

THE HONORABLE RICARDO S. MARTINEZ

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

STILLAGUAMISH TRIBE OF INDIANS,

Petitioner,

v.

STATE OF WASHINGTON

Respondent.

No. C70-9213 RSM

Subproceeding: 17-3

THE TULALIP TRIBES’ MOTION FOR
PARTIAL SUMMARY JUDGMENT

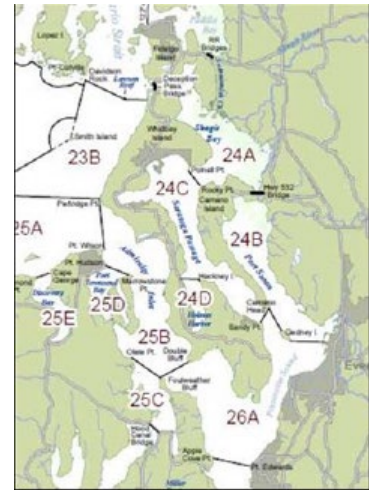
NOTE ON MOTION CALENDAR:
JANUARY 29, 2021

1. Introduction

In this subproceeding, the Stillaguamish Tribe seeks to expand its usual and accustomed fishing areas. After informal discussions with some affected tribes, Stillaguamish served a written “Meet and Confer” notice pursuant to Paragraph 25 of the Permanent Injunction herein on parties to this case. Following that notice discussions were held between some of the parties which yielded no positive results. On September 11, 2017, Stillaguamish filed a formal Request for Determination with the court. Dkt No. 21583. That Request was filed out of time and not in compliance with the terms of Paragraph 25 and the requirement to allow affected parties to demand mediation. On October 10, 2017, after one party demanded a mediation, the parties were directed to mediation by the court. Dkt. No. 21677. Mediation sessions were held by United States District Judge Robert Lasnik.

1 Mediation did not achieve a settlement and on July 16, 2018, Judge Lasnik returned the
 2 matter to the court. Dkt. No. 45. On July 20, 2018, the court issued an Order setting a pretrial
 3 briefing schedule. Dkt. No. 21805. That schedule resulted in two Motions to Dismiss, one
 4 each filed by the Swinomish and Upper Skagit Tribes, and a Motion for Partial Summary
 5 Judgment filed by the Tulalip Tribes, on or about October 5, 2018. On March 21, 2019, the
 6 Court issued its “Order Denying Motions to Dismiss and Motion for Partial Summary
 7 Judgment,” denying all three motions. A subsequent order of March 20, 2020 set a deadline of
 8 January 7, 2021 for filing dispositive motions.

9 This motion pertains to wider areas claimed by
 10 Stillaguamish, including the marine waters of Whidbey Island
 11 and both shores of Camano Island, including Port Susan, Skagit
 12 Bay, Saratoga Passage, Penn Cove, Holmes Harbor, and
 13 Deception Pass (also known as WDFW Shellfish Areas 24A-D,
 14 and a small portion of northern 26A, or as WDFW Salmon Areas
 15 8-1 and 8-2), excluding the waters directly adjacent to the Tulalip
 16 Reservation and any other Indian Reservation (*see* Map).



17 2. Motion for Partial Summary Judgement—Standard of Review

18 Pursuant to FRCP 56 Tulalip moves for Partial Summary Judgement that the
 19 Stillaguamish Tribe has not met its burden to prove usual and accustomed marine fishing
 20 areas as defined in the decisions of this Court. This motion does not pertain to the waters
 21 described in the May 1, 1984 Settlement Agreement between Tulalip and Stillaguamish,
 22 pursuant to that agreement of May 1, 1984. Appendix 1, hereto. Tulalip continues to support
 23 Stillaguamish expansion into those limited areas.¹

24 ¹ The Agreement provides in paragraph IV B: (Appendix 1 hereto)

25 “B. The Tulalip Tribes recognize that portion of Area 8A north of a line from Kayak Point due west
 26 to Camano Island (hereafter "Northern 8A"), as a non-exclusive usual and accustomed fishing area of
 the Stillaguamish Tribe and will affirmatively support the Stillaguamish Tribe's request for a

1 Summary judgment is appropriate when there is no genuine issue of material fact and
 2 the moving party is entitled to judgment as a matter of law.² Courts view inferences to be
 3 drawn from the underlying facts in the light most favorable to the non-moving party.³ Once the
 4 moving party meets its burden under Rule 56(c), the adverse party “may not rest upon the mere
 5 allegations or denials of the adverse party’s pleading, but the adverse party’s response, by
 6 affidavits or as otherwise provided in this Rule, must set forth specific facts showing that there
 7 is a genuine issue for trial.”⁴ The non-moving party must do more than simply show “some
 8 metaphysical doubt as to the material facts.”⁵ The mere existence of “a scintilla of evidence”
 9 supporting the non-moving party’s position is insufficient; there must be evidence on which the
 10 finder of fact could reasonably find for the non-moving party.⁶

11 3. Determination of Stillaguamish Usual and Accustomed Grounds and Stations

12 In 1974, the Court found: “The Stillaguamish Tribe is composed of descendants of the
 13 1855 Sto-luch-wa-mish of the Stoluch-wa-mish River. The population in 1855 resided on the
 14 main branch of the river as well as the north and south forks.” FF 144, 384 F. Supp. 312, 378
 15 (W.D. Wash. 1974). There is no finding that they resided on marine waters or fished there.

16 The Stillaguamish were a riverine tribe. The name Stillaguamish, under various
 17 spellings, has been used since about 1850 to refer to those Indians who lived along the
 18 Stillaguamish River and camped along its tributary creeks. They were a party to the Treaty of
 19 Point Elliot. *Id.* During treaty times and for many years following the Treaty of Point Elliott,
 20 fishing constituted a means of subsistence for the Indians inhabiting the area embracing the
 21

22 determination that the Stillaguamish Tribe's usual and accustomed fishing areas extend throughout
 23 Northern 8A and that portion of Area 8 southerly of a line drawn from Milltown to Polnell Point and
 24 northeasterly of a line drawn from Polnell Point to Rocky Point.”

25 Thus, the agreed area recognizing Stillaguamish Usual and Accustomed fishing area is confined to the
 26 areas stated. See map, attached to Appendix 1 hereto.

² FED. R. CIV. P. 56(c).

³ *Matsushita Elec. Indus. Corp. v. Zenith Radio Corp.*, 475 U.S. 574 (1986).

⁴ FED. R. CIV. P. 56(e).

⁵ *Matsushita*, 475 U.S. at 586.

⁶ *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242 (1986).

1 Stillaguamish River and its north and south forks, which river system constituted the usual and
2 accustomed fishing places of the tribe.” 384 F. Supp. 312, 378-379. There was no finding that
3 any marine waters constituted a usual and accustomed fishing place. Stillaguamish was not an
4 original party to *United States v. Washington* and was not a federally recognized Tribe. 348 F.
5 Supp. 312, 379.

6 Despite Stillaguamish Tribe not being federally-recognized until 1976, the Court set
7 out Stillaguamish usual and accustomed fishing areas in Final Decision No. 1. The Court
8 determined that the Stillaguamish usual and accustomed fishing area was located on the
9 Stillaguamish River. It did not include marine waters in its Stillaguamish usual and
10 accustomed finding:

11 “During treaty times and for many years following the Treaty of Point Elliott,
12 fishing constituted a means of subsistence for the Indians inhabiting the area
13 embracing the Stillaguamish River and its north and south forks, which river system
14 constituted the usual and accustomed fishing places of the tribe.” *Id.* at 379 [FF
15 146].

16 In August 1974, Stillaguamish filed Fishing Regulations and Ordinances of the
17 Stillaguamish Tribe that applied to the northern portion of Port Susan, north of a line which
18 runs due west of Kayak Point to Camano Island” (“northern Port Susan”).

19 Tulalip objected to Stillaguamish’s 1974 and 1975 fishing regulations on several
20 grounds, including that Final Decision #1 prohibited Stillaguamish from fishing in northern
21 Port Susan. 459 F. Supp. 1020, 1068. (W.D. Wash. 1978).

22 On March 1, 1976, the Court issued its Order Regarding Tulalip Tribes’ Objections to
23 Stillaguamish Fishing Regulations. *See United States v. Washington*, 459 F. Supp. 1020, 1068
24 (W.D. Wash. 1978) (the “March 1976 Order”). The Court confirmed Finding of Fact #146
25 from Final Decision #1 holding that:

26 “During treaty times and for many years following the Treaty of Point Elliott,
fishing constituted a means of subsistence for the Indians inhabiting the area
embracing the Stillaguamish River and its north and south forks, which river system

1 constituted the usual and accustomed fishing places of the tribe.” Id. at 379 [FF
2 146].

3 The Court further held:

4 “Paragraph 25 of the Court’s Injunction in Final Decision #1 establishes the
5 mechanism whereby further usual and accustomed fishing grounds may be
6 established and recognized by the Court. The Stillaguamish Tribe has not sought to
7 expand its fishing places to include the northern portion of Port Susan by following
8 the procedures set forth in paragraph 25 of the Injunction. It is only as a result of
9 the Tulalip objections that the Court has been made fully aware that the
10 Stillaguamish Tribe has, apparently unilaterally, expanded its fishing places beyond
11 those areas recognized and determined in Final Decision #1. For all of the
12 foregoing reasons the Court sustains the objections of the Tulalip Tribes of
13 Washington to the Stillaguamish fishing regulations insofar as they authorize tribal
14 fishing activities at grounds and stations beyond those determined and recognized in
15 Final Decision #1. Id.

16 The Court struck Stillaguamish’s 1975 and future regulations purporting to open tribal
17 fisheries at places other than set forth in Final Decision #1 Finding of Fact #146. Id. at 1069.

18 A. Subproceeding 79-1

19 After the March 1976 Order, and over objection, Stillaguamish continued issuing
20 fishing regulations that applied to not only the Stillaguamish River but also (1) northern Port
21 Susan and (2) lower Skagit Bay.

22 In October 1976, Stillaguamish filed a Request for Determination seeking to expand
23 its usual and accustomed fishing area beyond the Final Decision #1 determination into Port
24 Susan and Skagit Bay. Dkt. # 2584.

25 Stillaguamish, however, failed to prosecute its claim further, and the Court never
26 decided that Judge Boldt had not specifically determined Stillaguamish’s usual and
27 accustomed fishing area. This court dismissed Subproceeding 79-1 without prejudice.

28 B. Subproceeding 80-1

29 In 1980, Tulalip filed a new subproceeding to determine expansion of its usual and
30 accustomed fishing area, considered provisional, in its original case. See 459 F. Supp 1020,

1 1060. A Stipulation and Agreement between Stillaguamish and Tulalip Tribes, dated May 1,
2 1984 (“Stipulation”), was approved and entered by Order of this Court dated May 8, 1985
3 (“May 8, 1985 Order” [Dkt. #10042]; *see* Appendix 1).

4 C. Subproceeding 89-3

5 In Subproceeding 89-3, Stillaguamish filed a “Statement of usual and accustomed
6 Areas and Species Claimed” on May 3, 1993, to include, at least, “Port Susan and that portion
7 of Skagit Bay south and easterly of a line drawn from Milltown southwesterly to Polnell Point
8 then due south to Rocky Point.” Dkt # 13102. However, the Tribe also moved to voluntarily
9 dismiss that claim without prejudice on August 19, 1993. Dkt. # 13587.

10 On December 8, 1993, the Court granted the Tribe’s motion and ordered “dismiss[al]
11 without prejudice”. Order of December 8, 1993. Dkt. No. 13907.

12 Thus, Stillaguamish launched several abortive thrusts at establishing a usual and
13 accustomed fishing area but never followed through until filing this action. This checkered
14 dalliance with the issue of location fishing areas underscores the lack of legal support for the
15 issue here. For over 35 years Stillaguamish sat on their claim and only now is pressing a final
16 request for determination of fishing areas.

17 4. The Paucity of Evidence Presented by Stillaguamish

18 Stillaguamish has the burden of proof to establish their usual and accustomed fishing
19 areas. Despite reams of paper presented by Stillaguamish and a 217-page report (plus end
20 notes) issued through their designated expert, Dr. Chris Friday, Stillaguamish presents no
21 reliable evidence of Stillaguamish marine water fishing at treaty times. They rely primarily on
22 Dr. Friday’s report for their case, however, Dr. Friday appears to have little experience nor
23 knowledge of treaty time fishing of the subject tribes in this case. As a historian, he lacks
24 anthropological training and knowledge necessary to properly evaluate the Stillaguamish
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1 claims. His attempts to mesh disjointed pieces of information to make a case are contra
2 indicated by the experts in this case. The Friday⁷ report contains no direct evidence of fishing
3 by Stillaguamish in marine waters.

4 A. The Friday Report, Prehistory

5 The first sections of the Friday report deal with the natural history of Northwest
6 Washington and is irrelevant to these proceedings. Nothing in that section deals with who
7 fished where at treaty time. It provides no support for the Stillaguamish case.
8

9 B. The Friday report, “Radiating Tribal Interests”

10 Much of this material is likewise irrelevant and inapplicable as to where a particular
11 tribal group of Indians fished at treaty times. None of the very learned and experienced
12 anthropologists and ethnohistorians in this case have ever alluded to this concept.

13 It is the concept of Dr. Keith Carlson, developed in writing about landlocked riverine
14 tribes on a river in Canada. The concept has no application to Northwest marine water fishing
15 by Native Americans. Indeed, it is an absurd concept applied to marine fisheries of Tribes in
16 U.S. v. Washington. Followed to its logical conclusion, it would mean that every tribe has such
17 intersecting “radii” emanating from numerous village sites all crashing into such “radii” in a
18 mishmash of overlapping areas. Obviously, this concept would simply destroy and negate the
19 phrase “usual and accustomed.” Even if proven, this evidence is insufficient to prove “usual
20 and accustomed” places and stations in the Treaties. That phrase governs the location of
21 fishing areas, not some hypothetical “Radiating Tribal Interest.” While “evidence found
22 credible and inferences reasonably drawn therefrom” may be used to prove that a particular
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26 ⁷ “Stillaguamish Tribe of Indians – Marine Fisheries Report.” February 2020.

1 location is within a tribe's usual and accustomed fishing area, *United States v. Washington*, 384
2 F. Supp. 312, 349 (W.D. Wash. 1974), the *presence* of a tribe – even evidence of a tribe's
3 *village* – is not enough to infer fishing in the adjacent waters.

4 C. The Friday Report, Species found in Waters Claimed.

5 This section of the Friday Report is also irrelevant as to where Stillaguamish fished.
6 The fact that certain species are found in the waters at question does not prove, nor even
7 suggest, that Stillaguamish fished on those species in those locations. There is no direct
8 evidence of any such fishing. This Court turned to, and relied on, evidence of *fishing* to support
9 findings of marine usual and accustomed areas adjacent to village locations. While the Court
10 also cited the ICC maps and Dr. Lane's conclusions, both contained crucial additional
11 evidence: (1) the maps showed that the tribe as issue named many of the villages based on the
12 *fishing* activities that happened there and (2) Dr. Lane's conclusions were supported by first –
13 and second-hand accounts of *fishing*. The Court was not explicit in Final Decision #1 that
14 evidence of fishing was required to prove fishing areas in waters adjacent to villages.
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16
17 In 1975, however, the Court explicitly held that evidence of village locations was not
18 enough to prove fishing at those locations. *See United States v. Washington*, 459 F. Supp. 1020,
19 1059 (W.D. Wash. Sept. 10, 1975). In that subproceeding, the Court considered three types of
20 evidence in determining the Tulalip Tribes' usual and accustomed fishing areas: testimony by
21 Dr. Lane, testimony from a tribal elder about post-treaty fishing locations (“tribal fishing
22 locations subsequent to entering into treaties”), and ICC findings about the location of Tulalips'
23 “coastal and river villages.” *Id.* The Court held that the ICC findings “of the Indian coastal and
24 river villages” although raising the “presume[ption]” of fishing activities, was not enough. *Id.*
25

26 D. No Fishing Areas Documented

1 Although Dr. Friday stated that the areas claimed by Stillaguamish are in their fishing
2 areas, he presents no evidence of *fishing by the* Stillaguamish Tribe in marine areas at or before
3 treaty time. Indeed, he acknowledged that to determine whether Stillaguamish “were involved
4 in marine fisheries of some kind” he looked not for first- or second-hand accounts of marine
5 fishing by Stillaguamish at or before treaty times (implicitly acknowledging that there are
6 none), but instead for evidence (a) “that they were in locations where marine fisheries were
7 taking place, such as summer encampment along the west shore of Camano Island or in Holmes
8 Harbor,” (b) that they were “traveling distances from their villages for purposes of summer
9 encampments or the federal encampments,” and (c) that there were “shell middens” found at
10 the seashore. The determination of any areas as a usual and accustomed fishing ground or
11 station of a particular tribe must consider all of the factors relevant to (1) use of that area as a
12 usual or regular *fishing area*, (2) any treaty-time exercise or recognition of paramount or
13 preemptive *fisheries control* (primary right control) by a particular tribe, and (3) the petitioning
14 tribe’s (or its predecessors’) regular and frequent treaty-time *use of that area for fishing*
15 *purposes.*” *United States v. Washington*, 626 F. Supp. 1405, 1531 (W.D. Wash. 1985)
16 (emphasis added). Dr. Friday presented no such evidence.
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19 5. Conclusion

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21 Stillaguamish fails to meet the burden of proof. As to the relevance or evidentiary value
22 of Dr. Friday’s report, Tulalip concurs in and joins into the views of the Upper Skagit Tribe in
23 their motion for summary judgment filed on or about January 7, 2021.

24 DATED this 7th day of January, 2021.

25 Respectfully Submitted,
26

MORISSET SCHLOSSER JOZWIAK & SOMERVILLE

By: /s/ Mason D. Morisset

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Attorneys for the Tulalip Tribes

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CERTIFICATE OF SERVICE

I hereby certify that on January 7, 2021, I electronically filed the foregoing Tulalip Motion for Partial Summary Judgment with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the parties registered in the Court CM/ECF system.

DATED: January 7, 2021.

By: /s/ Mason D. Morisset
Mason D. Morisset, WSBA # 00273

<https://morissetschlosser.sharepoint.com/sites/CompanyShare/Shared Documents/T-Drive/WPDOCS/0075/98804 Subp 17-3/Pleadings/17-3 TTT Motion for Partial SJ Ver. 08 1-7-21.docx>

APPENDIX 1

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,)	
et al.,)	
)	
Plaintiffs,)	No. 9213 Phase I
)	
v.)	ORDER APPROVING SETTLEMENT
)	AGREEMENT BETWEEN STILLAGUAMISH
STATE OF WASHINGTON, et al.,)	AND TULALIP TRIBES RE: PUGET
)	SOUND FISHING AREA CLAIMS
Defendants.)	

On July 19, 1982, the Tulalip Tribes filed a renewed Request for Determination seeking to establish their usual and accustomed fishing grounds and stations. Several tribes filed responsive pleadings objecting to the proposed Tulalip fishing places. In anticipation of trial, many opposing tribes have sought to reach negotiated settlement with the Tulalip Tribes concerning the extent of the Tulalip Tribes' usual and accustomed fishing grounds and stations and the inter-tribal management regimes that should be implemented among themselves in areas where there are mutual fishing rights.

The Stillaguamish Tribe and the Tulalip Tribes have reached agreement concerning some of those places in which the Tulalip Tribes have sought final determination of its

101042

1 fishing rights. The agreements reached are embodied in the
2 attached Stipulation and Agreement (hereinafter "Settlement
3 Agreement") which, pursuant to this order and subject to the
4 provisions hereof, is incorporated herein. The court
5 recognizes, and the stipulating parties have so represented,
6 that the Agreement is a product of compromise on all sides and,
7 if this matter were required to be tried to the court, the
8 stipulating parties would make different representations, put
9 on different proof, and urge the court to reach different
10 conclusions. Notwithstanding this fact, it appears that the
11 settlement reached between these parties, as herein construed,
12 is fair to them and will enhance their abilities to coordinate
13 their fisheries among themselves without impairing the rights
14 and the interests of other parties.

15 The court emphasizes that this order affects only the
16 rights inter se of those parties signatory to the Settlement
17 Agreement. The Tulalip Tribes have specifically acknowledged
18 that, even though the Stillaguamish Tribe has withdrawn its
19 objection to the Tulalip Tribes' claims in areas not specifically
20 dealt with by the Settlement Agreement, other parties may con-
21 tinue to challenge the Tulalip Tribes' rights to fish in some
22 of these areas. Nothing in this Order shall be deemed to be a
23 determination of any portion of the Tulalip Tribes' Request
24 for Determination that is not hereby dismissed. However, to
25 the extent that the court does not further limit Tulalip
26 rights, the Settlement Agreement between the Stillaguamish

1 Tribe and the Tulalip Tribes shall continue to bind those
2 two tribes consistent with its terms and the terms of this Order.

3 Now, therefore, IT IS ORDERED as follows:

4 1. Subject to the interpretations and limitations
5 specified in this Order, the attached Settlement Agreement is
6 approved and adopted as part of this Order.

7 2. The Stillaguamish River has been found to be a
8 usual and accustomed fishing area of the Stillaguamish Tribe
9 (Finding of Fact No. 146, 384 F.Supp. at 370). It is hereby
10 found that the predecessors of the Tulalip Tribes were permitted
11 to fish on that river only with the permission and 'at the
12 invitation of the Stillaguamish Tribe. Accordingly, it is
13 hereby determined that as between the Tulalip Tribes and the
14 Stillaguamish Tribe, the latter has primary rights on that
15 river and the Tulalip Tribes have invitee rights to fish on
16 that river.

17 3. In accordance with the Settlement Agreement between
18 the tribes, it is hereby held that invitee rights to fish in
19 the Stillaguamish River are irrevocably extended to the Tulalip
20 Tribes to the extent and subject to the conditions and other
21 provisions set out in Paragraph III A of the Agreement between
22 the parties.

23 4. For the purpose of this order the Stillaguamish
24 River means the river upstream from an East-West line drawn
25 across the mouth of South Pass at approximately the N 1/4 corner
26 of Section 35, T.32N., R.3E, and upriver from a northwesterly

1 line across the mouth of Hat Slough located in S 1/2 of the SW
2 1/4 Section 1, T.31N., R.3E., also an East-West line drawn
3 across the mouth of Hat Slough located in the NE 1/4 of the
4 NE 1/4 Section 12, T.31N., R.3E., together with all tributaries
5 upstream from these lines, as shown on the attached maps
6 (Attachments A and B in the Settlement Agreement), which are
7 incorporated herein by reference.

8 5. To the extent that the Tulalip Tribes Request for
9 Determination seeks to establish usual and accustomed areas in
10 the Stillaguamish River and northern Area 8A to a greater
11 degree than in the Agreement between the tribes, such request
12 is hereby dismissed with prejudice. The Tulalip Tribes shall
13 not exercise or seek to exercise rights in violation of that
14 Agreement.

15 6. The Tulalip Tribes, as of the date of this order,
16 shall irrevocably extend an invitation to the Stillaguamish
17 Tribe to fish in northern 8A without prejudice to the latter's
18 right to establish its independent right to fish in that area.

19 7. This order, including the Settlement Agreement,
20 shall be enforceable pursuant to the procedures established
21 under the continuing jurisdiction in this case and shall be
22 enforceable as any other final order and judgment of this court.

23 8. Notwithstanding any other order of this court
24 involving the Tulalip Tribes and any other treaty tribe, to the
25 extent the harvesting rights of the Tulalip Tribes in any
26 other areas are affected by the Settlement Agreement and this

1 order, the Settlement Agreement and this order shall represent
2 the maximum right of the Tulalip Tribes in those areas.

3 9. Nothing in this order shall constitute a
4 determination of a Tulalip right to fish or shall authorize
5 the Tulalip Tribes to fish (whether by invitation or otherwise)
6 in any area in which that tribe's right to fish has not been
7 heretofore or is not herein or hereafter determined by this
8 court. Nor shall this order increase or affect the nature or
9 extent of any such right in relation to the rights of any tribe
10 not a signatory to the Settlement Agreement. No provision of
11 the Settlement Agreement approved by this order shall apply to
12 waters within the boundaries of a non-signatory tribe's
13 reservation without the consent of that tribe.

14 10. To the extent not prohibited by other orders of
15 this court, the parties to the Settlement Agreement shall be
16 bound by and shall comply with the harvest and management
17 limitations contained therein until a comprehensive management
18 plan is agreed to by the stipulating parties. Nothing in this
19 order shall alter or otherwise affect the provisions of this
20 court's prior orders approving the Puget Sound Salmon Plan
21 (459 F.Supp. at 1107-13) or answering questions re Salmon
22 Fisheries Management (459 F.Supp. at 1069-70).

23 11. If a comprehensive management plan agreed to in
24 accordance with Paragraph VI of the Settlement Agreement is
25 revoked, held to be contrary to the law, or otherwise found
26 or held to be unenforceable, any injured party may petition

1 the court for an order terminating the comprehensive management
2 plan and reinstating the interim management plan and harvest
3 limitations contained in the Settlement Agreement. The court
4 will not entertain any motion by any signatory party to modify
5 the Settlement Agreement unless such motion is agreed to by all
6 parties signatory thereto. Those harvest and management
7 considerations contained in the Settlement Agreement shall
8 continue to govern unless modified by express written agreement
9 of the signatory parties.

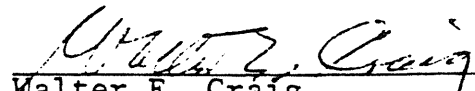
10 12. Nothing in this order shall limit any party's right
11 to seek enforcement of the Settlement Agreement consistent with
12 its terms in any separate proceeding.

13 13. This Order constitutes approval of the Settlement
14 Agreement within the meaning of Paragraph VIII thereof.

15 14. The parties to the attached Settlement Agreement
16 are enjoined from taking any action that fails to comply with
17 the terms of this Order and the terms of the Settlement Agreement
18 incorporated herein.

19 15. There being no just reason for delay, the Clerk of
20 Court is directed to enter this Order as a Final Judgment pursuant
21 to Rule 54(b), Federal Rules of Civil Procedure.

22 DATED this 3rd day of May, 1985.

23
24 
25 Walter E. Craig
26 United States District Judge

mjm Cooper
2064-1525-9

NOTE This is final but not filed.
Filed copy has two maps attached.

Hon. Robert E. Cooper
Special Master

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,)
et al.,)
Plaintiffs,)
v.)
STATE OF WASHINGTON, et al.,)
Defendants.)
-----)
In Re Tulalip Tribe's Request)
for Determination of Usual)
and Accustomed Fishing Places)
_____)

No. 9213 - Phase I

STIPULATION AND AGREEMENT
OF STILLAGUAMISH
AND TULALIP TRIBES
RE TULALIP USUAL AND
ACCUSTOMED FISHING PLACES

I. INTRODUCTION

The Stillaguamish and Tulalip Tribes are parties to the ongoing litigation in United States v. Washington (W.D. Wash. Civil No. 9123). These parties have agreed to this stipulated Settlement which resolves the issues raised in the Tulalip Tribes' request for final determination of its usual and accus-

ZIONTZ, PIRTLE, MORISSET, ERNSTOFF & CHESTNUT
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1 tommed fishing grounds and stations as between the parties to this
2 Agreement.

3 In an effort to foster closer ties between the parties, pro-
4 mote tribal unity and cooperation, and to support the development
5 of comprehensive management plans, the Stillaguamish Tribe and
6 the Tulalip Tribes have agreed as set out in this Settlement
7 Agreement.

8 It is understood that this Agreement is the product of good
9 faith negotiations between the parties and represents compromises
10 by both of the parties. These accommodations necessarily involve
11 policy adjustments between the parties. It is understood that if
12 this case were to be tried in court, the strict application of
13 evidence might not support the arrangements herein agreed to.
14

15 II. TULALIP USUAL AND ACCUSTOMED FISHING PLACES

16 A. The parties hereto agree that the Tulalip Tribes' usual
17 and accustomed fishing areas include all those which were provi-
18 sionally declared by the United States District Court in 1975 as
19 described in 459 F. Supp. 1020 at 1059-1060.

20 B. The Stillaguamish Tribe hereby withdraws its objections
21 to and affirmatively supports the Tulalip Tribes' request for de-
22 termination of its usual and accustomed fishing places in the
23 other claimed areas to the extent consistent with this Agreement
24 and other judicially approved agreements between the Tulalip
25 Tribes and other affected tribes.

1 III. Stillaguamish River.

2 A. In order to insure management protection of the Stil-
3 laguamish River stocks in marine waters, the Stillaguamish Tribe
4 agrees to recognize the Stillaguamish River as a Tulalip usual
5 and accustomed fishing area for invitational sport hook and line
6 fishing. The Stillaguamish Tribe has primary fishing rights in
7 the Stillaguamish River. The Tulalip Tribes shall have invitee
8 rights and will fish the Stillaguamish River only with the per-
9 mission of and at the invitation of the Stillaguamish Tribe, and
10 subject to Stillaguamish management authority and non-discrimin-
11 atory Stillaguamish regulations. The invitation to sport fish
12 shall be extended and effective on the date this Agreement is
13 approved by the court.

14 B. For the purpose of this Agreement, the Stillaguamish
15 River means the River upstream from an east-west line drawn
16 across the mouth of South Pass at approximately 48° 13' N.
17 latitude and upriver from northwesterly and east-west lines drawn
18 across the mouth of Hat Slough at approximately 48° 12' N.
19 latitude, together with all tributaries upstream from these
20 lines, as shown on the attached map which is incorporated herein
21 by reference.

22
23 IV. AREA 8A.

24 A. The Stillaguamish Tribe recognizes all of Area 8A
25 (including Northern 8A as defined herein) as a Tulalip usual and
26 accustomed fishing area. As used in this Agreement, Area 8A

1 means the Washington Department of Fisheries Puget Sound Salmon
2 Management & Catch Reporting Area 8A as constituted on the date
3 of this Stipulation (described in Appendix A hereto) or any
4 subsequent revision thereof which is concurred in by both parties
5 hereto.

6 B. The Tulalip Tribes recognize that portion of Area 8A
7 north of a line from Kayak Point due west to Camano Island (here-
8 after "Northern 8A"), as a non-exclusive usual and accustomed ((
9 fishing area of the Stillaguamish Tribe and will affirmatively
10 support the Stillaguamish Tribe's request for a determination
11 that the Stillaguamish Tribe's usual and accustomed fishing areas
12 extend throughout Northern 8A and that portion of Area 8
13 southerly of a line drawn from Milltown to Polnell Point and
14 northeasterly of a line drawn from Polnell Point to Rocky Point.

15 C. The Tulalip Tribes will extend an invitation to the
16 Stillaguamish Tribe to fish in Northern 8A until such time as the
17 Stillaguamish Tribe establishes the area as a usual and accus-
18 tomed fishing area of the Stillaguamish Tribe. The invitation
19 shall be without prejudice to the Stillaguamish Tribe to seek
20 such a determination. The invitation shall be extended and
21 effective on the date this Agreement is approved by the court.

22 D. The Stillaguamish Tribe recognizes that as between the
23 Stillaguamish Tribe and the Tulalip Tribes, the Tulalip Tribes
24 have primary fishing rights in all of Area 8A, other than
25 Northern 8A (as defined in Section IV.(B) above). //

1 E. The parties agree that special management concerns for
2 that area must be recognized. To meet these concerns, the
3 parties agree to co-manage the area according to the interim man-
4 agement provisions set out below, pending the development of a
5 comprehensive management, harvest sharing, and enhancement plan
6 for fisheries of mutual concern to which both parties agree.

7
8 V. INTERIM MANAGEMENT PLAN - NORTHERN 8A.

9 A. Pre-season Consultation.

10 Prior to the adoption of annual regulations, the
11 Stillaguamish and the Tulalip Tribes shall meet and exchange pre-
12 season data, production and harvest estimates; and shall consult
13 and agree as to the annual regulations for the season. Such
14 regulations shall take into account the special needs of each
15 tribe.

16 B. Management Considerations.

17 1. It is the intent of this Management Plan that all
18 regulations, both annual and in-season, shall be guided primarily
19 by the biology of the resource.

20 2. The Stillaguamish Tribe and the Tulalip Tribes
21 agree that whenever possible they shall try to have simultaneous
22 openings and closings in Northern 8A except when necessary to
23 achieve intertribal allocation requirements. If either tribe's
24 regulations opening the area meet all of the following criteria,
25 the other tribe must concur with them and the area may be

1 opened:

- 2 a) The regulation is not contrary to and is con-
- 3 sistent with conservation concerns and good
- 4 management practices.
- 5 b) The regulation is not contrary to intertribal
- 6 allocations or treaty/nontreaty allocations.
- 7 c) The regulation is consistent with this Interim
- 8 Management Plan or with a Comprehensive Man-
- 9 agement Plan for Area Northern 8A to which
- 10 both of the two tribes subscribe.
- 11 d) The Tulalip Tribes should not open Northern
- 12 8A unless the Stillaguamish Tribe has taken
- 13 or is expected to take its annual harvest
- 14 share.

11 C. Annual Harvest Shares.

12 1. It is agreed that the following harvest shares shall

13 be the interim harvest shares pending the development of a com-

14 prehensive plan. This will not preclude, however, the parties

15 from agreeing on different shares annually. The Stillaguamish

16 tribal harvest in Area 8A will count 100% towards their alloca-

17 tion of Stillaguamish River stocks.

<u>Species</u>	<u>Harvest Share</u>
18 CHINOOK	Stillaguamish Tribe: 33% of "Stilla- 19 guamish Harvestable Level"; 20 Tulalip Tribes: 67% of same.
21 PINK	Stillaguamish Tribe: 33% of "Stilla- 22 guamish Harvestable Level"; Tulalip Tribes: 67% of same.
23 COHO	Stillaguamish Tribe: 30% of "Stilla- 24 guamish Harvestable Level"; Tulalip Tribes: 70% of same.
25 CHUM	Stillaguamish Tribe: 35% of "Stilla- 26 guamish Harvestable Level";

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Tulalip Tribes: 65% of same.

SUMMER STEELHEAD Stillaguamish Tribe: 40% of "Stillaguamish Harvestable Level";
Tulalip Tribes: 60% of same.

WINTER STEELHEAD Stillaguamish Tribe: 40% of "Stillaguamish Harvestable Level";
Tulalip Tribes: 60% of same.

2. Definition of "Stillaguamish Harvestable Level"

The term "Stillaguamish Harvestable Level" shall be that number of fish from Stillaguamish River runs calculated as follows:

- The total run size entering the Strait of Juan de Fuca
- minus the agreed upon spawning escapement goal
- minus the nontreaty interceptions and nontreaty terminal harvest of such species
- minus the prior treaty interceptions in pre-terminal areas by tribes who are not parties to this agreement
- minus the terminal treaty interceptions by tribes who are not parties to this agreement.

3. The harvest shares in paragraph 1 above shall be adjusted up or down by agreement to meet each Tribe's special needs. Such needs shall include: 1) needs caused by the effects of natural events on fish runs; 2) the Tulalip's Tribe's needs to have their Snohomish runs entitlement; and 3) Stillaguamish needs to harvest their Stillaguamish runs entitlement. One possible method of adjustment could be for the Tulalip Tribes to invite the Stillaguamish Tribe into all or parts of 8A.

1 D. Annual Regulations.

2 Annual regulations shall be set jointly by the parties
3 using the annual harvest shares agreed to pursuant to section
4 V.(C) above as a guideline. It is agreed that due to the condi-
5 tion of the resource it may not be possible to reach these har-
6 vest shares each season.

7 E. Equitable Adjustment

8 If either tribe fails to attain its annual harvest
9 share of a particular species in a given year due to the actions
10 of the other party, an equitable adjustment on a fish-to-fish
11 basis shall be made the next year there is a harvestable number
12 of that species, provided that if the two tribes agree, an equit-
13 able adjustment on any other agreed basis may be made.

14
15 VI. COMPREHENSIVE PLAN

16 A. The parties agree to work with all due speed towards a
17 comprehensive plan for management, harvest and enhancement of
18 fisheries of mutual concern. The parties intend that the first
19 draft of such a plan shall be completed no later than June 30,
20 1985. Both parties agree to commit all necessary resources to
21 the development of such plan.

22 VII. COOPERATIVE ENHANCEMENT PROGRAMS

23 A. The parties agree to continue to cooperate on biolo-
24 gically sound enhancement and environmental programs of mutual
25 benefit. It is the intent of the Tulalip Tribes to continue to

1 fund biologically sound cooperative programs beneficial to the
2 Stillaguamish River System whenever funding allows.

3 B. The parties re-affirm and agree to continue to follow
4 the management principles and the dispute resolution, modifica-
5 tion and termination procedures set out in the "Agreement Between
6 the Tulalip Tribes and the Stillaguamish Tribe concerning the
7 Tulalip Tribal Salmon Hatchery" dated April 21, 1981, as it may
8 be modified from time to time by the parties.

9
10 VIII. ENFORCEMENT - REMEDIES

11 A. The parties agree that this Agreement shall be made
12 part of a federal court order. If either party fails to comply
13 with the terms of this Agreement the injured party may enforce
14 this Agreement as follows:

15 1. The terms of this Agreement shall be enforceable
16 as a Court Order of the United States District Court for the
17 Western District of Washington pursuant to and within the mechan-
18 isms established in Phase I of United States v. Washington, Civ.
19 No. 9213. In the event that the continuing jurisdiction of the
20 court in United States v. Washington is terminated, the terms of
21 this Agreement shall be enforceable generally as a federal court
22 order and in the same manner as any other order of that court.

23 2. The parties to this Agreement agree to submit dis-
24 putes arising under or relating to the enforcement of this Agree-
25 ment or the enforcement of the court order in which this Agree-
26 ment is incorporated to the federal court for resolution.

ZIONTZ, PIRTLE, MORISSET, ERNSTOFF & CHESTNUT
ATTORNEYS AT LAW
METROPOLITAN PARK, 16TH FLOOR
1100 OLIVE WAY
SEATTLE, WASHINGTON 98101
(206) 422-1255

1 3. The parties agree that they may be enjoined from
2 taking any action that fails to comply with the terms of this
3 Agreement and may be subject to contempt and injunctive relief.
4 If a party fails to substantially comply with the terms of this
5 Agreement the court may temporarily suspend fishing by a party
6 under this Agreement.

7 4. If either party breaches this Agreement the in-
8 jured party at its option, may sue for specific performance of
9 the Agreement or sue for breach of contract including damages and
10 injunctive relief, or any combination of the above.

11 5. The parties agree that the remedies set out herein
12 are exclusive, and that no party may disregard, or violate any of
13 the provisions of this Agreement. In the event that a party
14 believes that management decisions are contrary to the terms of
15 this Agreement, the injured party shall seek recourse pursuant to
16 this Agreement. Self-help shall not be an available remedy.

17 6. Neither party to this Agreement shall seek from a
18 court an order modifying or eliminating the provisions of this
19 Agreement unless such modification or limitation is agreed to by
20 both parties hereto.

21 7. The Agreement shall become effective when signed
22 by the parties, and shall be irrevocably binding on the parties
23 unless and until a modification to the Agreement is agreed to in
24 writing by each of the parties; provided, if this Agreement is
25 not approved by the Court and incorporated into a court order,

26
GGjm/050184 STIPULATION OF STILLAGUAMISH AND ZIONTZ, PIRTLE, MORISSET, ERNSTOFF & CHESTNUT
GGM7/T-S/Stip TULALIP TRIBES RE: U&A PLACES - 10

ATTORNEYS AT LAW
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1100 OLIVE WAY
SEATTLE, WASHINGTON 98101
(206) 461-1177

1 court order, as of 30 days after the date of the decision not to
2 approve, the Agreement shall be null and void and of no force and
3 effect. In the case that this Agreement is not approved by the
4 Court, the parties expressly reserve as between each other, the
5 right to litigate the issue of the extent of each party's usual
6 and accustomed fishing places.

7 Dated this 1st of May, 1984.

9 Nanci A. McCurdy
10 Chairperson, Stillaguamish
Tribe

11 Gary Tatro
12 FISHERIES MANAGER, STILLAGUAMISH
TRIBE
13 Cynthia Davenport
14 Cynthia Davenport,
Attorney for Stillaguamish
Tribe

Stan Jones Sr
Stan Jones, Sr., Chairman,
Tulalip Tribes

Bernie Gobin
Bernie Gobin, Tulalip Tribes

Mason D. Morisset
Mason D. Morisset,
Attorney for Tulalip Tribes

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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON DEPUTY

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Hon. Robert E. Cooper
Special Master

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,)
et al.,)

Plaintiffs,)

v.)

STATE OF WASHINGTON, et al.,)

Defendants.)

-----)
In Re Tulalip Tribe's Request)
for Determination of Usual)
and Accustomed Fishing Places)

No. 9213 - Phase I

STIPULATION AND AGREEMENT
OF STILLAGUAMISH
AND TULALIP TRIBES
RE TULALIP USUAL AND
ACCUSTOMED FISHING PLACES

I. INTRODUCTION

The Stillaguamish and Tulalip Tribes are parties to the ongoing litigation in United States v. Washington (W.D. Wash. Civil No. 9123). These parties have agreed to this stipulated Settlement which resolves the issues raised in the Tulalip Tribes' request for final determination of its usual and accus-

ZIONTZ, PIRTLE, MORISSET, ERNSTOFF & CHESTNUT
ATTORNEYS AT LAW
METROPOLITAN PARK, 16TH FLOOR

STIPULATION OF STILLAGUAMISH AND
TULALIP TRIBES

1 tommed fishing grounds and stations as between the parties to this
2 Agreement.

3 In an effort to foster closer ties between the parties, pro-
4 mote tribal unity and cooperation, and to support the development
5 of comprehensive management plans, the Stillaguamish Tribe and
6 the Tulalip Tribes have agreed as set out in this Settlement
7 Agreement.

8 It is understood that this Agreement is the product of good
9 faith negotiations between the parties and represents compromises
10 by both of the parties. These accommodations necessarily involve
11 policy adjustments between the parties. It is understood that if
12 this case were to be tried in court, the strict application of
13 evidence might not support the arrangements herein agreed to.

14
15 II. TULALIP USUAL AND ACCUSTOMED FISHING PLACES

16 A. The parties hereto agree that the Tulalip Tribes' usual
17 and accustomed fishing areas include all those which were provi-
18 sionally declared by the United States District Court in 1975 as
19 described in 459 F. Supp. 1020 at 1059-1060.

20 B. The Stillaguamish Tribe hereby withdraws its objections
21 to and affirmatively supports the Tulalip Tribes' request for de-
22 termination of its usual and accustomed fishing places in the
23 other claimed areas to the extent consistent with this Agreement
24 and other judicially approved agreements between the Tulalip
25 Tribes and other affected tribes.

1 III. Stillaguamish River.

2 A. In order to insure management protection of the Stil-
3 laguamish River stocks in marine waters, the Stillaguamish Tribe
4 agrees to recognize the Stillaguamish River as a Tulalip usual
5 and accustomed fishing area for invitational sport hook and line
6 fishing. The Stillaguamish Tribe has primary fishing rights in
7 the Stillaguamish River. The Tulalip Tribes shall have invitee
8 rights and will fish the Stillaguamish River only with the per-
9 mission of and at the invitation of the Stillaguamish Tribe, and
10 subject to Stillaguamish management authority and non-discrimin-
11 atory Stillaguamish regulations. The invitation to sport fish
12 shall be extended and effective on the date this Agreement is
13 approved by the court.

14 B. For the purpose of this Agreement, the Stillaguamish
15 River means the River upstream from an east-west line drawn
16 across the mouth of South Pass at approximately 48° 13' N.
17 latitude and upriver from northwesterly and east-west lines drawn
18 across the mouth of Hat Slough at approximately 48° 12' N.
19 latitude, together with all tributaries upstream from these
20 lines, as shown on the attached map which is incorporated herein
21 by reference.

22 IV. AREA 8A.

23 A. The Stillaguamish Tribe recognizes all of Area 8A
24 (including Northern 8A as defined herein) as a Tulalip usual and
25 accustomed fishing area. As used in this Agreement, Area 8A
26

1 means the Washington Department of Fisheries Puget Sound Salmon
 2 Management & Catch Reporting Area 8A as constituted on the date
 3 of this Stipulation (described in Appendix A hereto) or any
 4 subsequent revision thereof which is concurred in by both parties
 5 hereto.

6 B. The Tulalip Tribes recognize that portion of Area 8A
 7 north of a line from Kayak Point due west to Camano Island (here-
 8 after "Northern 8A"), as a non-exclusive usual and accustomed
 9 fishing area of the Stillaguamish Tribe and will affirmatively
 10 support the Stillaguamish Tribe's request for a determination
 11 that the Stillaguamish Tribe's usual and accustomed fishing areas
 12 extend throughout Northern 8A and that portion of Area 8
 13 southerly of a line drawn from Milltown to Polnell Point and
 14 northeasterly of a line drawn from Polnell Point to Rocky Point.

15 C. The Tulalip Tribes will extend an invitation to the
 16 Stillaguamish Tribe to fish in Northern 8A until such time as the
 17 Stillaguamish Tribe establishes the area as a usual and accus-
 18 tomed fishing area of the Stillaguamish Tribe. The invitation
 19 shall be without prejudice to the Stillaguamish Tribe to seek
 20 such a determination. The invitation shall be extended and
 21 effective on the date this Agreement is approved by the court.

22 D. The Stillaguamish Tribe recognizes that as between the
 23 Stillaguamish Tribe and the Tulalip Tribes, the Tulalip Tribes
 24 have primary fishing rights in all of Area 8A, other than
 25 Northern 8A (as defined in Section IV.(B) above).

1 E. The parties agree that special management concerns for
2 that area must be recognized. To meet these concerns, the
3 parties agree to co-manage the area according to the interim man-
4 agement provisions set out below, pending the development of a
5 comprehensive management, harvest sharing, and enhancement plan
6 for fisheries of mutual concern to which both parties agree.
7

8 V. INTERIM MANAGEMENT PLAN - NORTHERN 8A.

9 A. Pre-season Consultation.

10 Prior to the adoption of annual regulations, the
11 Stillaguamish and the Tulalip Tribes shall meet and exchange pre-
12 season data, production and harvest estimates; and shall consult
13 and agree as to the annual regulations for the season. Such
14 regulations shall take into account the special needs of each
15 tribe.

16 B. Management Considerations.

17 1. It is the intent of this Management Plan that all
18 regulations, both annual and in-season, shall be guided primarily
19 by the biology of the resource.

20 2. The Stillaguamish Tribe and the Tulalip Tribes
21 agree that whenever possible they shall try to have simultaneous
22 openings and closings in Northern 8A except when necessary to
23 achieve intertribal allocation requirements. If either tribe's
24 regulations opening the area meet all of the following criteria,
25 the other tribe must concur with them and the area may be

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opened:

- a) The regulation is not contrary to and is consistent with conservation concerns and good management practices.
- b) The regulation is not contrary to intertribal allocations or treaty/nontreaty allocations.
- c) The regulation is consistent with this Interim Management Plan or with a Comprehensive Management Plan for Area Northern 8A to which both of the two tribes subscribe.
- d) The Tulalip Tribes should not open Northern 8A unless the Stillaguamish Tribe has taken or is expected to take its annual harvest share.

C. Annual Harvest Shares.

1. It is agreed that the following harvest shares shall be the interim harvest shares pending the development of a comprehensive plan. This will not preclude, however, the parties from agreeing on different shares annually. The Stillaguamish tribal harvest in Area 8A will count 100% towards their allocation of Stillaguamish River stocks.

<u>Species</u>	<u>Harvest Share</u>
CHINOOK	Stillaguamish Tribe: 33% of "Stillaguamish Harvestable Level"; Tulalip Tribes: 67% of same.
PINK	Stillaguamish Tribe: 33% of "Stillaguamish Harvestable Level"; Tulalip Tribes: 67% of same.
COHO	Stillaguamish Tribe: 30% of "Stillaguamish Harvestable Level"; Tulalip Tribes: 70% of same.
CHUM	Stillaguamish Tribe: 35% of "Stillaguamish Harvestable Level";

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Tulalip Tribes: 65% of same.

SUMMER STEELHEAD Stillaguamish Tribe: 40% of "Stillaguamish Harvestable Level";
Tulalip Tribes: 60% of same.

WINTER STEELHEAD Stillaguamish Tribe: 40% of "Stillaguamish Harvestable Level";
Tulalip Tribes: 60% of same.

2. Definition of "Stillaguamish Harvestable Level"

The term "Stillaguamish Harvestable Level" shall be that number of fish from Stillaguamish River runs calculated as follows:

- The total run size entering the Strait of Juan de Fuca
- minus the agreed upon spawning escapement goal
- minus the nontreaty interceptions and nontreaty terminal harvest of such species
- minus the prior treaty interceptions in pre-terminal areas by tribes who are not parties to this agreement
- minus the terminal treaty interceptions by tribes who are not parties to this agreement.

3. The harvest shares in paragraph 1 above shall be adjusted up or down by agreement to meet each Tribe's special needs. Such needs shall include: 1) needs caused by the effects of natural events on fish runs; 2) the Tulalip's Tribe's needs to have their Snohomish runs entitlement; and 3) Stillaguamish needs to harvest their Stillaguamish runs entitlement. One possible method of adjustment could be for the Tulalip Tribes to invite the Stillaguamish Tribe into all or parts of 8A.

1 D. Annual Regulations.

2 Annual regulations shall be set jointly by the parties
3 using the annual harvest shares agreed to pursuant to section
4 v.(C) above as a guideline. It is agreed that due to the condi-
5 tion of the resource it may not be possible to reach these har-
6 vest shares each season.

7 E. Equitable Adjustment

8 If either tribe fails to attain its annual harvest
9 share of a particular species in a given year due to the actions
10 of the other party, an equitable adjustment on a fish-to-fish
11 basis shall be made the next year there is a harvestable number
12 of that species, provided that if the two tribes agree, an equit-
13 able adjustment on any other agreed basis may be made.

14
15 VI. COMPREHENSIVE PLAN

16 A. The parties agree to work with all due speed towards a
17 comprehensive plan for management, harvest and enhancement of
18 fisheries of mutual concern. The parties intend that the first
19 draft of such a plan shall be completed no later than June 30,
20 1985. Both parties agree to commit all necessary resources to
21 the development of such plan.

22 VII. COOPERATIVE ENHANCEMENT PROGRAMS

23 A. The parties agree to continue to cooperate on biolo-
24 gically sound enhancement and environmental programs of mutual
25 benefit. It is the intent of the Tulalip Tribes to continue to

1 fund biologically sound cooperative programs beneficial to the
2 Stillaguamish River System whenever funding allows.

3 B. The parties re-affirm and agree to continue to follow
4 the management principles and the dispute resolution, modifica-
5 tion and termination procedures set out in the "Agreement Between
6 the Tulalip Tribes and the Stillaguamish Tribe concerning the
7 Tulalip Tribal Salmon Hatchery" dated April 21, 1981, as it may
8 be modified from time to time by the parties.

9
10 VIII. ENFORCEMENT - REMEDIES

11 A. The parties agree that this Agreement shall be made
12 part of a federal court order. If either party fails to comply
13 with the terms of this Agreement the injured party may enforce
14 this Agreement as follows:

15 1. The terms of this Agreement shall be enforceable
16 as a Court Order of the United States District Court for the
17 Western District of Washington pursuant to and within the mechan-
18 isms established in Phase I of United States v. Washington, Civ.
19 No. 9213. In the event that the continuing jurisdiction of the
20 court in United States v. Washington is terminated, the terms of
21 this Agreement shall be enforceable generally as a federal court
22 order and in the same manner as any other order of that court.

23 2. The parties to this Agreement agree to submit dis-
24 putes arising under or relating to the enforcement of this Agree-
25 ment or the enforcement of the court order in which this Agree-
26 ment is incorporated to the federal court for resolution.

ZIONTZ, PIRTLE, MORISSET, ERNSTOFF & CHESTNUT
ATTORNEYS AT LAW
METROPOLITAN PARK, 16TH FLOOR
1100 OLIVE WAY

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3. The parties agree that they may be enjoined from taking any action that fails to comply with the terms of this Agreement and may be subject to contempt and injunctive relief. If a party fails to substantially comply with the terms of this Agreement the court may temporarily suspend fishing by a party under this Agreement.

4. If either party breaches this Agreement the injured party at its option, may sue for specific performance of the Agreement or sue for breach of contract including damages and injunctive relief, or any combination of the above.

5. The parties agree that the remedies set out herein are exclusive, and that no party may disregard, or violate any of the provisions of this Agreement. In the event that a party believes that management decisions are contrary to the terms of this Agreement, the injured party shall seek recourse pursuant to this Agreement. Self-help shall not be an available remedy.

6. Neither party to this Agreement shall seek from a court an order modifying or eliminating the provisions of this Agreement unless such modification or limitation is agreed to by both parties hereto.

7. The Agreement shall become effective when signed by the parties, and shall be irrevocably binding on the parties unless and until a modification to the Agreement is agreed to in writing by each of the parties; provided, if this Agreement is not approved by the Court and incorporated into a court order,

1 court order, as of 30 days after the date of the decision not to
2 approve, the Agreement shall be null and void and of no force and
3 effect. In the case that this Agreement is not approved by the
4 Court, the parties expressly reserve as between each other, the
5 right to litigate the issue of the extent of each party's usual
6 and accustomed fishing places.

7 Dated this 1st of May, 1984.

9 Maria A. McCurdy
10 Chairperson, Stillaguamish
Tribe

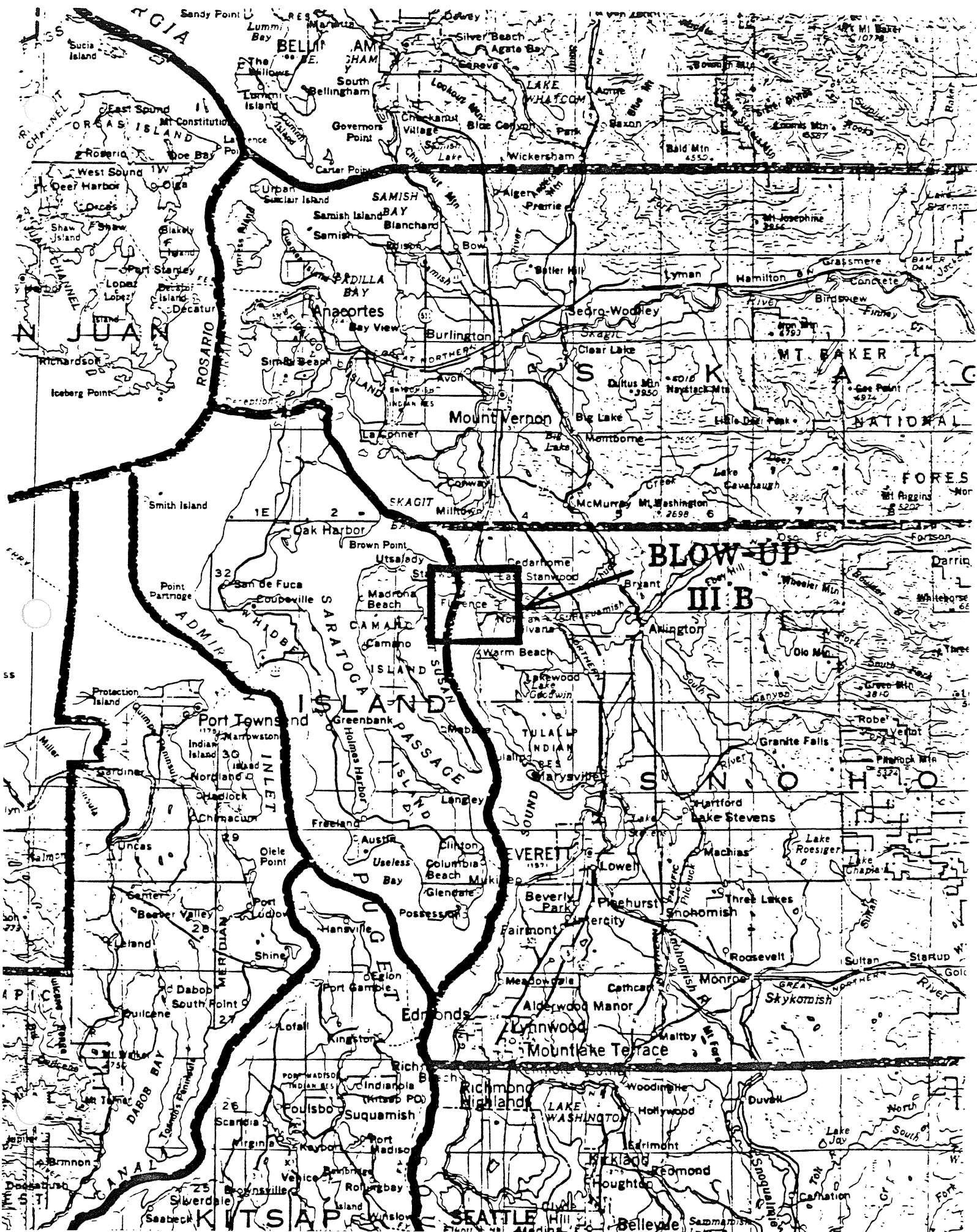
Stan Jones Sr
11 Stan Jones, Sr., Chairman,
12 Tulalip Tribes

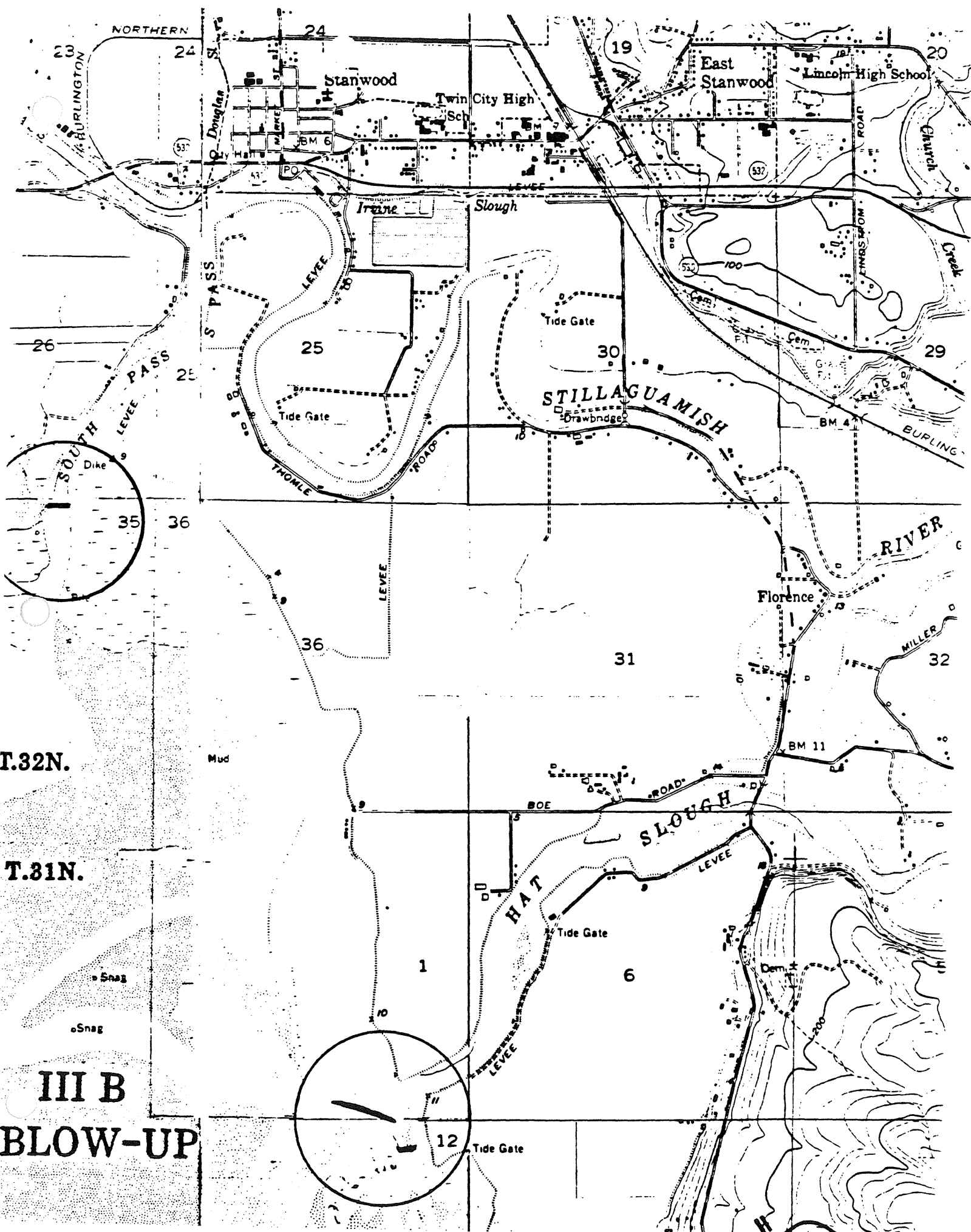
Jay Tatro
13 FISHCULTURE MANAGER, STILLAGUAMISH
14 TRIBE

Bernie Gobin
15 Bernie Gobin, Tulalip Tribes

Cynthia Davenport
16 Cynthia Davenport,
17 Attorney for Stillaguamish
18 Tribe

Mason D. Morisset
19 Mason D. Morisset,
20 Attorney for Tulalip Tribes



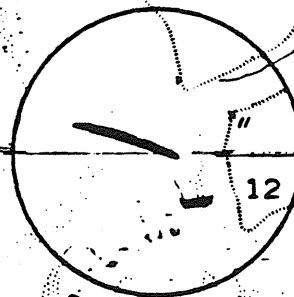


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ZIONTZ, PIRTLE, MORISSET,
ERNSTOFF & CHESTNUT

The Honorable Robert E. Cooper
Special Master

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,)
et al.,)
)
Plaintiffs,)
)
v.)
)
STATE OF WASHINGTON, et al.,)
)
Defendants.)
-----)
In Re Tulalip Tribe's Request)
for Determination of Usual)
and Accustomed Fishing Places)

NO. 9213 Phase I
SPECIAL MASTER'S REPORT
RE STILLAGUAMISH AND TULALIP
USUAL AND ACCUSTOMED
FISHING PLACES

This Court having reviewed the Stillaguamish and Tulalip Settlement Agreement and Proposed Order in this matter, and having considered the record and representations of counsel, and it appearing that the settlement is fair to all signator parties, the Stillaguamish and Tulalip Stipulated Settlement Agreement is hereby approved and it is recommended that the Court adopt this Agreement and Proposed Order.

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The parties shall have the right to litigate the issue of the extent of Tualip usual and accustomed places without prejudice if the Settlement Agreement and proposed Court Order are not approved by the Court.

DATED this 1 day of ^{November} ~~October~~, 1984.

Robert E. Croger
Special Master

Presented by:

Cynthia Davenport
Cynthia Davenport
Attorney for the Stillaguamish Tribe

Mason D. Morisset
Mason D. Morisset
Attorney for The Tulalip Tribes
of Washington