.org)>; Hansi Hals <[hhals@jamestowntribe.org](mailto:hhals@jamestowntribe.org)>; Randy Harder <[rharder@pnptc.org](mailto:rharder@pnptc.org)>; Kim Sager <[kim.sager@Elwha.org](mailto:kim.sager@Elwha.org)>; Tweed, Chet <[Chet.Tweed@quinault.org](mailto:Chet.Tweed@quinault.org)>; Lyle Almond <[Lyle.Almond@elwha.org](mailto:Lyle.Almond@elwha.org)>; William White <[William.White@elwha.org](mailto:William.White@elwha.org)>; [ctseafoods@earthlink.net](mailto:ctseafoods@earthlink.net); Sam Hough <[sam.hough@elwha.org](mailto:sam.hough@elwha.org)>; Kevin Lyon ([klyon@squaxin.us](mailto:klyon@squaxin.us)) <[klyon@squaxin.us](mailto:klyon@squaxin.us)>; Russell Svec <[russell.svec@makah.com](mailto:russell.svec@makah.com)>; Ethan Jones <[ethan@yakamanation-olc.org](mailto:ethan@yakamanation-olc.org)>; Riko Hilario <[rikohilario@yakamanation-olc.org](mailto:rikohilario@yakamanation-olc.org)>; Yanity, Shawn <[syanity@stillaguamish.com](mailto:syanity@stillaguamish.com)>; [merlej@lummi-nsn.gov](mailto:merlej@lummi-nsn.gov); Scott Schuyler <[ScottS@UPPERSKAGIT.com](mailto:ScottS@UPPERSKAGIT.com)>; [bcladoosby@swinomish.nsn.us](mailto:bcladoosby@swinomish.nsn.us); [JeremiahJ@lummi-nsn.gov](mailto:JeremiahJ@lummi-nsn.gov); [jeremiah.johnson@makah.com](mailto:jeremiah.johnson@makah.com); [jjoseph@sauk-suiattle.com](mailto:jjoseph@sauk-suiattle.com); fsharp ([fsharp@quinault.org](mailto:fsharp@quinault.org)) <[fsharp@quinault.org](mailto:fsharp@quinault.org)>; Kelly, Bob <[bkelly@nooksack-nsn.gov](mailto:bkelly@nooksack-nsn.gov)>; [john.idessr@makah.com](mailto:john.idessr@makah.com); [matt.beirne@elwha.org](mailto:matt.beirne@elwha.org); [melissa.calvert@muckleshoot.nsn.us](mailto:melissa.calvert@muckleshoot.nsn.us); David Bean <[David.Bean@PuyallupTribe-nsn.gov](mailto:David.Bean@PuyallupTribe-nsn.gov)>; [troutt.david@nisqually-nsn.gov](mailto:troutt.david@nisqually-nsn.gov); [acooper@squaxin.us](mailto:acooper@squaxin.us); Andy Whitener ([awhitener@squaxin.us](mailto:awhitener@squaxin.us)) <[awhitener@squaxin.us](mailto:awhitener@squaxin.us)>; [ggray@stillaguamish.com](mailto:ggray@stillaguamish.com); [lforsman@suquamish.nsn.us](mailto:lforsman@suquamish.nsn.us); [rayfryberg@tulaliptribes-nsn.gov](mailto:rayfryberg@tulaliptribes-nsn.gov); [msevigny@tulaliptribes-nsn.gov](mailto:msevigny@tulaliptribes-nsn.gov); [george.swanasetjr@nooksack-nsn.gov](mailto:george.swanasetjr@nooksack-nsn.gov); [barbera.moeller@puyallup-nsn.gov](mailto:barbera.moeller@puyallup-nsn.gov); [bill.sterud@puyalluptribe.com](mailto:bill.sterud@puyalluptribe.com)  
**Subject:** Comment period extended to July 31, 2019 - WDFW DRAFT Traditional Hunting Procedural Guidelines  
**Importance:** High

All,

Please be advised that WDFW is providing additional time for tribal input on an updated version of the DRAFT Traditional Hunting Area Procedural Guidelines document. **The extended comment period is planned to end**

**July 31, 2019.** Some of you have already provided comments of behalf of your respected tribe and thank you for that input.

The Washington Department of Fish and Wildlife has proposed more clarity in the process and has outlined steps on how WDFW would engage affected parties. WDFW proposes this draft to be use to evaluate an asserted traditional hunting area so it is important for tribes that have off reservation rights to weigh in and provide comments on the draft.

I have attached the old 2009 old version, the Buchanan Report (that WDFW has referenced) and the proposed updated DRAFT Procedural Guidelines dated April 2019. If you have any questions, concerns or would like to schedule time to meet please don't hesitate to give me a call.

Thanks for your attention to this important issue and look forward to any and all additional comments.

Best regards,  
~Jim

***Jim Woods***  
***Tribal Policy Advisor***  
***Special Assistant to the Director***  
***Washington Department of Fish and Wildlife***  
***360-902-2202***  
***[James.Woods@dfw.wa.gov](mailto:James.Woods@dfw.wa.gov)***

# **EXHIBIT C**

# **WDFW Procedural Guidelines for Responding to Assertions of Tribal Traditional Hunting Areas**

*Draft Version: April 1, 2019*

## **INTRODUCTION**

There are 24 tribes with off-reservation hunting rights in Washington, of which 23 are treaty tribes (see Appendix A).

The Washington state Supreme Court held in *State v. Buchanan* 138 Wn.2d 186 (1999) that the geographical scope of the treaty hunting right includes the lands ceded by the treaty tribes, “and may include other areas if those areas are proven to have been actually used for hunting and occupied by the [tribe] over an extended period of time” (hereafter to referred to as the “*Buchanan* test”). The Court appeared to endorse the notion that any line drawn must necessarily be approximate. Further, the Court did not provide guidance regarding: the type of evidence required; the process used to evaluate a tribe’s claim; and which entity would review and approve, or deny, the recognition of a tribe’s claim.

The purpose of this document is to outline the Washington Department of Fish and Wildlife (WDFW) process for responding to a treaty tribe’s assertion that it traditionally hunted an area outside of its treaty ceded area. These procedural guidelines outline WDFW’s process to review anthropological and historical information in the context of the *Buchanan* test, and may result in a common understanding for a line that will guide future wildlife management discussions and enforcement and prosecution discretion.

This process is not intended to result in a final determination of the geographic scope of any tribe’s treaty right to hunt, nor limit any party’s position in a future determination of the geographic scope of the treaty hunting right.

WDFW needs a process that describes how to review and evaluate a tribe’s traditional hunting area assertion and what enforcement posture to take in light of that assertion and the *Buchanan* test. It is important for WDFW to consider the potential geographic scope of a tribe’s off-reservation hunting right in order to: 1) honor rights that the tribe has exercised since “time immemorial” and reserved in treaty; 2) maintain a cooperative working relationship with the tribes and determine which tribes to work with regarding cooperative wildlife management; 3) provide clear direction to enforcement officers and clear information to tribes concerning where WDFW will apply state licensing requirements and regulations; 4) be consistent with a State Supreme Court ruling; and 5) avoid unnecessary or contentious litigation with unpredictable outcomes.

Reviewing and acknowledging tribal traditional hunting areas that extend outside of a ceded area will be challenging for WDFW. The tribes may feel that engaging in a process with WDFW is not necessary because hunting is a right reserved in a treaty with the United States. Some tribes have indicated that they may not want their treaty right linked

to management agreements that could be subject to future changes in politics or in state or local leadership. Some tribes may believe their own treaty rights are infringed upon by decisions to allow other tribes to hunt beyond their ceded area. Also, this issue will likely be contentious with state constituents who may not be familiar with the complexities of off-reservation hunting rights.

Therefore, this document outlines a process: to be consistent with the direction provided by the State Supreme Court in *Buchanan*; to be responsive to a tribe's assertion that it traditionally hunted outside of its treaty ceded area; to ensure proper government-to-government consultation with affected tribes and county prosecutors; and to describe a consistent, constructive, and defensible process for WDFW's decision of whether or not to enforce state hunting regulations in areas a tribe claims it traditionally hunted.

## **BACKGROUND**

### **Treaty Language and Case Law**

In the 1850s, the United States wanted to ensure that land was available to the increasing number of settlers in Washington. Isaac Stevens, the first Governor and Superintendent of Indian Affairs of the Washington Territory, was authorized by the United States to negotiate with Washington tribes for the peaceful settlement of their traditional lands.

Stevens ultimately negotiated eight treaties with tribes in what would become the State of Washington. The treaties established reservations for the exclusive use of the tribes. In addition, the tribes reserved their right to continue traditional activities on lands beyond these reserved areas. The "Stevens Treaties" all contain substantially similar language reserving the right to hunt, fish, and conduct other traditional activities on lands off of the reservations:

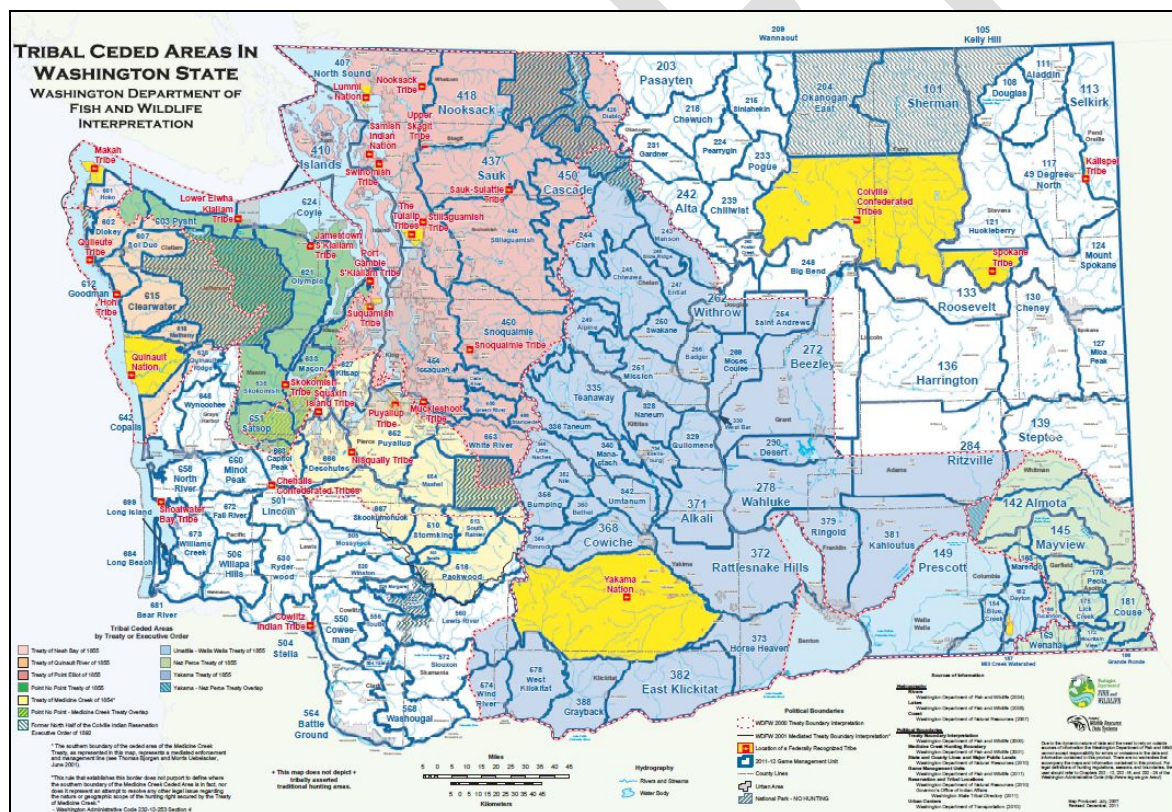
The right of taking fish, at all usual and accustomed grounds and stations, is further secured to said Indians in common with the citizens of the territory...together with the privilege of hunting, gathering roots and berries, and pasturing their horses on open and unclaimed lands.

The express language of the Stevens Treaties limits the geographic scope of the tribal fishing right to a tribe's "usual and accustomed" areas. In contrast, the treaty language does not expressly limit the geographic scope of the hunting right. Thus, the question has arisen of whether the parties to the treaties intended to have a geographic limit to a tribe's hunting right—and if so, what is the limit.

There is no federal court ruling applicable in Washington that interprets the geographic scope of the treaty hunting right reserved in the Stevens Treaties. The Washington State Supreme Court ruled in 1999, in *State v. Buchanan*, that a tribe's treaty hunting right extends to the areas ceded to the United States by that tribe, and "may include other areas if those areas are proven to have been actually used for hunting and occupied by the [tribe] over an extended period of time."

## Ceded Area Interpretation, 1999-2001

Following the *Buchanan* decision, WDFW produced a map delineating WDFW's interpretation of the ceded areas boundaries based on a literal reading of the ceded area language within each treaty (Figure 1). WDFW sent a draft of the map to the tribes for comment in August 1999. The tribes responded and clarified a few technical items which WDFW incorporated in its map. It also became apparent that WDFW and the tribes signatory to the Treaty of Medicine Creek had differing interpretations of the southern boundary of the area ceded under the Treaty. In December 2000, WDFW, the Muckleshoot Indian Tribe, the Nisqually Tribe, the Puyallup Tribe, and the Squaxin Island Tribe, and the Thurston, Mason, Lewis, Pierce, and Grays Harbor county prosecutors entered into an agreement outlining a process for determining the location of the southern boundary of the ceded lands. The agreement called for the joint selection of two mediators. The parties were given the opportunity to submit evidentiary materials and briefings.



**Figure 1:** Areas ceded to the federal government described in the Stevens Treaties of the 1850s, as interpreted by WDFW.

The parties agreed that the tribes and WDFW would propose the facilitator's determination as a regulation to their respective legislative bodies. The Fish and Wildlife Commission

ultimately adopted a rule indicating that the facilitator's line would be used to guide enforcement staff in the field ([WAC 220-413-170](#)). The rule does not purport to set forth the boundary of the ceded area as described in the treaty, since WDFW does not have the authority to make determinations regarding those boundaries. However, because the parties agreed to use the line to guide management efforts, the line has functioned as an effective substitute for an authoritative court determination of the ceded area boundary since early 2002.

#### Evaluating traditional hunting areas, 2001-2009

WDFW has responded to the traditional hunting area discussions with treaty tribes on a case-by-case basis following the *Buchanan* decision. Two examples include the Quinault Indian Nation (QIN) and the Makah Tribe. WDFW signed an annual Memorandum of Understanding (MOU) for several years with QIN for them to hunt in two Game Management Units (GMU) that were bisected by the treaty ceded area boundary and one GMU that was outside of the ceded area boundary in its entirety. WDFW had based the decision roughly on QIN's federally adjudicated usual and accustomed fishing area. In 2007, QIN requested that WDFW recognize the tribe's assertion to a traditional hunting area that included much of southwest Washington.

In 2005 and 2006, WDFW and the Makah Tribe entered into an MOU for the tribe to hunt in GMUs that roughly matched the tribe's federally adjudicated usual and accustomed fishing area. In 2005 and 2006, the tribe had opened a GMU outside of the agreement area and in the spring of 2007, WDFW also received an objection from a neighboring tribe, and thus did not renew the agreement in 2007. In early 2008, the Makah Tribe provided WDFW and the Clallam County prosecutor's office evidence that they felt supported their position to open traditional hunting areas outside of the ceded area. WDFW requested that the tribe conduct an outreach effort to the other treaty tribes that the Makah's claimed traditional area would overlap and requested that the Makah Tribe meet with other treaty tribes. The Quileute Tribe requested a meeting with WDFW to present their review of the Makah Tribe's evidence. WDFW met with the Makah Tribe again to present a possible area that WDFW would feel comfortable recognizing, based on the information that the tribe provided. The meeting was left that WDFW would develop a process to evaluate a tribe's claim and the WDFW discussed interim enforcement guidance for the 2008 hunting season.

Five tribes contacted WDFW in 2008 requesting that WDFW recognize their asserted traditional hunting areas: Makah for GMUs 602, 603, and 607; Muckleshoot for GMUs 336, 346, and 356; Quinault for GMUs 638, 642, and 648; Sauk-Suiattle for GMUs 203, 218, 231, 242, 244, 245, 249, and 335; and Suquamish for GMUs 621, 624, and 627.

In 2008, WDFW Enforcement program updated the Enforcement Program Regulation 5.95 regarding tribal hunting. The regulation included a flowchart of information to be gathered to determine whether or not a contacted tribal hunter was hunting consistent with the treaty hunting right or if they should be hunting consistent with state licenses and regulations. The flowchart asks officers to determine, among many other things, whether or not the



tribal member is a member of a tribe with off-reservation hunting rights and whether or not the tribal member was hunting within that tribe's ceded area or within an area that WDFW recognizes as being part of that tribe's traditional hunting area (through an agreement).

#### Evaluating Traditional Hunting Areas, 2009-2018

In 2009, WDFW shared a draft of the procedural guidelines for evaluating a tribe's asserted traditional hunting area. Some tribes provided edits and they were incorporated in a draft version dated July 6, 2009 that the WDFW used to evaluate asserted hunting areas through 2018.

WDFW used the draft 2009 procedure as the primary basis to review asserted traditional hunting areas for Makah, Quinault, Suquamish, Sauk-Suiattle, Upper Skagit, Muckleshoot, Skokomish, Confederated Tribes of the Umatilla Indian Reservation, Colville Confederated Tribes, Port Gamble S'Klallam, Jamestown S'Klallam, and Lower Elwha Klallam.

In some instances, the final review led to documenting the decision as part of a hunting co-management agreement between WDFW and a tribe; in other instances, it resulted in oral communication to the tribe concerning those areas where WDFW intends to use its discretion and not enforce state law against members of the tribe hunting on open and unclaimed land. WDFW typically also documented this information internally and circulated to appropriate WDFW staff.

Further, in a single instance involving three tribes during this timeframe, while a review was underway, the WDFW Director indicated to the asserting tribes that for an interim period, the WDFW would provide greater enforcement discretion until the review was completed.

Due to litigation and strong differences of tribal opinions on the geographic scope of off-reservation hunting rights, WDFW desired to have technical support to help evaluate tribal asserted traditional hunting areas. In 2014-15, WDFW provided funding to the Attorney General's Office to contract Historical Research Associates, Inc. to both review a tribe's submitted materials and to develop criteria for evaluating asserted traditional hunting areas into the future.

#### Additional Background Information

If there is a court ruling, WDFW may recognize asserted traditional hunting area without applying the procedural guidelines.

For example, in *State v. Brigham*, Case No. 96-1-00049-1, the Skamania County Superior Court held in 1996 that the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) traditionally hunted in the Gifford Pinchot National Forest in Skamania County. That decision was based on an un rebutted anthropologist affidavit that, "The area of the Gifford Pinchot National Forest is within the traditional territory in which the CTUIR exercise treaty-reserved fishing, hunting, and gathering rights and privileges."



## **PROCEDURE FOR RESPONDING TO AN ASSERTION OF A TRADITIONAL HUNTING AREA**

### **Notification of Assertion**

There are three possible actions that may initiate a process to review a tribe's assertion of a traditional hunting area:

- A tribe contacts WDFW to request it recognize the tribe's asserted traditional hunting areas, either before or after the tribe opens the area to hunting;
- A tribe opens an area that is outside the treaty area to hunting and the WDFW learns of the action (such as, reviewing the tribe's annual hunting regulation); or
- WDFW Enforcement contacts and investigates a tribal member hunting outside of the tribe's ceded area.

WDFW will notify affected county prosecutor(s) of the tribe's assertion and seek confirmation that the prosecutor(s) support WDFW's proposed evaluation process.

### **Initial Assessment**

WDFW will request an initial meeting with the tribe to describe the evaluation process and the county prosecutor(s)' role, and to determine the scope of the area the tribe asserts it traditionally hunted. WDFW will provide a copy of the 2015 report, "Anthropological Criteria for the *State v. Buchanan* Washington State Supreme Court Decision Standard," attached, to the asserting tribe, and request that the tribe compile information in a manner that addresses the following criteria:

- Use and occupation for an extended period prior to treaty time.
- Use and occupation of a defined geographic area that is familiar and describable with some specificity.
- Use and occupation for hunting, which is intentional and not incidental to another activity such as travel for visiting or trade.
- Use and occupation by a group of the tribe, because the hunting right is reserved by a tribe rather than by an individual or a family.
- Use and occupation by right rather than by permission, because a tribe that hunted through the permission of another tribe would not have had the hunting right, which would have been retained by the tribe granting the permission.

The intent of the initial meeting is to assess the merits of the assertion to see if there is enough preliminary information to warrant further engagement with affected tribe(s), county prosecutor(s), and whether WDFW/AGO need to contract an anthropological firm to assist in the evaluation.

### **Fact Gathering and Applying Criteria**

If it appears to WDFW from the initial assessment that there is enough evidence to proceed further, WDFW will request that the tribe submit written documentation supporting its

assertion. WDFW will share any written documentation received from the asserting tribe with all affected tribes that wish to receive such information.

WDFW will ask the AGO to contract with an anthropological firm to attend future meetings and review evidence submitted by the tribes.

WDFW will invite the asserting tribe to meet and make a presentation of the tribe's evidence. In addition, WDFW will invite the AGO, affected county prosecutors, and the contracted anthropological firm to the meeting.

WDFW will notify affected tribes and request information from them about the asserting tribe's claims. WDFW will also encourage the asserting tribe to meet with other affected tribes and to share their response with WDFW.

If an affected tribe opposes another tribe's asserted traditional hunting area, WDFW will consult with the affected tribe to see if it has documentation that shows that the tribe asserting a traditional hunting area does not meet the *Buchanan* test. WDFW will notify the affected tribe and provide at least 60 calendar days to respond with written documentation, or submit a request for additional time, ordinarily not longer than 90 days, to prepare its documentation. Ideally, an affected tribe would document its position through a council resolution or letter so that all parties involved will clearly understand if the affected tribe is supportive, neutral, or opposed to the asserted traditional hunting area. Note that the refusal of an affected tribe to meet with either the asserting tribe or with WDFW will not prevent the process from continuing further.

WDFW will share with the asserting tribe any written documentation received from any affected tribes. WDFW will provide time for the asserting tribe to respond to any affected tribes' submittal prior to conducting a final review. WDFW and the asserting and affected tribes may schedule a joint meeting of their anthropologists to review the information compiled, explore areas of agreement, and attempt to resolve differences of professional interpretation.

The state's contracted anthropological firm will review all of the tribal documentation received by WDFW from the asserting and affected tribes in light of the criteria in the 2015 report, "Anthropological Criteria for the *State v. Buchanan* Washington State Supreme Court Decision Standard," and will provide its report to WDFW in writing. WDFW will consider the anthropological firm's report in formulating its position. WDFW will share with the asserting and affected tribes the final, written report from the anthropological firm at or before the time that WDFW determines its position on the matter.

#### Making and Documenting a Decision

WDFW staff will consult with the anthropological firm and AGO to review documentation and share the preliminary assessment with affected county prosecutors.

If the result is that the WDFW agrees with, or partially agrees with certain asserted areas, then WDFW will offer to meet with the affected county prosecutor(s) to determine, in light of the Buchanan test, if there is sufficient information to develop a management and enforcement boundary (i.e., to delineate an area outside a tribe's ceded area, where WDFW would not take an enforcement action against tribal members hunting on "open and unclaimed lands").

In making this determination, WDFW and the prosecutor(s) will consider the allocation and prioritization of available, but often limited, enforcement and prosecutorial resources.

- It is important that the enforcement area boundary created be as clear as possible, with borders following distinguishable features such as existing GMU boundaries, roads, rivers, or other obvious landmarks.

WDFW will notify the tribe asserting a traditional hunting area and other affected tribe(s) and county prosecutor(s) of any management/enforcement line. The letter would state: WDFW's present intention is not to cite tribal hunters hunting on "open and unclaimed lands" within the described enforcement boundary that extends outside of the ceded area, and would include the following stipulations: that WDFW is not waiving state authority; that WDFW is not making a determination of the geographic scope of the off-reservation treaty hunting right; that WDFW would notify the tribe should its position change in future due to new evidence or for other reasons; and that WDFW requests the tribe seeking recognition of its traditional hunting area to adopt similar hunting regulations regarding opening hunting areas within the ceded area and the derived enforcement/management line.

WDFW will ensure internal communication of the enforcement boundary to Wildlife and Enforcement Program staff. WDFW's final decision will be recorded in a memo to the file regarding the enforcement boundary, the steps taken to reach that conclusion, and a summary of supporting evidence that the decision was based.

If the result is that the WDFW disagrees with an asserting tribe's position, then WDFW will meet with the tribe and share the assessment and its rationale, and inform the tribe on how WDFW intends to enforce state law.

#### Staff Resources

WDFW staff engaged in traditional hunting area evaluations should include:

- Policy Director
- Tribal Liaison
- Regional Director of area(s) in question
- Regional Wildlife Program Managers of area(s) in question
- Enforcement Captain of area(s) in question
- Assistant Attorney General, AGO

Other staff informed and involved, as needed:

- Director
- Chief and Deputy Chief, Enforcement Program
- Regional staff within tribe's ceded area because of working relationship with WDFW
- Fish and Wildlife Commission
- Governor's Office natural resource policy staff

## Appendix A: Treaty tribes with off-reservation hunting rights in Washington.

*Treaties between the United States of America and Northwest Indian Tribes*

<b>Treaty</b>	<b>Indian Tribes</b>	<b>Location and Date</b>
Treaty with the Yakamas	Yakama confederated tribes and bands	Camp Stevens, Walla Walla Valley June 9, 1855
Treaty with the Walla Wallas	Walla Walla, Cayuse and Umatilla tribes and bands	Camp Stevens, Walla Walla Valley June 9, 1855
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Treaty of Point Elliott	Lummi, Nooksack, Stillaguamish, Swinomish, Upper Skagit, Suquamish, Sauk Suiattle, Tulalip, and Muckleshoot	Point Elliott January 22, 1855
Treaty with the Nez Perces	Nez Perce Tribe	Camp Stevens, Walla Walla Valley June 11, 1855
Treaty of Neah Bay	Makah	Neah Bay January 31, 1855
Treaty of Medicine Creek	Nisqually, Puyallup, Squaxin Island, Muckleshoot	Medicine Creek December 26, 1854

# **EXHIBIT D**



State of Washington  
**Department of Fish and Wildlife**

Mailing Address: 600 Capitol Way N • Olympia WA 98501-1091 • (360) 902-2200; TDD (360) 902-2207  
Main Office Location: Natural Resources Building • 1111 Washington Street SE • Olympia WA

August 4, 2009

Frank Geyer, TFW Biologist  
Quileute Tribe  
Post Office Box 279  
La Push, Washington 98350

Dear Mr. Geyer:

Enclosed is a copy of the Washington Department of Fish and Wildlife (WDFW) 2009-2010 Big Game Hunting Seasons and Regulations. This set of regulations was developed from the new 2009-2015 Game Management Plan and the Three-Year Hunting Season package that was initiated last summer. Many tribes provided comments and suggestions during the development of the draft package, and we appreciated your input and working with you as we finalized the regulations.

Please share with us a copy of your hunting regulations, if you have not already. Regulations can be mailed to me at the address above, emailed to me at [Nathan.Pamplin@dfw.wa.gov](mailto:Nathan.Pamplin@dfw.wa.gov), or faxed to me at (360) 902-2158. I will then distribute a copy to our regional wildlife and enforcement programs.

Also enclosed is a draft of our internal procedural guidelines on how we would evaluate a Treaty Tribe's asserted traditional hunting area per the *State v Buchanan* State Supreme Court decision. The guidelines outline a collaborative process for the agency to review anthropological and historical information in the context of the *Buchanan* decision, and may result in a common understanding of a line that will guide future wildlife management discussions and enforcement and prosecution discretion. The guidelines were recently developed because we have been approached by five Treaty Tribes over the past year asking us to recognize their asserted traditional hunting area by not enforcing state hunting regulations on their members and we desired to have a consistent, constructive process to guide our efforts in an evaluation.

These procedural guidelines are not intended to result in a final determination of the geographic scope of the Treaty hunting right, but are intended to describe a process for WDFW's decision of whether or not to enforce state hunting regulations in areas a tribe claimed it traditionally hunted. Key entities that would be consulted in the process would include the asserting tribe, any affected tribes, and county prosecutors. Please review and provide any comments on the draft procedural guidelines to me by August 31, 2009.

If you have any questions, please contact me at (360) 902-2693.

Sincerely,

Nate Pamplin, Wildlife Policy Coordinator  
Intergovernmental Resource Management

Enclosures

**RECEIVED**

AUG 06 2009

QUILEUTE NATURAL RESOURCES



## **DRAFT**

# **WDFW Procedural Guidelines for Responding to Assertions of Tribal Traditional Hunting Areas Draft Version: July 6, 2009**

## **INTRODUCTION**

There are 24 tribes with off-reservation hunting rights in Washington, of which 23 are treaty tribes (see Appendix A). The Washington state Supreme Court held in *State v. Buchanan* 138 Wn.2d 186 (1999) that the geographical scope of the treaty hunting right includes the lands ceded by the treaty tribes, “and may include other areas if those areas are proven to have been actually used for hunting and occupied by the [tribe] over an extended period of time” (hereafter to referred to as the “*Buchanan* test”). The Court did not provide guidance regarding: the type of evidence required; the process used to evaluate a tribe’s claim; and which entity would review and approve, or deny, the recognition of a tribe’s claim.

The purpose of this document is to outline the Washington Department of Fish and Wildlife (WDFW) process for responding to a treaty tribe’s assertion that it traditionally hunted an area outside of its treaty ceded area. The guidelines outline a collaborative process to review anthropological and historical information in the context of the *Buchanan* test, and may result in a common understanding for a line that will guide future wildlife management discussions and enforcement and prosecution discretion. This process is not intended to result in a final determination of the geographic scope of the treaty right to hunt, nor limit any party’s position in a future determination of the geographic scope of the treaty hunting right.

WDFW needs a process that describes how to review and evaluate a tribe’s traditional hunting area assertion and what enforcement posture to take in light of that assertion and the *Buchanan* test. The recognition of these areas is important to: 1) maintain a cooperative working relationship with the tribes and determine which tribes to work with regarding cooperative wildlife management; 2) to provide clear direction to enforcement officers concerning where tribal members must comply with state licenses and regulations; 3) be consistent with a State Supreme Court ruling; and 4) avoid unnecessary or contentious litigation with unpredictable outcomes. From a treaty tribe’s perspective, it is important that the State recognize areas the tribe claims its members have hunted since “time immemorial.”

Reviewing and acknowledging tribal traditional hunting areas that extend outside of a ceded area will be challenging for WDFW. The tribes may feel that engaging in a process with the state is not necessary because hunting is a right reserved in a treaty with the United States. Some tribes have indicated that they may not want their treaty right linked to management agreements that could be subject to future changes in politics or in state or local leadership. Some tribes may believe their own treaty rights are infringed upon by



decisions to allow other tribes to hunt beyond their ceded area. Also, this issue will likely be contentious with state constituents who may not be familiar with the complexities of off-reservation treaty hunting rights. Therefore, this document outlines a process: to be consistent with the direction provided by the State Supreme Court in *Buchanan*; to be responsive to a tribe's assertion that it traditionally hunted outside of its treaty ceded area; to ensure proper government-to-government consultation with affected tribes and county prosecutors; and to describe a consistent, constructive and defensible process for WDFW's decision of whether or not to enforce state hunting regulations in areas a tribe claims it traditionally hunted.

## **BACKGROUND**

In the 1850s, the United States wanted to ensure that land was available to the increasing number of settlers in Washington. Isaac Stevens, the first Governor and Superintendent of Indian Affairs of the Washington Territory, was authorized by the United States to negotiate with Washington tribes for the peaceful settlement of their traditional lands.

Stevens ultimately negotiated eight treaties with tribes in what would become the State of Washington. The treaties established reservations for the exclusive use of the tribes. In addition, the tribes reserved their right to continue traditional activities on lands beyond these reserved areas. The "Stevens Treaties" all contain substantially similar language reserving the right to hunt, fish, and conduct other traditional activities on lands off of the reservations:

The right of taking fish, at all usual and accustomed grounds and stations, is further secured to said Indians in common with the citizens of the territory...together with the privilege of hunting, gathering roots and berries, and pasturing their horses on open and unclaimed lands.

The express language of the Stevens Treaties limits the geographic scope of the tribal fishing right to a tribe's "usual and accustomed" areas. In contrast, the treaty language does not expressly limit the geographic scope of the hunting right. Thus, the question has arisen of whether the parties to the treaties intended to have a geographic limit to a tribe's hunting right—and if so, what is the limit.

There is no federal court ruling applicable in Washington that interprets the geographic scope of the treaty hunting right. The Washington State Supreme Court ruled in 1999 in *State v. Buchanan* that a tribe's treaty hunting right extends to the areas ceded to the United States by that tribe, and "may include other areas if those areas are proven to have been actually used for hunting and occupied by the [tribe] over an extended period of time."

Following the *Buchanan* decision, WDFW produced a map delineating the ceded areas boundaries (Figure 1). WDFW sent the map to the tribes for comment in August 1999. The tribes responded and clarified a few technical items, but it also became apparent that the state and the tribes signatory to the Treaty of Medicine Creek had differing

interpretations of the geographic extent of the treaty language. In December 2000, WDFW, the Muckleshoot Indian Tribe, the Nisqually Tribe, the Puyallup Tribe, and the Squaxin Island Tribe, and the Thurston, Mason, Lewis, Pierce, and Grays Harbor county prosecutors entered into an agreement outlining a process for determining the location of the southern boundary of the ceded lands. The agreement called for the joint selection of two mediators. The parties were given the opportunity to submit evidentiary materials and briefings.

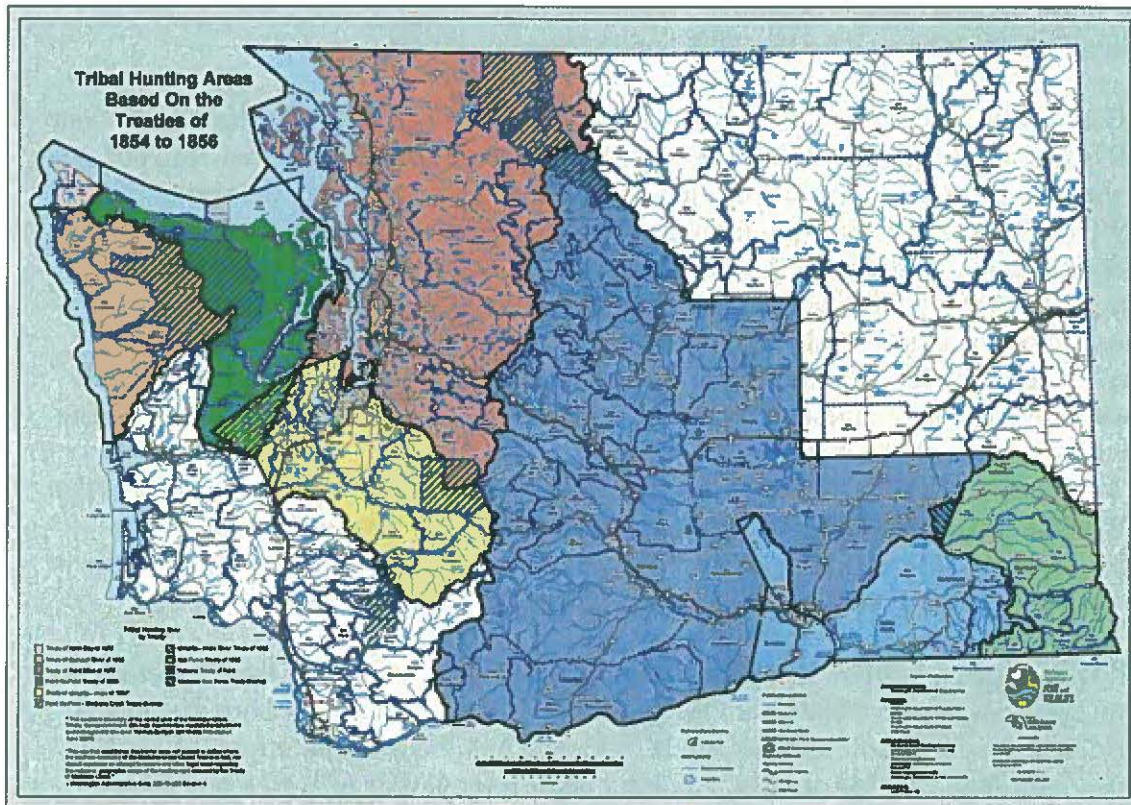


Figure 1: Areas ceded to the federal government described in the Stevens Treaties of the 1850s.

The parties agreed that the tribes and WDFW would propose the facilitator's determination as a regulation to their respective legislative bodies. The Fish and Wildlife Commission ultimately adopted a rule indicating that the facilitator's line would be used to guide enforcement staff in the field (WAC 232-12-253). The rule does not purport to set forth the boundary of the ceded area as described in the treaty, since the state does not have the authority to make determinations regarding those boundaries. However, because the parties agreed to use the line to guide management efforts, the line has functioned as an effective substitute for an authoritative court determination of the ceded area boundary since early 2002.



WDFW has responded to the traditional hunting area discussions with treaty tribes on a case-by-case basis since the *Buchanan* decision. Two examples include the Quinault Indian Nation (QIN) and the Makah Tribe. WDFW had a Memorandum of Understanding (MOU) for several years with QIN for them to hunt in two Game Management Units (GMU) that were bisected by the treaty ceded area boundary and one GMU that was outside of the ceded area boundary in its entirety. WDFW had based the decision roughly on QIN's usual and accustomed fishing area. In 2007, QIN requested that WDFW recognize the tribe's assertion to a traditional hunting area that included much of southwest Washington. In 2007 and 2008, WDFW and QIN did not have an MOU for geographic area, and discussions are still on-going. WDFW offered interim enforcement guidance regarding QIN hunting area for the 2008 hunting season.

In 2005 and 2006, WDFW and the Makah Tribe entered into an MOU for the tribe to hunt in GMUs that roughly matched the tribe's usual and accustomed fishing area. In 2005 and 2006, the tribe had opened a GMU outside of the agreement area and in the spring of 2007, WDFW also received an objection from a neighboring tribe, and thus did not renew the agreement in 2007. In early 2008, the Makah Tribe provided WDFW and the Clallam County prosecutor's office evidence that they felt supported their position to open traditional hunting areas outside of the ceded area. WDFW requested that the tribe conduct an outreach effort to the other treaty tribes that the Makah's claimed traditional area would overlap and requested that the Makah Tribe meet with other treaty tribes. The Quileute Tribe requested a meeting with WDFW to present their review of the Makah Tribe's evidence. WDFW met with the Makah Tribe again to present a possible area that WDFW would feel comfortable recognizing, based on the information that the tribe provided. The meeting was left that WDFW would develop a process to evaluate a tribe's claim and we discussed interim enforcement guidance for the 2008 hunting season.

Five tribes contacted WDFW in 2008 requesting that WDFW recognize their asserted traditional hunting areas: Makah for GMUs 602, 603, and 607; Muckleshoot for GMUs 336, 346, and 356; Quinault for GMUs 638, 642, and 648; Sauk-Suiattle for GMUs 203, 218, 231, 242, 244, 245, 249, and 335; and Suquamish for GMUs 621, 624, and 627.

In 2008, WDFW Enforcement program updated the Enforcement Program Regulation 5.95 regarding tribal hunting. The regulation included a flowchart of information to be gathered to determine whether or not a contacted tribal hunter was hunting consistent with the treaty hunting right or if they should be hunting consistent with state licenses and regulations. The flowchart asks officers to determine, among many other things, whether or not the tribal member is a member of a tribe with off-reservation hunting rights and whether or not the tribal member was hunting within that tribe's ceded area or within an area that the Department recognizes as being part of that tribe's traditional hunting area (through an agreement).

## **PROCEDURE FOR RESPONDING TO AN ASSERTION OF A TRADITIONAL HUNTING AREA**

### **Process Description:**

- There are three possible triggers that would initiate a process to review a tribe's assertion of a traditional hunting area: 1) a tribe requests a meeting with WDFW to discuss traditional hunting areas, either before or after the tribe opens the area to hunting; 2) a tribe opens an area that is outside the treaty area to hunting and the WDFW learns of the action; or 3) WDFW Enforcement contacts a tribal member hunting outside of the tribe's ceded area.
- WDFW would notify affected county prosecutor(s) of the tribe's assertion and seek confirmation that the prosecutor(s) support WDFW's proposed evaluation process.
- WDFW would request a meeting with the tribe to describe the evaluation process, including the county prosecutor(s)' role, and to determine the scope of the area the tribe asserts it traditionally hunted. WDFW would request that the tribe provide documentation supporting the tribe's assertion
- The second meeting between WDFW and the tribe would consist of an oral overview of the type of evidence the tribe has to support its assertion, and would allow WDFW to make an initial evaluation to determine if there is enough evidence to proceed further and engage other affected tribes and county prosecutors.
- WDFW would also ask the tribe to meet with other affected tribes in the area the tribe asserts it traditionally hunted and to document their response. Refusal of an affected tribe to meet with either the tribe asserting evidence or with WDFW will not prevent the process from continuing.
- Tribe submits written documentation supporting its assertion (described in more detail in the section titled, "Traditional Hunting Area Documentation"). WDFW staff would review documentation and share with affected county prosecutors.
- If an affected tribe opposes another tribe's asserted traditional hunting area, WDFW would consult with the affected tribe to see if it has documentation that shows that the tribe asserting a traditional hunting area does not meet the *Buchanan* test. Before deciding its position, WDFW would the notify the affected tribe and provide at least 30 calendar days to respond with written documentation, or submit a request for additional time, ordinarily not longer than 45 days, to prepare their documentation. Ideally, an affected tribe would document its position through a council resolution or letter so that all parties involved understood if the affected tribe were supportive, neutral, or opposed to the asserted traditional hunting area.
- WDFW and county prosecutors would then meet to determine, in light of the *Buchanan* test, if there is sufficient information to develop a management and enforcement boundary (i.e., to delineate an area outside a tribe's ceded area, where the state would not take an enforcement action against tribal members hunting on "open and unclaimed lands"). This overall evaluation process would likely take considerably longer if the tribes submit contradictory documentation or otherwise disagree.

In making this determination, WDFW and the prosecutors would consider the allocation and prioritization of available, but often limited, enforcement and prosecutorial resources.

- It is important that the enforcement area boundary created be as clear as possible, with borders following distinguishable features such as existing GMU boundaries, roads, rivers or other obvious landmarks.
- WDFW would notify the tribe seeking recognition of a traditional hunting area and other affected tribes and county prosecutors of any management/enforcement line. The letter would state WDFW's present intention not to cite tribal hunters hunting on "open and unclaimed lands" within the described enforcement boundary, but would include the following reservations: that WDFW is not waiving state authority; that WDFW is not making a determination of the geographic scope of the off-reservation treaty hunting right; that WDFW would notify the tribe should its position change in future due to new evidence or for other reasons; and that WDFW requests the tribe seeking recognition of their traditional hunting area to adopt similar hunting regulations regarding opening hunting areas within the ceded area and the derived enforcement/management line.
- WDFW would ensure internal communication of the enforcement boundary to Wildlife and Enforcement Program staff. WDFW's final decision would be recorded in a memo to the file regarding the enforcement boundary, the steps taken to reach that conclusion, and a summary of supporting evidence that the decision was based upon.
- WDFW would refer tribes with inter-tribal disputes to seek resolution elsewhere.

**WDFW staff engaged in traditional hunting area evaluation:**

**Agency staff engaged in process:**

- Wildlife Policy Coordinator, IRM
- Regional Director of area(s) in question
- Enforcement Captain of area(s) in question
- Assistant Attorney General, AGO

**Other agency staff informed and involved as needed:**

- Director's Office
- Chief and Deputy Chief, Enforcement Program
- Assistant Director, IRM
- Regional Wildlife Program Manager in area(s) in question, to address any resource management issue.
- Regional staff within tribe's ceded area because of working relationship with WDFW.

## **TRADITIONAL HUNTING AREA DOCUMENTATION**

Documentation supporting or refuting a tribe's claim to a traditional hunting area should be in light of the Buchanan test requiring that the area be proven to have been actually used for hunting and occupied by the tribe over an extended period of time. Below is a list of some of the type of evidence and documentation that should be considered in the evaluation of a tribe's claim to a traditional hunting area:

- Ethnographic information—may provide some of the best evidence available for geographic distribution at treaty times
- Elder testimony
- Anthropological evidence—village sites, camps, artifacts, etc. that can be assigned to the tribe seeking recognition that the area was used for hunting
- Linguistic evidence—in particular, names of places within that tribe's language or events that occurred in certain areas
- Other tribes' recognition of a tribe's use of the area
- *US v Washington*—while this case established U&As for salmon fishing, the Finding of Facts may include other cultural information and should consider both tribal and state evidence (was there State evidence for anthropological evidence submitted?)
- Journals of settlers/explorers
- 19<sup>th</sup> Century Maps and Surveys
- Indian Claims Commission



## Appendix A: Treaty tribes with off-reservation hunting rights in Washington.

*Treaties between the United States of America and Northwest Indian Tribes*

<b>Treaty</b>	<b>Indian Tribes</b>	<b>Location and Date</b>
Treaty with the Yakamas	Yakama confederated tribes and bands	Camp Stevens, Walla Walla Valley June 9, 1855
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Treaty of Medicine Creek	Nisqually, Puyallup, Squaxin Island, Muckleshoot	Medicine Creek December 26, 1854

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September 10, 2020 - 3:58 PM

## Transmittal Information

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 54945-0  
**Appellate Court Case Title:** Makah Indian Tribe, Appellant v. Commissioner of Public Lands Hilary Franz, et al., Respondents  
**Superior Court Case Number:** 20-2-01547-1

### The following documents have been uploaded:

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Affidavit/Declaration - Other  
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### A copy of the uploaded files will be sent to:

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### Comments:

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