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

UNITED STATES OF AMERICA, *et al.*,

Plaintiffs,

v.

STATE OF WASHINGTON, *et al.*,

Defendants.

**Case No. C70-9213
Subproceeding:**

**QUINAULT INDIAN NATION’S
REQUEST FOR DETERMINATION
FOR MARINE AND FRESH WATER
USUAL AND ACCUSTOMED
FISHING AREAS**

STATEMENT OF THE CASE

1. The Quinault Indian Nation (“Quinault” and/or “Nation”) respectfully requests the Court to determine and declare the non-exclusive treaty and equitable rights of the Nation to manage and harvest all species of fish, shellfish, and where lawful, marine mammals in the marine waters south of Grays Harbor to Willapa Bay and Shoalwater Bay, and the mouth of the Columbia River, as well as the freshwater about sixty (60) river miles eastward, including, but not limited to, Peacock Spit, Cape Disappointment, Fort Canby, Sand Island, Illwaco, Chinook, McGowan, Dahlia, Cathlamet and Oak Point all in Washington State (the “Subject Waters”).

JURISDICTION

2. The Court possesses jurisdiction over this Request for Determination pursuant to 28 U.S.C. §§ 1331 and 1362, and Paragraph 25(f) of the Court’s injunction of March 23, 1974,

1 *United States v. Washington*, 384 F. Supp. 312, 419 (W.D. Wash. 1974), as modified by the Court
2 on August 24, 1993, November 9, 2011, and November 20, 2012.

3 3. Paragraph 25(a)(6) provides that any of the parties may invoke the continuing
4 jurisdiction of the Court to determine “the location of any of a tribe’s usual and accustomed fishing
5 grounds not specifically determined by Final Decision #1.” Dkt. # 13599. The Nation seeks to
6 adjudicate, for the first time, the scope of its treaty-reserved fishing rights south of its existing
7 adjudicated marine usual and accustomed area from Grays Harbor to the mouth of the Columbia
8 River, as well as about sixty (60) river miles eastward to Oak Point in Washington State.

9 4. The Quinault held a meet and confer about this Request for Determination on May
10 29, 2026 at Taholah, Wahington and via Zoom. Despite good faith efforts, judicial resolution is
11 required.

12 **PARTIES**

13 5. Petitioner is the Quinault Indian Nation, a federally recognized sovereign Indian
14 tribe, signatory and party to the Treaty of Olympia, signed July 1, 1855 and January 25, 1856, and
15 ratified by the United States Senate as federal law on March 8, 1859, and proclaimed April 11,
16 1859. 12 Stat. 971.

17 6. Respondent is the State of Washington.

18 7. Whether other parties will join the Petitioner or adopt the Respondent’s stance in
19 this subproceeding is unknown.

20 **STATEMENT OF FACTS**

21 **A. The Quinault Indian Nation**

22 8. The Quinault Indian Nation is the heir of succession to the Qui-nai-elt and Quit
23 named in the Treaty with the Qui-nai-elt and Quil-leh-ute, July 1, 1855 and January 25, 1856, 12
24 Stat. 971 (“Treaty of Olympia” or the “Treaty”).

25 9. Quinault’s ancestral homeland covers the coastal, riverine and maritime places
26 extending from the Pacific shoreline through the Quinault River valley and surrounding lakes and
27 forests, providing the Quinault with a cultural and economic life built on, among other things, the

1 harvest of salmon, halibut, shellfish, and marine mammals; resources the Quinault people have
2 relied on since time immemorial.

3 10. Ethnographic and historical evidence consistently identify the Quinault as a
4 maritime people, or “a people of the sea,” with a lifeway and trade patterns inextricably linked to
5 the Pacific Ocean and the river systems that drain into it.

6 11. Quinault fishermen and navigators possessed seaworthy ocean canoes that allowed
7 the Nation to travel miles offshore, maintaining trade networks reaching north to Vancouver Island
8 and south to the Columbia River and the Oregon Coast.

9 12. In addition to their ocean fisheries, the Quinault were historically and customarily
10 present in the lower Columbia River, fishing from its mouth eastward to Oak Point nearly sixty
11 (60) river miles inland.

12 13. Quinault fishermen traveled south each season to intercept the salmon runs and to
13 harvest sturgeon along the lower Columbia River, often in association with Shoalwater Bay and
14 Grays Harbor fisheries. *United States v. Washington*, 129 F.Supp. 1069, 1079-81 (W.D. Wash.
15 2015) *aff'd sub nom. Makah Indian Tribe v. Quileute Indian Tribe*, 873 F.3d 1157 (9th Cir. 2017).

16 14. Early accounts and witness testimony confirm that these fisheries were not isolated
17 occurrences but a regular and recognized part of the Quinault seasonal round, integrated with the
18 broader system of coastal and riverine trade.

19 15. At and before treaty time, Quinault followed the salmon upstream and established
20 temporary fishing camps at key locations at the mouth and along the Columbia River in
21 Washington such as Cape Disappointment, Fort Canby, Sand Island, Illwaco, Chinook, McGowan,
22 Dahlia, Cathlamet and Oak Point in what is now Washington State.

23 **B. Previous Usual and Accustomed Determinations and Procedural History**

24 16. In 1931, this Court held in *United States ex rel. Charley v. McGowan*, 2 F. Supp.
25 426 (W.D. Wash. 1931), *aff'd*, 62 F.2d 955 (9th Cir. 1933) that tribal member evidence failed to
26 establish that the Quinault “were usually and customarily or frequently resorted to [the estuary of
27 the Columbia River] for the purpose of fishing” because Quinault’s homeland was approximately

1 sixty miles north of the Columbia River and separated by other abundant fisheries in Grays Harbor
2 and Shoalwater Bay, rendering it “unnecessary” for the Quinault to travel south into the Columbia
3 River estuary to fish. Preceding Final Decision #1 by 43 years, *McGowan* applied a narrow
4 evidentiary standard that emphasized geographic distance. *McGowan* was wrongly decided, was
5 abrogated or superseded by Final Decision #1 and Subproceeding 09-1 and does not preclude this
6 requested determination.

7 **i. Final Decision #1**

8 17. Quinault were one of the original parties in *United States v. Washington*, recognized
9 at that time as one of two tribes “qualified to self-regulate the off reservation fishing of their tribal
10 members,” enforcing “regulations on its river fisheries since 1916 [with] tribal patrolmen since
11 1925.” *United States v. Washington*, 384 F.Supp. at 333, 375.

12 18. This was because, before and “[a]t treaty time[,] fishing constituted the principal
13 economic activity of the Quinault[, with s]almon and steelhead serv[ing] as the principal food and
14 as an important item of trade.” *Id.* at 375.

15 19. Considering evidence restricted to the original case area, the Court determined in
16 Final Decision #1 that the usual and accustomed fishing places of the Quinault Nation “included
17 the following rivers and streams: Clearwater, Queets, Salmon, Quinault (including Lake Quinault
18 and the Upper Quinault tributaries), Raft, Moclips, Copalis, and Joe Creek.” *Id.* at 374.

19 20. The Court noted that the Quinault’s “[o]cean fisheries were utilized in the water
20 adjacent to their territory,” recognizing that the Quinault possessed “important fisheries which
21 were shared with other tribes to the south and east of the boundaries of the case area, especially
22 Grays Harbor and those streams which empty into Grays Harbor.” *Id.* at 374-75.

23 21. In the later compilation of key court findings, the Court further concluded: “The
24 Quinault Tribe has usual and accustomed fishing places in Grays Harbor and its watershed,
25 including the Humptulips River.” *United States v. Washington*, 459 F.Supp. 1020, 1038 (W.D.
26 Wash. 1978).

1
2 **ii. 1975 Request for Determination (Subproceeding 75-1)**

3 22. On August 8, 1975, the Quinault Nation filed a Request for Determination in *United*
4 *States v. Washington* seeking adjudication of its usual and accustomed fishing grounds and stations
5 in Willapa Bay, its watershed, and in the mouth of the Columbia River, pursuant to Paragraph
6 25(f) of the injunction in Final Decision No. 1. Dkt. 1255, 1256.

7 23. The Court neither conducted a merits hearing nor issued any determination
8 resolving the Quinault Nation’s asserted usual and accustomed fishing grounds and stations in
9 either Willapa Bay or the Columbia River. *See* Dkt. 8121.

10 24. Years later, on February 25, 1987, the Quinault Nation voluntarily withdrew its
11 Request for Determination, without prejudice, pursuant to Rule 41(a)(1), and expressly preserved
12 its ability to raise the matter in the future. *See* Dkt # 10538.

13 **iii. Subproceeding 09-1**

14 25. The Makah Tribe initiated subproceeding 09-1, which proceeded under Paragraph
15 25(a)(1), requesting a determination of the Quinault Nation’s and Quileute Indian Tribe’s usual
16 and accustomed fishing grounds in the Pacific Ocean in order to resolve overlapping marine treaty
17 claims between the tribes. *United States v. Washington*, 129 F. Supp. 3d at 1072.

18 26. The Court framed the proceeding as limited to the western ocean boundary of
19 Quinault’s usual and accustomed fishing grounds and stations, and not as an adjudication of
20 Quinault’s inland or southern boundaries. *Id.*

21 27. The Court found that Quinault treaty fishermen historically exercised regular and
22 extensive fishing activity in the Pacific Ocean, including offshore areas beyond the surf zone, using
23 large ocean-going canoes and marine fishing techniques. *Id.* at 1079, 1083.

24 28. The Court credited evidence demonstrating that Quinault marine fishing practices
25 were oriented southward and westward along the coast “between Cape Flattery and the Columbia
26 River” as well as “60 miles south of Quinault in Shoalwater Bay,” and therefore not confined to
27 the waters immediately adjacent to the Quinault River or its Reservation. *Id.* at 1079-80.

1 29. Based on that record, this Court determined Quinault’s usual and accustomed ocean
2 fishing grounds to:

3 [C]ommenc[e] at the Pacific coast shoreline near Destruction Island, located at
4 latitude 47°40’06” north, longitude 124°23’51.362” west; then proceed[] west
5 approximately thirty nautical miles at that latitude to a northwestern point located
6 at latitude 47°40’06” north, longitude 125°08’30” west; then proceeding in a
7 southeasterly direction mirroring the coastline no farther than thirty nautical miles
8 from the mainland Pacific coast shoreline at any line of latitude, to a southwestern
point at latitude 46°53’18” north, longitude 125°53’53” west; then proceeding east
along that line of latitude to the pacific coast shoreline at latitude 46°53’18” north,
longitude 124°7’36.6” west.

9 Subproceeding No. 09-01, Dkt. 439, at 5-6.

10 30. The Court has never adjudicated Quinault’s southern treaty fishing boundary or
11 made any determination regarding Quinault reserved treaty fishing rights in Willapa Bay,
12 Shoalwater Bay, at the mouth of the Columbia River, or in the Columbia River.

13 31. Accordingly, neither Final Decision #1 nor subproceeding 09-1 resolved these
14 unadjudicated portions of Quinault’s usual and accustomed fishing grounds and left unresolved
15 the precise extent of Quinault’s southern treaty fishing boundary, which remains subject to this
16 determination as to the Subject Waters.

17 **C. Current Request for Determination – Southern Boundary**

18 32. This Court has already recognized that the Quinault fished and traded southward
19 into Willapa Bay and Shoalwater Bay, and to the Columbia River. *United States v. Washington*,
20 129 F. Supp. 3d at 1079, 1083. This Request for Determination seeks to determine exactly where
21 the Quinault “customarily fished from time to time at and before treaty times” within those Subject
22 Waters maintaining the existing adjudicated western boundary of the Nation’s ocean treaty fishing
23 area. *United States v. Washington*, 384 F.Supp. at 332.

24 **i. Quinault Orientation as a Maritime and Coastal People**

25 33. Ethnographic and historical sources dating back to the late 1700s consistently
26 describe the Quinault as a maritime people whose subsistence, trade, and seasonal movements
27

1 were oriented along the Pacific Coast and connected river systems, rather than confined to a single
2 watershed.

3 34. Quinault fishermen possessed large, seaworthy ocean canoes capable of extended
4 offshore travel, enabling regular coastal movement well beyond the immediate vicinity of the
5 Quinault River and Lake Quinault.

6 35. The Quinault coastal orientation included routine southward travel for fishing,
7 trade, and social interaction, consistent with a seasonal round that followed fish runs and market
8 opportunities.

9 **ii. Quinault Fishing and Presence in Willapa Bay and Shoalwater Bay**

10 36. Numerous historical accounts from Spanish explorers, French fur traders, Fort
11 Records, United States Indian Agent journals and regional shellfish documents place Quinault
12 individuals and groups in Shoalwater Bay, including encounters documented well south of the
13 Quinault homeland, demonstrating recognized and repeated Quinault presence in and around those
14 waters at and before treaty times.

15 37. Quinault fishing in both Shoalwater Bay and Willapa Bay was not episodic or
16 incidental, but part of a regular pattern of seasonal use tied to salmon runs and shellfish harvests.

17 38. The Quinault travelled overland, carrying or convoying their canoes from
18 Shoalwater Bay to Ilwaco in order to fish at Ilwaco, Cape Disappointment, Sand Island and
19 upstream riverine sites along the Columbia River in modern-day Washington State, consistent with
20 regular and customary fishing use at and before treaty time.

21 39. Prior judicial findings recognize Quinault coastal travel extending “between Cape
22 Flattery and the Columbia River,” encompassing Shoalwater Bay geographically and culturally.
23 *United States v. Washington*, 129 F. Supp. 3d at 1079-81.

24 **iii. Quinault Fishing at the Mouth of the Columbia River and Inland**

25 40. Historical sources from early Spanish and French explorers, Fort records, United
26 States Indian Agent journals, wagon convoy testimony as well as cannery documents demonstrate
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1 Quinault fishermen traveled to the mouth of the Columbia River, sometimes carrying canoes
2 overland or paddling around Peacock Spit, to regularly and customarily fish upstream for
3 significant distances, including locations approaching sixty (60) river miles inland at and before
4 treaty time.

5 41. Quinault entered the Columbia River every year in anticipation for the seasonal
6 salmon runs and to catch other types of finfish, like sturgeon. Participation in Columbia River
7 fisheries were economically significant and integrated into the Quinault seasonal round.

8 42. The lower Columbia River functioned as a regional fishing and trade corridor,
9 where Quinault fishermen interacted with other tribes for trade and fishing.

10 43. Quinault fishermen established temporary fishing camps and staging locations at or
11 near places such as Cape Disappointment, Sand Island, and upstream riverine sites, consistent with
12 regular and customary fishing use at and before treaty time.

13 **iv. Trade Networks Supporting Southern Fishing**

14 44. Quinault trade networks extended southward along the coast and into the Columbia
15 River basin, with regular presence at Fort Astoria and Fort Canby, reinforcing regular travel and
16 sustained presence in Columbia River fisheries at and before treaty time.

17 45. Fish harvested in southern coastal and Columbia River locations were used for
18 subsistence, preservation, and trade, tying those fisheries directly to Quinault economic life at and
19 before treaty time.

20 46. These trade relationships further demonstrate that Quinault fishing in southern
21 waters was recognized by neighboring tribes and communities, consistent with shared and
22 overlapping customary use.

23 **v. Anthropological and Ethnohistorical Support**

24 47. Anthropological evidence confirms that Quinault fishing territories were fluid and
25 seasonally adjusted, following fish availability rather than rigid geographic boundaries.

26 48. Expert analyses recognize Quinault fishing to include southward coastal and
27 riverine locations.

1 49. Indian Claims Commission materials and related historical documentation further
2 corroborate Quinault coastal use patterns consistent with customary and regular fishing activity
3 extending into Willapa and Shoalwater Bay and the Columbia River region at and before treaty
4 time.

5 50. The regularity of travel and fishing, the consistency of eyewitness testimony, and
6 the corroborating accounts from tribal members, early settlers, and Indian Agents collectively
7 confirm the Quinault's longstanding familiarity with and use of Shoalwater Bay and its
8 surrounding waterways. The historical record illustrates not only the Nation's sustained presence
9 in the area but also the continuity of a southward route that connected its coastal villages to its
10 river fishing stations in the Columbia River at and before treaty time.

11 LEGAL AUTHORITIES

12 51. The law of the case is that "every fishing location where members of a tribe
13 customarily fished from time to time at and before treaty times, however distant from the then
14 usual habitat of the tribe, and whether or not other tribes then also fished in the same waters, is a
15 usual and accustomed ground or station." *United States v. Washington*, 384 F. Supp. at 332.
16 Quinault reserved the right to take all species of fish, shellfish, and marine mammals at adjudicated
17 usual and accustomed fishing locations. *United States v. Washington*, 873 F.Supp. 1422, 1431
18 (W.D. Wash. 1994), *aff'd United States v. Washington*, 157 F.3d 630, 644 (9th Cir. 1998); *United*
19 *States v. Washington*, 129 F.Supp.3d 1069.

20 52. The burden is on the petitioning tribe to produce evidence that waters were usual
21 and accustomed fishing grounds. *United States v. Washington*, 459 F. Supp. 1020, 1059 (W.D.
22 Wash. 1978) *aff'd*, 645 F.2d 749 (9th Cir. 1981).

23 53. Every subproceeding of *United States v. Washington* requires a reverence to the
24 relaxed preponderance standard that governs adjudication of U&A. This is because little
25 documentation of Indian fishing locations in and around 1855 exists today, and the documentation
26 that does exist is "extremely fragmentary and just happenstance." *United States v. Washington*,
27 626 F.Supp. 1405, 1528 (W.D. Wash. 1985). The evidence that is available of treaty-time fishing

1 is “sketchy and less satisfactory than evidence available in the typical civil proceeding.” *United*
2 *States v. Lummi Indian Tribe*, 841 F.2d 317, 321 (9th Cir. 1988). And, information respecting
3 specific areas of use by particular groups at treaty times is incomplete and sometimes conflicting.
4 *United States v. Washington*, 626 F.Supp. at 1529.

5 54. These evidentiary issues are only compounded when marine waters are at issue.
6 The district court has acknowledged the “greater difficulties in specifying or delineating marine
7 areas used by one or another Indian group than is the case with river areas,” and the “more
8 complicated” situation regarding treaty-time saltwater fisheries. *Id.* at 1528. These greater
9 difficulties exist in part because “there is very little treaty-time documentation or direct evidence
10 of fishing in open marine areas.” *Id.*

11 55. The stringent standard of proof that operates in ordinary civil proceedings is
12 therefore relaxed. “In determining usual and accustomed fishing places the court cannot follow
13 stringent proof standards because to do so would likely preclude a finding of any such fishing
14 areas.” *United States v. Washington*, 730 F.2d 1314, 1317 (9th Cir. 1984) (noting it would be
15 impossible to compile a complete inventory of any tribe’s usual and accustomed grounds and
16 stations).

17 56. Direct evidence or reasonable inferences used to demonstrate a tribe regularly
18 fished certain waters include: travel evidence (*United States v. Lummi Nation*, 876 F.3d 1004, 1009
19 (9th Cir. 2017); village locations (*United States v. Washington*, 384 F. Supp. at 351, 353);
20 testimony of tribal elders (*United States v. Washington*, 459 F. Supp. at 1058-60); and expert
21 reports and testimony (*Stillaguamish Tribe of Indians v. Upper Skagit Indian Tribe*, 2025 WL
22 2528943, at *2-*3 (9th Cir. 2025); *United States v. Washington*, 730 F.2d 1314 (9th Cir. 1984)).
23 In addition, the Court has held that evidence from the Indian Claims Commission is relevant
24 insofar as it can presume fishing activity took place from coastal areas used by a tribe. *United*
25 *States v. Washington*, 459 F. Supp. at 1059.

26 57. All of the above evidentiary sources support Quinault usual and accustomed fishing
27 areas in the Subject Waters.

1 58. Nothing precludes the present adjudication of the Quinault's treaty fishing claim to
2 the Subject Waters.

3 59. Quinault has a proven record for managing its fishery resources for over a century
4 and has been a reliable co-manager with other tribes, the State of Washington, and the multi-
5 sovereign forum that is the Pacific Salmon Treaty Commission.

6 60. The requested order adjudicating the Quinault's traditional, treaty-reserved usual
7 and accustomed fishing places in the Subject Waters will not fundamentally upset management
8 expectations; instead, it will improve them.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, the Quinault Indian Nation respectfully requests the following relief:

- 11 A. An order declaring that the non-exclusive usual and accustomed fishing places of the
12 Quinault Indian Nation include the ocean and marine waters from the current
13 adjudicated western and southern boundary at and near Grays Harbor to the mouth of
14 the Columbia River.
- 15 B. An order declaring that the non-exclusive usual and accustomed places of the Quinault
16 Indian Nation include the freshwaters from the mouth of the Columbia River to Oak
17 Point on the Washington State side of the Columbia River.
- 18 C. An order declaring that the Quinault Indian Nation may immediately begin exercising
19 its treaty rights in these marine waters in a manner consistent with other orders of this
20 Court and any established management plans.
- 21 D. To the extent the Court determines the freshwater Subject Waters in the Columbia
22 River in Washington State are outside of the case area, an order of transfer or
23 assignment to the U.S. District Court for the District of Oregon in *United States v.*
24 *Oregon* for adjudication of those claims.
- 25 E. Any further relief as the Court may deem just and proper.
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1 DATED this 1st day of June, 2026.

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