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MEMORANDUM

TO: All *United States v. Washington* Counsel

FROM: J Fiander, Attorney *J.W.F.*

DATE: October 21, 2025

SUBJECT: Notice and Invitation for Meet and Confer

1. Introduction

The Sauk-Suiattle Indian Tribe invites all interested parties to attend or participate in a Meet and Confer to be held via Zoom by the Sauk-Suiattle Indian Tribe on December 3, 2025, at 10:00 a.m. This request is made pursuant to Paragraph 25 of the Court’s March 22, 1974, Order (384 F. Supp. at 419), as revised by the Court’s August 23, 1993, Order modifying Paragraph 25 of the Permanent Injunction, and the Court’s Supplemental Order on Paragraph 25 Procedures dated November 9, 2011.

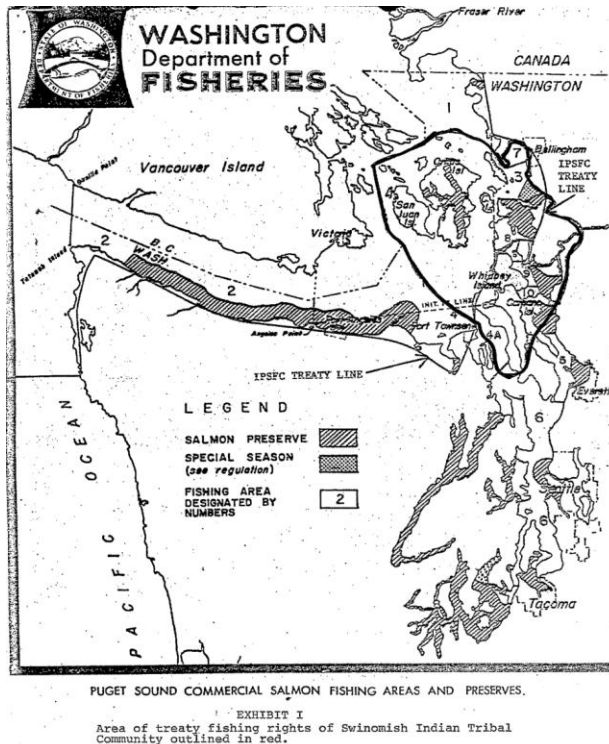
2. Nature of the Request

This conferral will be a formal meeting and consultation regarding the usual and accustomed fishing grounds of the Swinomish Indian Tribal Community (“Swinomish”) as set forth in *United States v. Washington*, 459 F. Supp. 1020, 1048-49 (Orders re: Herring Fisheries and Determination of Usual and Accustomed Fishing Places of Additional Tribes) (the “Order”). The record before United States District Judge George Boldt on March 28, April 9 and April 18, 1975 does not appear to include any evidence or testimony of tribes or bands composing the Swinomish Indian Tribal Community customarily fishing at the time of the Point Elliott Treaty in freshwater rivers or streams upstream of present-day Mount Vernon, Washington.

A. Procedural History

The Order arose on an emergency basis (Dkt 618, ¶ 3) to determine whether the Swinomish Indian Tribal Community possessed treaty reserved rights to harvest Herring at certain locations. The Court held that “the Swinomish Tribal Community...made a prima facie showing, on the basis of evidence that was not controverted, of their treaty-secured right to take herring at their respective usual and accustomed fishing places.” *Id.* At 1049. The District Court defined Swinomish’s U&A, in paragraph 6, to “include the Skagit River and its tributaries, the Samish River and its tributaries and the marine areas of northern Puget Sound from the Fraser River south to and including Whidbey, Camano, Fidalgo, Guemes, Samish, Cypress and the San Juan Islands, and including Bellingham Bay and Hale Passage adjacent to Lummi Island.” *Id.* The Court determined that Swinomish had the right to “take herring at all of its usual and accustomed fishing places to the same extent and subject to the same terms and conditions as specified in Final Decision #1 with respect to the right of taking anadromous fish....” *Id.*

Swinomish’s evidence of its usual and accustomed fishing grounds is provided in its Petition of Swinomish Tribal Community for a Determination of Usual and Accustomed Fishing Areas and for Authority to Issue Identification Cards (Dkt. 618) (including a map identifying Swinomish’s U&A:



The Swinomish petition for determination stated:

Attached hereto as Exhibit I is a map which outlines the usual and accustomed fishing areas of the Aboriginal tribes whose descendents [*sic*] are the present day members of the Swinomish Indian Tribal Community.

Dkt 618 (June 24, 1974). Exhibit I of docket entry 618 is consistent with Swinomish's May 13, 1974, Motion to Intervene in *United States v. Washington* (70-cv-9213) limiting its claim of treaty rights of the Swinomish, Samish, Kikiallus and Lower Skagit and identifying its off-reservation usual and accustomed fishing grounds as *at the mouth of the Skagit River*, in various locations around Whidbey Island and throughout the San Juan Islands and the Straits of Juan De Fuca:

1 4. Applicant also, on behalf of its members, has usual and
2 accustomed fishing grounds outside of the Reservation, which
3 grounds are on and at the mouth of the Skagit River, in various
4 locations around Whidbey Island and throughout the San Juan
5 Islands and the Straits of Juan De Fuca.

Dkt Entry No. 552 (May 13, 1974).

Additional Swinomish evidence presented to Judge Boldt was a Report of Dr. Wayne Suttles, and Report of Dr. Sally Snyder), Request for Determination of the Right to Engage in Herring Fishery (Dkt. 1013) (including the June 20, 1974 report of Dr. Barbara Lane entitled The Indian Herring Fishery from the Earliest Times to the Mid-Nineteenth Century and the undated supplemental report of Dr. Lane regarding Indian Herring and Herring Roe Fisheries), testimony presented at a hearing held April 9 and 10, 1975, and Dr. Lane's report entitled Identity, Treaty Status, and Fisheries of the Swinomish Indian Tribal Community entered into evidence as USA-74. Dr. Lane's report relied on, and included as appendices, the reports of Dr. Suttles and Snyder.

The evidence and testimony submitted was sufficient only to establish Swinomish customarily fishing at and before treaty times from the right and left banks at the mouth of the Skagit River along the north and south forks to what is present-day Mount Vernon. There was no evidence or testimony submitted to Judge Boldt Swinomish customarily fished on the Skagit River above Mount Vernon. Because the hearing arose on an emergency basis, the Court's ruling was deemed a *prima facie*, rather than final, ruling and the Court expressly retained continuing jurisdiction for parties to seek a declaration revisiting its preliminary findings. The Court concluded by *explicitly* stating:

The findings and determinations made in paragraphs 2 through 7 above are made on the basis of a *prima facie* showing as heretofore provided and each is subject to reconsideration on the basis of a full evidentiary hearing if requested by any party by written request filed on or before May 19, 1975. If no such reconsideration is requested within said time as to any such finding or determination, the latter shall become final and reviewable as provided by 28 U.S.C. §§ 1291 and 2201 *without further order of this court*.

459 F Supp. at 1049 (emphasis added).

Accordingly, if conferral does not result in resolution of this matter, Sauk intends to file a motion to open a new subproceeding and a request for determination under Paragraph 25 (a) (1) seeking a determination that Swinomish's fishing in the Skagit River or its tributaries above Mount Vernon is not in conformity with Judge Boldt's order regarding Swinomish's U&A or, alternatively, in conformity with Paragraph 8 of Judge Boldt's Order Re Herring Fisheries and Determination of Usual and Accustomed Fishing Places of Additional Tribes, 459 F. Supp. 1020 at 1049, the Sauk-Suiattle Indian Tribe will seek a declaratory judgment that there was no evidence in the record before Judge Boldt sufficient to support a final determination that Swinomish possessed usual and accustomed fishing grounds above the mouth of the North Fork of the Skagit River near present-day Mount Vernon, Washington at the time of the treaty.

3. Agenda

Consistent with Paragraph 25 (b) (1), the items to be discussed at the meet and confer shall include, but are not limited to:

- a. Basis for relief sought.
- b. Possibility of Settlement.
- c. Whether this is an issue for the Fisheries Advisory Board.
- d. Identification of relevant technical issues.
- e. Whether independent extra-judicial actions may remove the need for adjudication.
- f. Whether earlier rulings of the Court may have addressed or resolved the matter fully or partially.
- g. Whether the parties can agree to mediation or arbitration in lieu of litigation.

This meet and confer is an effort to resolve, settle or compromise a dispute and therefore all discussions at the December 3, 2025, meeting are confidential and subject to Rule 408, Fed. R. Civ. P.

The Sauk-Suiattle Indian Tribe looks forward to a productive meet and confer.

Sincerely,

S/*Jack W. Fiander*

Jack W. Fiander, General Counsel
Sauk-Suiattle Indian Tribe