

1 THE HONORABLE RICARDO S. MARTINEZ

2
3
4
5
6
7 UNITED STATE DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 UNITED STATES OF AMERICA, et al.,

Case No. C70-9213

11 Plaintiffs,

DECLARATION OF CURT SMITCH

12 v.

13 STATE OF WASHINGTON, et al.,

14 Defendants.

15
16 CURT SMITCH declares under penalty of perjury under the laws of the State of
17 Washington that the following is true and correct.

18 1. I am over 18 years of age and competent to testify, and make this declaration based upon
19 my own personal knowledge.

20 2. I graduated from Western Washington University with a double Bachelor's Degree –
21 Bachelor of Arts in Education and Bachelor of Science in Biology followed by a Master's
22 Degree in Environmental Science. I then spent a year in Honolulu as the Director of the Hawaii
23 Center for Environmental Education, then attended Michigan State University, where I received
24 my PhD and spent two years on the faculty. In the early 1980's I went to work for the
25 Washington State Department of Fisheries. I spent time working in Governor Gardner's office
26

SCHEFTER & FRAWLEY
Attorneys-at-Law

1 as his natural resource policy advisor and was appointed Director of the Washington Department
2 of Wildlife in 1988. In 1994 I was appointed Assistant Regional Director for Region 1 for the
3 US Fish and Wildlife Service. I returned to state government in 1997 as the Senior Policy
4 Advisor for Natural Resources for Governor Gary Locke. As part of my duties I chaired the
5 Governor's Natural Resource Cabinet and set up the Governor's Salmon Recovery Office. I
6 was also appointed as a Commissioner to the US/Canada Pacific Salmon Commission from 1997
7 to 2003, and Chaired the Commission in 2000. I retired from state service in 2002. Thereafter, I
8 consulted on natural resource issues, including salmon, as Senior Vice President for the
9 Thompson Consulting Group.
10

11 3. I was the Assistant to the Director of the Washington Department of Fisheries from 1981
12 to 1987. One of my primary duties was to work with the treaty tribes to improve cooperation
13 and coordination following the ruling in this case by Judge Boldt. As part of that effort, the
14 Washington Department of Fisheries and the treaty tribes developed and entered into the Puget
15 Sound Salmon Management Plan (the "PSSMP"). I was a lead negotiator for Fisheries during
16 the development of the PSSMP. The PSSMP was approved by this Court, and a true and correct
17 copy of the PSSMP is attached hereto as Exhibit A. The PSSMP was completed and approved
18 by the Court in 1985 and remains in effect today.
19

20 4. At the time the PSSMP was developed, the parties understood that it was critical to limit
21 harvest inequities in order to better foster cooperation and try to bring an end to the divisive
22 relationship between the state and treaty tribes. The intent of the PSSMP was to work
23 cooperatively and give effect to the language and spirit of Judge Boldt's decision.
24

25 5. One key provision is found in Section 10.0. It was agreed between the treaty tribes and
26

SCHEFTER & FRAWLEY

Attorneys at Law

1415 College Street SE

Lacey, Washington 98503

(360) 491-6666 * (360) 456-3632 fax

1 Fisheries that the most effective way to limit the incentive for either party to exceed the 50%
2 ceiling for each party was to require a "repayment" for going over the 50% ceiling. This process
3 was referred to as "equitable adjustment." Specifically, the PSSMP provides that: "[s]hares will
4 be calculated annually post-season, using preliminary data, by no later than one month after the
5 date of the post-season audit report. Deficiencies in shares shall be adjusted annually unless
6 neither party exceeded its share by more than 5% of the total of both shares. Every four years an
7 automatic adjustment will be made using final hard data as they become available." This
8 quotation is found on page 26 of the PSSMP.

9
10 6. To further strengthen the PSSMP, we included the following specific requirement:
11 "[a]djustments calculated pursuant to subsection 10.4 shall be made during the next year, or in as
12 few years as possible, provided that repayment of a deficit in any one year shall be either:

- 13
14 A) 15% of that year's share of the party owing the adjustment, or
15 B) 25% of the total deficit that was due, whichever is greater."

16 This language is also found on page 26 of the PSSMP.

17 7. The agreed intent of the parties was to avoid the exact behavior that is occurring now.
18 With the parties knowing that each would get roughly 50% of the harvest, the parties could focus
19 on cooperatively managing salmon without having to worry that the other side was going to take
20 advantage of the other. Now, that key provision of the PSSMP has been ignored.

21
22 8. The harvest data for Puget Sound chinook and Coho documents that this provision of the
23 PSSMP required have been totally ignored by the State, the Tribes, and the federal government.
24 The parties do not make the court ordered calculations of shares and the fish that were actually
25 harvested. There is no attempt to fairly allocate the catch, and the treaty tribes have been
26

SCHEFTER & FRAWLEY
Attorneys at Law

1415 College Street SE
Lacey, Washington 98503
(360) 491-6666 * (360) 456-3632 fax

1 annually harvesting tens of thousands more salmon than the non-treaty citizens of Washington.
2 9. Based on the parties' actions, it is apparent that the parties are not even attempting to follow
3 the Court's order or the intent of the PSSMP. The PSSMP worked very well in the years
4 immediately after its approval by this Court. The state and the treaty tribes did not have serious
5 disputes over allocation. As a result, the relationship between the state and treaty tribes
6 improved greatly. We were able negotiate and agree on deviations from a strict 50/50 split of the
7 available harvest in a manner that benefited both sides. I worked cooperatively with tribal
8 leaders. That cooperation is largely gone, and I believe this Court enforcing the PSSMP,
9 including the payback provisions that were specifically negotiated to deter the behavior we see
10 today, will discourage the parties from gaming the system and allow cooperation to be restored
11 and will demonstrate that the court's rulings and orders, such as in the PSSMP, are not a dead
12 letter but are to be respected and adhered to by all involved.
13
14

15 DATED this 5th day of October, 2020.
16


17 
18 CURT SMITCH
19
20
21
22
23
24
25
26

EXHIBIT A



OCT 17 1985
 2:24 10/17/85
 AT SEATTLE
 CLERK U.S. DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON
 BY *DL* DEPUTY

IN THE UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
 et al.,

Plaintiffs,

vs.

STATE OF WASHINGTON, et al.,

Defendants.

No. 9213 Phase I

(sub no. 85-2)

ORDER ADOPTING PUGET SOUND
 SALMON MANAGEMENT PLAN

On August 31, 1977, this court approved a Puget Sound Salmon Management Plan that had been jointly developed by the affected parties. 459 F.Supp. at 1107, subsequently modified October 11, 1978. The plan was to be periodically reviewed by the parties, and commencing in May, 1982, the parties or any of them could propose modifications to the court. On June 1, 1982, the court granted a motion continuing the plan until further order of the court so as to give the parties more time to develop a replacement plan.

The Puget Sound Tribes and the Washington Department of Fisheries have reached agreement on a new plan for managing the Puget Sound salmon runs. The new plan is based upon the experience the parties have had in managing Puget Sound

10/180

1 Fisheries since the 1977 plan was enacted. The new plan
2 includes provisions for continued annual review and possible
3 modifications as well as provisions for the development of
4 more detailed regional plans by agreement of the affected parties.

5 The State of Washington, the Puget Sound Area tribes
6 and the United States have asked this court to approve the
7 new plan and incorporate its provisions as an order of the
8 court.

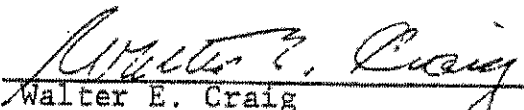
9 The court has received and reviewed the proposed new plan.
10 After a review of the plan, the court has amended paragraph
11 11.1.4 at page 29 by adding the following sentence:

12 "However, nothing herein is to be construed
13 as relieving any party of any obligation under
14 any law or any administrative or judicial
15 order to timely furnish any information or
16 data to any state, federal, or international
17 governmental body or officer."

18 The court adopts the attached May 15, 1985 Puget Sound Salmon
19 Management Plan, as amended by the court, as an order of this
20 court to replace the Memorandum Adopting Salmon Management Plan,
21 as modified and set out at 459 F.Supp. 1107-1113. The parties
22 are directed to implement the plan consistent with the Pacific
23 Salmon Treaty and its implementing legislation (P.L. 99-5) and
24 the Salmon and Steelhead Conservation and Enactment Act,
25 16 U.S.C. 3301 et seq. Other previous orders of this court
26 are changed only to the extent they are explicitly modified

1 by the terms of the attached Plan and then only with respect
2 to their application to runs covered by this Plan.

3 DATED this 15th day of October, 1985.

4
5
6 
7 Walter E. Craig
8 United States District Judge
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27



OCT 17 1985

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

PUGET SOUND
SALMON MANAGEMENT PLAN

5/15/85

TABLE OF CONTENTS

	<u>Page</u>
1 PREAMBLE	1
2 DEFINITIONS	4
3 ESCAPEMENT	10
4 EQUILIBRIUM BROOD PROGRAM	13
5 TECHNICAL AND MANAGEMENT REPORTS AND DOCUMENTS	16
6 SCHEDULES	21
7 MANAGEMENT PERIODS	22
8 TEST AND EVALUATION FISHERIES	23
9 HARVEST RATES	24
10 ALLOCATION OF HARVEST	25
11 COORDINATED INFORMATION SYSTEMS	27
12 TIMING AND CONTENT OF FISHING REGULATIONS	31
13 REGIONAL MANAGEMENT PLANS	33
14 DISPUTE RESOLUTION	33

1 1.0 PREAMBLE

2
3 1.1 The purpose of this plan is to establish guidelines for management of
4 salmonid resources originating in or passing through Washington waters from
5 the mouth of the Strait of Juan de Fuca eastward (Puget Sound) only. The
6 parties hereto, all Puget Sound treaty tribes and the Washington Department
7 of Fisheries, shall manage from the premise that steelhead and salmon
8 fisheries are intimately related, although it is recognized that the
9 Washington Department of Fisheries does not have jurisdiction over
10 steelhead fisheries. The parties agree to a philosophy of cooperation in
11 implementing management programs to maintain, perpetuate and enhance the
12 salmonid resources.

13
14 1.2 This plan is intended to ensure that treaty fishermen and non-treaty
15 fishermen, subject to their respective regulatory authorities, shall be
16 afforded the opportunities to harvest their shares as determined in United
17 States v. Washington, 384 F.Supp.312, aff'd 520 F.2d 676 (9th Cir. 1975),
18 cert. denied 423 U.S. 1086, aff'd sub nom Washington v. Washington State
19 Commercial Passenger Fishing Vessel Association, 443 U.S. 658 (1979) and
20 other orders under the court's continuing jurisdiction.

21
22 1.2.1 The parties have developed this plan with the objectives of
23 promoting the stability and vitality of the treaty and non-
24 treaty fisheries of Puget Sound and of steadily improving the
25 practical and technical basis for management of each of the
26 Puget Sound fisheries.
27

1 1.3 The parties agree to enact and recommend for enactment by the Pacific
2 Fishery Management Council, appropriate regulations for the ocean salmon
3 fishery that will provide for adequate escapement of salmon into Puget
4 Sound waters to achieve the goals and purposes of this plan.

5
6 1.4 The parties shall advocate and recommend to the appropriate governmental
7 and regulatory entities, international agreements to reduce foreign inter-
8 ceptions of salmonids originating from Puget Sound.

9
10 1.5 This plan shall remain in effect from the date of the order approving it
11 until modified by agreement of the parties or order of the court.

12
13 In order to implement changes for the following year, modifications to this
14 plan must be proposed in writing to other parties by October 1 and either
15 be agreed to by a signed stipulation of all parties filed with the court by
16 December 31 or be entered as an order of the court by December 31. Unless
17 both the October 1st and December 31st deadlines are met, this plan shall
18 continue in effect for the following year. Disputes regarding modifica-
19 tions of the plan must go through the Dispute Resolution process before
20 being filed with the court.

21
22 1.6 Where action of the parties is required in this plan, failure to act or to
23 reach agreement shall be resolved as provided in Section 14.

24
25 1.7 When adopted by the Court, this plan supercedes and replaces the Memo-
26 randum Adopting Salmon Management Plan, 459 F.Supp. 1107, as extended by
27 the Order of June 1, 1982 (Docket Number 8421); it also supplements,

1 and where inconsistent, modifies the Order on Certain Questions Re
2 Salmon Fisheries Management, dated April 13, 1976, 459 F.Supp. 1069,
3 which is hereby extended and shall remain in effect until further order
4 of the Court, provided, that nothing in this plan is intended to modify
5 or supercede the answer to Question No. 2 as set forth in that Order.
6 This plan also supplements and where inconsistent modifies the Order for
7 Program to Implement Interim Plan, 459 F.Supp. 1035, the Orders
8 Establishing Fisheries Advisory Board and Prescribing Procedures for
9 State Emergency Regulations, 459 F.Supp. 1061, and Order Re Notification
10 and Effective Date of Emergency Regulations dated August 29, 1980,
11 Docket Number 7158. All orders not expressly modified remain in effect.
12

13 1.8 The parties agree that the permit processes of the parties will remain
14 intact. For any project or activity which has been agreed upon by the
15 parties, the issuance of a Washington Department of Fisheries permit
16 will be automatic. Disputes which might arise over issuance of a permit
17 will be submitted to the dispute resolution process described in Section
18 14.
19

20 1.9 All fisheries, both recreational and commercial, are covered by the pro-
21 visions of this plan unless specifically indicated otherwise. It is the
22 intent of the parties that recreational fisheries be managed consistent
23 with the standards and principles set forth in this plan, and par-
24 ticularly that the recreational fishing regulations adopted by the
25 Washington Department of Fisheries shall be made in accordance with the
26 escapement and allocation provisions of this plan. However, it is
27 recognized by the parties that because of the nature of recreational

1 fisheries, they cannot always be adjusted in mixed-stock marine manage-
2 ment areas as readily in season or in the same time frame as commercial
3 fisheries. Recreational fisheries generally rely on published annual
4 regulations with few in-season adjustments, particularly in marine
5 waters. Resolution of pre-season Puget Sound recreational marine and
6 freshwater management conflicts and agreement on annual recreational
7 fishing plans and objectives must be reached according to the schedules
8 as outlined in Section 6, with consideration for maintaining stability.
9

10 2.0 DEFINITIONS

11 Except where the context clearly requires otherwise, the following terms
12 used in this plan have the following meanings:

13 Adult Fish

14
15 A mature salmonid returning to spawn.

16 Affected Party

17
18 A party whose fisheries will be affected by a proposed action under this
19 plan.

20 Allocation Equivalent

21
22 The standard unit of measure used to determine the number of adult fish
23 that would return to treaty fishing areas in the absence of non-treaty
24 fishing. The allocation equivalent run size shall be the net result of
25 accounting for natural mortalities, transfer of harvest to foreign
26 fisheries, and direct fishery-related wastages which are not reflected
27 in actual landings.

1 Allocation Unit

2
3 A management unit or group of management units with similar timing for
4 which harvest shares are calculated.
5

6 Equilibrium Brood Program

7
8 The standard mode of operation for existing facilities/functions, asso-
9 ciated with intervention in one or more of a salmon's life history
10 stages.
11

12 Escapement

13
14 That portion of a run that is not harvested and escapes to natural or
15 artificial spawning areas.
16

17 Evaluation Fishery

18
19 A commercial fishery conducted for the purpose of acquiring technical or
20 management information.
21

22 Future Brood Planning Report

23
24 The annual expression of the equilibrium brood program as it pertains to
25 the coming year's run of salmon.
26
27

1 Management Period

2
3 The time interval during which regulatory actions are taken to meet the
4 escapement requirements for a management unit or allocation requirement
5 for an allocation unit, taking into account catches (actual or expected)
6 of the unit(s) made outside its management period. Management periods
7 are specific to each management unit (or aggregate of units) and to each
8 fishing area through which the unit(s) passes.
9

10 Management Unit

11
12 A stock or group of stocks which are aggregated for the purpose of
13 achieving a desired spawning escapement objective.
14

15 Maximum Sustained Harvest (MSH)

16
17 The maximum number of fish of a management unit that can be harvested on
18 a sustained basis, measured as the number of fish that would enter fresh
19 water to spawn in the absence of fishing after accounting for natural
20 mortality. MSH is intended to mean maximum sustained harvest to
21 Washington fisheries.
22

23 MSH Escapement

24
25 The specific escapement for a management unit necessary to provide MSH
26 under average environmental conditions.
27

1 Natural Spawning Area

2
3 An area which is or may be utilized by spawning salmon and in which egg
4 deposition and fertilization occur naturally.

5
6 Parties

7
8 The state and the 17 Puget Sound tribes together make up the parties to
9 this plan.

10
11 Primary Management Unit

12
13 A stock or group of stocks for which a specific spawning escapement goal
14 is established with the intention of managing all impacting fisheries to
15 meet that goal.

16
17 Prior Interceptions

18
19 Harvest of a run by fisheries outside of its region of origin or imma-
20 ture fish within their region of origin computed separately for treaty
21 and non-treaty fishermen.

22
23 Region of Origin

24
25 A geographic area from which an allocation unit originates. The
26 following geographic areas are recognized regions of origin:
27

- (1) Strait of Juan de Fuca (tributaries)
- (2) Bellingham/Samish Bays - Nooksack - Samish Rivers
- (3) Skagit
- (4) Stillaguamish-Snohomish
- (5) South Puget Sound, south of Snohomish System
- (6) Hood Canal
- (7) Canada

Run

A stock or group of stocks identified for fishery management purposes.

Run Size

The number of fish in an allocation unit, management unit, stock or any aggregation thereof.

Salmonid

The following anadromous species of the family Salmonidae which are native to the United States v. Washington Case Area:

Oncorhynchus tshawytscha (chinook, king, spring, tyee, blackmouth salmon)

Oncorhynchus kisutch (coho, silver, silverside, hooknose salmon)

Oncorhynchus nerka (sockeye, red, blueback salmon)

Oncorhynchus keta (chum, dog, keta salmon)

1 Oncorhynchus gorbuscha (pink, humpback, humpy salmon)

2 Salmo gairdneri (Steelhead)

3

4 Secondary Management Unit

5

6 A stock or group of stocks for which escapement is that which occurs
7 primarily as a result of not being caught in fisheries directed at
8 commingled primary units.

9

10 State

11

12 Washington Department of Fisheries (WDF).

13

14 Stock

15

16 An anadromous salmonid population of a single species migrating during a
17 particular season to a specific fish production facility and/or to a
18 freshwater system which flows into saltwater.

19

20 Test Fishery

21

22 An agreed-upon fishery conducted on a limited basis for the purpose of
23 acquiring technical or management information. Any fish taken in test
24 fisheries may not be sold for personal profit.

25

26

27

1 Tribes

2
3 All Puget Sound treaty tribes: Lummi, Nooksack, Suquamish, Swinomish,
4 Upper Skagit, Sauk-Suiattle, Tulalip, Stillaguamish, Muckleshoot,
5 Puyallup, Nisqually, Squaxin Island, Skokomish, Port Gamble Klallam,
6 Jamestown Klallam, Lower Elwha Klallam, and Makah.

7
8 3.0 ESCAPEMENT

9
10 3.1 Decisions made by the parties concerning stock enhancement, habitat pro-
11 tection, and harvest management programs and policies recognize that the
12 escapement of natural and hatchery management units must be preserved
13 and protected sufficiently to ensure their perpetual existence and maxi-
14 mize the benefits derived from their protection. In order to provide a
15 desired level of future harvest, it is necessary to prevent the capture
16 of a certain portion of the run, so that these uncaught fish can spawn
17 and produce fish for future use. An escapement goal must be evaluated
18 primarily according to whether it achieves these purposes.

19
20 3.2 The parties shall determine and agree as to primary and secondary man-
21 agement unit status. In making this determination, at least the
22 following factors should be taken into account: (a) harvest management
23 conflicts between harvest rates appropriate to harvest fish returning to
24 hatcheries and fish returning to natural spawning areas simultaneously;
25 (b) the management history pertinent to the stocks; (c) the present or
26 future production potential of the stocks; (d) unique characteristics of
27 the stock with respect to behavior, physiology, or morphology which

1 might be desired for future stock enhancement; (e) the technical feasi-
2 bility of achieving escapement allowances in the short and/or long term;
3 (f) legal obligations of the parties; (g) substantial intra- and inter-
4 specific conflicts; and (h) impacts on existing fisheries of attempting
5 to reach MSH escapement level according to a set time schedule. The
6 primary or secondary status of a unit may be changed only by agreement
7 of the parties.
8

9 3.3 Escapement goals for fish returning to hatcheries and natural spawning
10 areas shall be agreed upon on a management unit basis. The parties
11 shall reach agreement as to what comprises each management unit.
12

13 3.4 For primary management units returning to hatcheries, escapement goals
14 shall be those numbers of spawners needed to meet artificial production
15 programs that are agreed to in accordance with the guidelines in Section
16 4 of this plan. For primary management units returning to natural
17 spawning areas, the escapement goal shall be the maximum sustained har-
18 vest (MSH) escapement level.
19

20 3.5 Exceptions to primary management unit escapement goals may be allowed by
21 agreement of the affected parties. When considering any exception, both
22 long- and short-term costs and benefits must be adequately and openly
23 quantified and considered to the extent possible. Potential exceptions
24 include the following:
25

26 (1) Test fisheries

27 (2) Evaluation fisheries

(3) Ceremonial fisheries

(4) Management units for which a specific rebuilding schedule has been established

(5) Mixed-stock fisheries such as immobile fisheries in mixed-stock areas, recreational fisheries directed at maturing fish, fisheries outside management periods, and fisheries with unavoidable inter- and/or intra-specific harvest conflicts between primary management units

(6) Any other circumstance that is agreed to by all affected parties

3.6 The MSH escapement level will be estimated and documented annually for each management unit using the best available data and method.

3.7 If no reasonably accurate estimate of the MSH escapement level exists, the parties will employ the best agreed-to investigative technique to determine MSH. The investigative method used by the parties to better define the MSH escapement level must not intentionally result in escape-ments above or below the current best estimate of the MSH escapement level unless this escapement is necessary to the investigation.

3.8 The parties may agree to establish an escapement level for a primary management unit below which no exceptions will be allowed under any cir-cumstances, unless expressly declaring that management unit secondary.

3.9 Escapement goals may be established for secondary units by agreement of all affected parties, and shall be based on expected escapement resulting from anticipated harvest patterns in all fisheries, including those fisheries that may occur subsequent to separation from primary units.

1 3.10 Escapement goals shall be established annually by agreement between the
2 parties within the time frame outlined in Section 6 of this plan.
3

4 3.11 Except as otherwise agreed by all affected parties, escapement goals
5 established under this section shall not be changed during the season.
6

7 4.0 EQUILIBRIUM BROOD PROGRAM
8

9 4.1 The affected parties shall reach agreement in a document on an equilib-
10 rium brood program, in conjunction with the development of the regional
11 plans (Section 13).
12

13 4.2 The equilibrium brood document shall provide a description of the
14 agreed-to equilibrium brood program. This document will express a
15 description of each facility and its functions, including at least the
16 following:
17

18 I. Operating Entity

19 II. Station/Facility Name

20 III. Station/Facility Description (characteristics)

21 IV. Species

22 Activity (transfer, release, etc.)

23 Number

24 Type (egg, fry, fingerling, etc.)

25 Size of Release/Transfer

26 Time of Release/Transfer

27 Preferred Stock

1 Destination (disposition of fish)

2 V. Station Contingency Plans (allowable operation alternatives)

3 VI. Comments/Footnotes

4
5 4.3 The equilibrium brood document as it exists on November 1 (or other
6 agreed-to date) provides the basis for the development of the future
7 brood planning report, as outlined in Sections 5 (status reports) and 6
8 (schedules) of this plan.

9
10 4.4 No modifications may be made to the equilibrium brood program without
11 prior agreement of the affected parties. Notice of proposed modifica-
12 tion shall be provided at least 30 days prior to the proposed action,
13 unless otherwise agreed to by the affected parties.

14
15 4.5 Changes or additions to the equilibrium brood program must be compatible
16 with the management of primary management units and with the rights of
17 the affected parties. Any party proposing a modification to the
18 equilibrium brood program shall provide the following information:

19
20 I. Name of Project

21 II. Originating Entity

22 III. Purpose

23 IV. Analysis of benefits and costs, including at least consideration
24 of species interactions, effects on genetic stock integrity, and
25 cost-effective mitigation of adversely affected stocks

26 IV. Analysis of benefits and costs, including at least consideration
27 of species interactions, effects on genetic stock integrity, and

1 cost-effective mitigation of adversely affected stocks

2 V. Facility Characteristics

3 A. Location

4 B. Design

5 1. Water Source

6 2. Anticipated Watershed Modification

7 VI. Species

8 Number

9 Activity (transfer, release, etc.)

10 Type (egg, fry, fingerling, etc.)

11 Size of Release/Transfer

12 Time of Release/Transfer

13 Preferred Stock

14 A. Timing

15 B. Disease History

16 C. Source

17 Destination

18 VII. Harvest Management Strategy

19 A. Harvest Area

20 B. Harvest Time

21 C. Expected Exploitation Rate

22 D. Conflicts With Other Stocks or Fisheries

23 E. Allocation Implications

24 F. Number of Adults Needed for Escapement

25 VIII. Station Contingency Plans (addressing VI and VII)

26 IX. Other Comments (marks, etc.)

27

1 5.0 TECHNICAL AND MANAGEMENT REPORTS AND DOCUMENTS

2
3 The timely exchange of information and management recommendations is
4 vital for the preparation of management options as well as for the
5 review and performance auditing of the management actions undertaken by
6 the parties. Management reports and documents prepared by the parties
7 facilitate the management process by: a) presenting data, methods,
8 analyses, and recommendations in an organized fashion; b) identifying
9 areas of disagreement; and c) providing a basis from which the parties
10 may proceed to technical and policy agreements. Annually, the parties
11 shall provide the reports and documents listed below within the time
12 frame established in Section 6 of this plan.
13

14 5.1 Basic Resource Management Documents

15
16 Certain components of Puget Sound salmon management form the basis for
17 specific annual management plans and are not expected to change signifi-
18 cantly from year to year. Basic resource management documents describe
19 these components separately from the detailed pre-season planning for a
20 specific season. The parties shall jointly develop the following basic
21 resource management documents and shall reach agreements on any modifi-
22 cations to these documents on an annual basis in accordance with the
23 schedule in Section 6. The parties shall also reach agreement on the
24 exact form of these documents (e.g., they may consist of annual written
25 reports, computer files, a single source document with annual amend-
26 ments, etc.), and which if any documents may be combined for simplicity.
27

1 5.1.1 One basic resource document shall be the equilibrium brood
2 document described in Section 4 of this plan. Information to
3 be included, procedures for modification, and schedules for
4 reaching agreement are found in Sections 4 and 6.
5

6 5.1.2 A second basic resource document shall contain data and analy-
7 ses for the establishment of management periods as described in
8 Section 7. This should include the methods used to analyze run
9 timing and should address general approaches to account for
10 overlaps and gaps in run timing.
11

12 5.1.3 A third basic resource document shall contain the best current
13 estimate of MSH escapements for management units, required in
14 Section 3, and the data, analyses and methods used to establish
15 these estimates. This document shall also contain agreed-upon
16 methods for estimation of actual spawning escapements achieved
17 each season.
18

19 5.1.4 A fourth basic resource document shall contain agreed-upon
20 methods for conducting post-season run reconstruction. This
21 document shall detail methods by area for post-season estima-
22 tion of total run size for each Puget Sound management unit.
23

24 5.1.5 The parties may, by agreement, formulate other basic resource
25 documents.
26
27

1 5.2 Pre-Season Management Reports
2

3 The ultimate goal of the pre-season planning process is to develop a
4 fisheries management strategy acceptable to all parties. For each spe-
5 cies, the parties shall jointly develop, in accordance with Section 6 of
6 this plan, the following pre-season reports. The parties, by agreement,
7 may choose to combine any of these reports to simplify the report
8 generation process.
9

10 5.2.1 One pre-season report shall provide an assessment of the status
11 of all management units which return and/or are harvested in
12 Puget Sound and justification(s) for management recommen-
13 dations. The following topics shall be included: (1) recom-
14 mended management periods for each run by management area; (2)
15 pre-season run size forecasts for each management unit,
16 including such background information as brood year escapement
17 to natural spawning areas, quantities of off-station plants,
18 and releases from hatcheries; (3) an outline of the methods and
19 analyses used to compute the forecasts, along with quantitative
20 measures of the degree of precision or confidence that can be
21 applied to the forecasts; (4) recommended spawning escapement
22 goals for each management unit and methods and rationale to
23 determine them; (5) predicted levels of harvest and/or har-
24 vestable numbers, including expected incidental catches; (6)
25 quantitative forecasts of prior interceptions and remaining
26 allocations for each allocation unit and all background infor-
27 mation and estimation methods used; (7) harvest management

1 recommendations and justification for each management area
2 covered by this plan; and (8) an outline of anticipated test
3 and evaluation fishery needs.
4

5 5.2.2 A second pre-season report shall be the future brood planning
6 report which will contain the following information for each
7 facility in the equilibrium brood document: (1) escapement
8 needs and details of the utilization of adult spawners by spe-
9 cies and stock, and (2) details of the rearing and release of
10 juveniles by species and stock, transfers between facilities,
11 marks to be applied, release location and schedule, and age,
12 size and numbers of juveniles at release. In addition, this
13 report shall indicate any anticipated deviations from the
14 equilibrium brood document.
15

16 5.2.3 A third pre-season report shall contain methods to provide in-
17 season estimates of run size and allocation. It shall also
18 include methods to apportion catches from areas having a mix-
19 ture of stocks from two or more regions of origin. Pre-season
20 forecasts have often been found to be unreliable. In-season
21 estimates of run sizes obtained during the passage of a run are
22 direct measures of the quantity of fish present and are
23 generally more accurate than pre-season forecasts. In-season
24 run size estimates shall be made for every run unless the par-
25 ties agree that a usable updating method is not available.
26 Topics in this report shall include: (1) a description of the
27 quantitative methods (models) to be used for in-season run size

1 estimation, the data or other information on which these models
2 are based, quantitative indications of the reliability of the
3 models, expected impact on escapements and/or allocations, and
4 limitations on the use of the models; (2) methods for the in-
5 season adjustment of management periods; (3) methods for the
6 in-season adjustment of allocations; and (4) methods for appor-
7 tioning mixed-stock catches to each management unit.
8

9 5.3 Post-Season Reports

10
11 A post-season audit report is necessary in order to permit an assessment
12 of the parties' annual management performance in achieving spawning
13 escapement, enhancement, harvest and allocation objectives. A post-
14 season report will be jointly prepared by the parties. Differences
15 among the parties in data or information interpretation shall be docu-
16 mented in this report. This report shall be prepared in accordance with
17 the schedule in Section 6 and will generally include at least two years
18 of information: preliminary data for the immediately preceding season
19 and final data for prior years. The parties are encouraged to reach
20 agreement on the various data and analyze components of this report as
21 data become available throughout the year.
22
23
24
25
26
27

6.0 SCHEDULES

The various reporting and agreement requirements placed on the parties by this plan shall be fulfilled in accordance with the following scheduled deadlines for each species. Meeting these deadlines may necessitate omission of the most recent year of the data bases used to formulate run size forecasts.

	Spring chinook	Sockeye	Summer/fall chinook	Pink	Coho	Chu
1 Basic resource management documents finalized				11/1		
2 Co-op egg requests received	12/15	1/1	1/15	1/15	2/1	2/1
3 Escapement estimates compiled and available	12/15	1/15	2/15	2/15	3/1	3/15
4 Preliminary PSF established ^{1/}	-	12/1	1/8	12/1	1/8	1/8
5 Post-season audit report and soft catch available	1/1	1/23	3/1	3/1	3/15	3/15
6 Recreational management proposals available				1/15		
7 Pre-season forecasts completed/exchanged	1/8	2/1	3/8	3/8	3/23	4/2
8 Pre-season recreational management planning completed				2/15		
9 Scale data available				3/1		
10 CWT data available	3/1	3/1	3/1	3/1	3/15	3/15
11 Resolution of pre-season forecast conflicts completed	1/23	2/15	3/23	3/23	4/15	5/8
12 Future brood egg requests, commercial management recommendations, and proposed escapement goals exchanged	2/1	3/1	4/8	4/8	5/1	5/23
13 Draft status and future brood reports completed/exchanged; including conflicting commercial management recommendations	2/15	3/15	4/23	4/23	5/15	6/8
14 Resolution of pre-season commercial management conflicts completed	3/1	4/1	5/23	5/23	6/15	7/8
15 Initial position statement on co-op egg requests sent out	2/15	3/15	4/23	4/23	5/15	6/8
16 In-season update methods exchanged/completed	2/15	4/1	5/1	5/1	5/15	6/15
17 Response from co-ops to initial position received	3/1	3/23	5/8	5/8	6/1	6/23
18 In-season update method conflicts resolved	3/1	4/15	5/23	5/23	6/8	7/8
19 Draft update method report released	3/15	4/23	6/1	6/1	6/15	7/15
20 Final position on co-op requests sent out	3/15	4/15	6/1	6/1	6/23	7/15
21 Final status and future brood reports released	3/15	4/15	6/1	6/1	6/23	7/15
22 Final update method report released ^{2/}	4/1	5/1	6/15	6/15	7/1	8/1
23 Commercial hard data available				7/1		
24 Sport hard data available				8/1		
25 ^{1/} These estimates are subject to revision and are established by the parties to meet administrative procedures and the planning needs of other agencies such as PFMQ.						
26 ^{2/} If hard catch data from the preceding year become available prior to use of agreed-to in-season update models, and these data would significantly alter the models, the parties should consider corrections to the models using hard data.						
27						

1 7.0 MANAGEMENT PERIODS

2
3 7.1 Proposed management periods shall be included in management reports
4 developed under Section 5 of this Plan and agreed upon in accordance
5 with time schedules of Section 6 of this Plan.
6

7 7.2 Adjustments of management periods may occur in season by agreement of
8 the affected parties.
9

10 7.3 Management periods shall generally be based on the central 80% of the
11 run timing of a management unit or group of management units in a man-
12 agement area unless otherwise agreed to by the parties.
13

14 7.4 Overlaps and gaps in management periods present fisheries managers with
15 problems which will be unique to each situation and will vary as a
16 result of such things as run timing patterns, fish size, run sizes and
17 management goals. As a result, a single guideline to handle these
18 problems is not feasible. Many overlaps where one or more species need
19 protection may be handled by gear restrictions. In other cases, area or
20 time restrictions may be used by the parties to achieve management goals
21 during the overlap. The parties should reach agreement on methods to
22 address overlap and gap situations on a case-by-case basis. Adjustments
23 of Section 7.5 of this plan should be made after overlaps and gaps are
24 addressed.
25

26 7.5 Management periods may be adjusted to begin on the nearest Sunday and
27 end on the nearest Saturday to simplify processing of regulations.

1 8.0 TEST AND EVALUATION FISHERIES

2
3 Test and evaluation fisheries are valuable and necessary tools of
4 fisheries managers. The use of these fisheries for data collection and
5 other management needs is encouraged. The parties agree to jointly
6 improve the methodologies used for test and evaluation fisheries.
7

8 8.1 General outlines of anticipated test and evaluation fisheries needs
9 shall be included in draft, and final pre-season management reports
10 developed under Section 5 of the plan.
11

12 8.2 Uses of test and evaluation fisheries include: maintenance of data
13 continuity throughout a run; collection of fishing gear oriented data;
14 collection of data for population parameter estimates (e.g., species
15 and stock composition, run timing, abundance); and such other uses the
16 parties agree are appropriate.
17

18 8.3 Certain criteria shall be evaluated before these proposed test and
19 evaluation fisheries are implemented. These include, but may not be
20 limited to: (1) whether the information to be collected is needed to
21 meet in-season or general management needs; (2) whether the fishery will
22 significantly impact escapement and/or allocation objectives; and (3)
23 whether the proposed fishery is an appropriate method for collection of
24 the desired data.
25

26 8.4 All test fisheries shall be monitored by fisheries management agency
27 personnel (tribal or state, as applicable). The extent of monitoring

necessary in any given test fishery should be determined on an individual test fishery basis. Any fish taken in test fisheries may not be sold for personal profit.

8.5 The information collected in a test fishery is to be made available to all parties in a timely manner.

9.0 HARVEST RATES

9.1 The following rules shall govern harvest management in all salmon fisheries, except as otherwise agreed by all affected parties.

9.2 Harvests of salmon in mixed-stock catch areas shall ensure that the weakest primary management unit is protected.

9.3 The maximum harvest rate for a management unit shall be defined as follows:

$$H = \frac{S - E}{S}$$

where,

H = the maximum harvest rate

S = the numerical abundance of a defined management unit based on the best available estimate of a run size (see Section 5)

E = the escapement goal applicable to the management unit.

1 9.4 The maximum harvest rates in each catch area shall be determined sepa-
2 rately for each primary management unit, taking into account catches of
3 that unit that have occurred or are expected to occur. Of the harvest
4 rates computed for each catch area, the lowest rate shall prevail in the
5 management of the area during the course of the run, provided, however,
6 that all affected parties may agree to a lower harvest rate.
7

8 9.5 Harvest rates for each catch area shall be agreed upon between the state
9 and all affected tribes on the basis of escapement goals agreed upon by
10 the parties.
11

12 10.0 ALLOCATION OF HARVEST 13

14 10.1 Shares shall be computed separately for each species and region of ori-
15 gin, unless otherwise agreed by all affected parties.
16

17 10.2 Both the State and the tribes recognize that fisheries management is not
18 sufficiently precise to provide a prescribed harvest allocation between
19 treaty fishermen and non-treaty fishermen for every allocation unit each
20 year. Therefore, if treaty or non-treaty fishermen are not provided the
21 opportunity to harvest their share of any given allocation unit as pro-
22 vided by the orders of the federal court, deficiencies in numbers of
23 fish shall be made up as provided in subsections 10.4 and 10.5, without
24 any claim being necessary.
25

26 10.3 The parties agree to consider annually methods that provide management
27 flexibility to achieve fair sharing of fish in ways that will minimize

1 or eliminate the need for equitable adjustments. Methods to be con-
2 sidered include, but are not limited to, special fisheries, adjustments
3 across regions or species, hatchery fish agreements, production
4 increases or changes, stratified allocations, allocation of species
5 separated by timing, and management refinements. The methods to be
6 employed must be agreed to by all affected parties; they shall be
7 decided upon annually on a regional basis (except where more than one
8 region is affected).

9
10 10.4 Shares will be calculated annually post-season, using preliminary data,
11 by no later than one month after the date of the post-season audit
12 report. Deficiencies in shares shall be adjusted annually unless
13 neither party exceeded its share by more than 5% of the total of both
14 parties' shares. Every four years an automatic adjustment will be made
15 using final hard data as they become available. Provided, parties may
16 agree to different arrangements on a regional basis.

17
18 10.5 Adjustments calculated pursuant to subsection 10.4 shall be made during
19 the next year, or in as few years as possible, provided that repayment
20 of a deficit in any one year shall be either:

21 A) 15% of that year's share of the party owing the adjustment,
22 or

23
24 B) 25% of the total deficit that was due,

25
26 whichever is greater. However, there may be either a greater or lesser
27 repayment by agreement of the parties.

1 10.6 Any dispute over the existence, extent or implementation of a deficiency
2 or imbalance shall be subject to the dispute resolution process of
3 Section 14, except that whether or not to use the methods suggested in
4 subsection 10.3 shall be based solely on agreement of all affected par-
5 ties.

6
7 10.7 Fish taken in test fisheries pursuant to Section 8 do not count in
8 either party's share.

9
10 10.8 Catches made in Puget Sound marine waters having a mixture of stocks
11 from two or more allocation units will be apportioned in accordance with
12 methods established pursuant to Section 5.2.3.

13
14 11.0 COORDINATED INFORMATION SYSTEMS

15
16 Coordinated information systems are the means by which the parties com-
17 pile, exchange, and utilize fisheries resource management information.
18 The coordinated information system shall contain resource data and
19 information required for coordinated fisheries resource management.
20 This information may be broadly classified into three categories.

21
22 11.0.1 Basic resource data, including both current and historic
23 records of: catch, effort, spawning information, production,
24 tagging experiments, age distributions, regulations, etc.
25 These data may be summarized in some convenient form but are
26 generally not analytically derived results.

27

1 11.0.2 Analytical tools and procedures consisting of methods used for
2 run forecasting, updating, catch allocation, regulation, eval-
3 uation, escapement estimation, and other resource management
4 tasks.

5
6 11.0.3 Biological parameters and analytical results, including
7 resource inventory information, mortality rates, etc.
8

9 11.1 Coordinated information systems may be established by mutual agreement
10 and include standards and procedures for the input and modification of
11 fisheries resource management information. The following factors are
12 essential components of standards and procedures.
13

14 11.1.1 Detailed and consistent documentation is fundamental to the
15 utility of fishery resource management information. This docu-
16 mentation is necessary to ensure that quality, consistency, and
17 validity of information can be assessed by all parties. This
18 documentation should include criteria useful in discriminating
19 between alternative candidates for best available data, such as
20 bias, precision, correlation coefficients and other statistical
21 properties of estimation methods. Adequate documentation is a
22 prerequisite to making an informed decision as to what consti-
23 tutes the best available information for any management appli-
24 cation.
25

26 11.1.2 The timeliness of information availability to all parties is
27 crucial to the planning and regulatory processes. Deadlines

1 for preparation and submission of management information will
2 be in accordance with Sections 5 and 6 on reports and sched-
3 ules.
4

5 11.1.3 Equal access to all fishery resources management information by
6 all parties, for fisheries resource management purposes only,
7 is indispensable. Equal access in this context implies the
8 same ability in terms of similar time and cost of all parties
9 to view and use information in the same form at the same time.
10

11 11.1.4 All information provided to the coordinated information system
12 is the sole property of the party providing it. Disclosure of
13 fisheries information by a party to another party is not a
14 waiver of confidentiality nor is it deemed to be a release of
15 such information for purposes other than fisheries management
16 planning and management under this plan. No party may volun-
17 tarily release information or data received from another party
18 without that party's consent, whether to another party or an
19 outside agency, including agencies of the United States
20 Government. If a party is compelled by legal process to
21 release such information, it shall do so only after notifica-
22 tion to all affected parties. However, nothing herein is to be
23 construed as relieving any party of any obligation under any
24 law or any administrative or judicial order to timely furnish
25 any information or data to any state, federal, or international
26 governmental body or officer.
27

1 11.2 An important goal of the parties is to establish the best available data
2 for fisheries resource management. The parties shall maintain a list of
3 their completed, ongoing and proposed research studies which will
4 include a project abstract available upon request of any party.
5

6 11.3 Catch Recording System. Reliable "soft" and "hard" data systems are
7 needed for in-season fisheries management needs and for the finalizing
8 of catch and effort statistics, respectively.
9

10 11.3.1 The hard and soft data systems shall include all commercial
11 catches for treaty and non-treaty fishermen. The systems shall
12 also include fishing effort information, ceremonial and sub-
13 sistence catches, and the number of fish taken home by fisher-
14 men during commercial fisheries.
15

16 11.3.2 The soft data system shall provide current catch and effort
17 information in an agreed-upon form as frequently as is
18 necessary for in-season management purposes.
19

20 11.3.3 Fish buyers shall submit commercial catch reports to the
21 appropriate agency on a daily basis on agreed-to forms (fish
22 tickets) to be provided by the state.
23

24 11.3.4 Processing of fish tickets, collection of data, correction of
25 errors, and finalization of data shall be carried out under an
26 agreed-upon joint catch monitoring system which recognizes the
27 need and responsibility of each party to correct its own fish

1 ticket information. Primary emphasis will be on achieving
2 completeness and accuracy in the initial preparation of the
3 fish ticket. Further, the parties recognize the need for rapid
4 entry of ticket information into the soft and hard data system.
5

6 11.3.5 Area descriptions to be used for catch recording shall be
7 agreed to by the parties. Comparable commercial and
8 recreational catch reporting areas are desirable.
9

10 11.3.6 Recreational catches shall be estimated through an agreed-upon
11 sport catch estimation system established following a joint
12 study to evaluate estimation methods.
13

14 12.0 TIMING AND CONTENTS OF FISHING REGULATIONS

15 12.1 The parties shall cooperatively maintain a system for transmitting,
16 cross-indexing and storing fishing regulations affecting harvest of stocks
17 covered by this plan. In cases of conflicting regulations, the system
18 must identify the applicable regulations.
19

20 12.2 Annually, following the completion of management reports, the parties
21 shall exchange pre-season commercial regulations containing at least
22 information concerning number of units of each gear type by fishing
23 area(s), and anticipated fishing pattern for each species, at least 10
24 days prior to fishing.
25

26 12.3 The filing of all emergency regulations shall be in accordance with the
27 Order re: Notification and Effective Date of Emergency Regulations,

1 dated 26 August 1980, United States v. Washington (W. D. Wash. No.
2 9213), except that Section 4 of the above order shall be amended such
3 that on Friday, or a normal business day immediately preceding a holi-
4 day transmission times shall be limited to that period between 9:00 a.m.
5 and 10:00 a.m.

6
7 12.4 The prior orders of this court which require 24-hour advance notice or
8 FAB approval of proposed fishery openings are modified to permit waiver
9 of such notice or FAB action when there is agreement by all the parties.
10 Fisheries may be opened with less than 24-hour notice and without FAB
11 action so long as proposed openings are communicated to and received by
12 all affected parties (by TWX and personal contact) with a 4-hour notice
13 minimum before the fishery opening (during normal working hours) and so
14 long as no objection is made by any affected party. In addition to the
15 notice requirement specified above, the party requesting waiver of the
16 notice requirement shall make a written record of time and date of the
17 request and the time and date that each affected party received the
18 request. That written record shall be served on all affected parties.
19 The parties recognize this provision is not be be used for regular
20 filing of regulations, but rather is reserved for emergency implemen-
21 tation only.

22 12.5 Each party's regulations should be filed as complete as possible and
23 refer to previous regulations only when necessary.

24
25 12.6 The Washington Department of Fisheries' proposed annual recreational
26 fishing regulations will be transmitted to the tribes by March 1.
27

1 13.0 REGIONAL MANAGEMENT PLANS
2

3 13.1 The parties shall develop comprehensive regional resource management
4 plans for Puget Sound stocks. The goal of these plans shall be to
5 achieve coordination between the affected parties and to eliminate
6 potential conflicts in resource management strategy. These regional
7 plans shall specifically address the provisions of this Plan as to which
8 management units are primary and harvest management and enhancement
9 strategies, with consideration of current and anticipated habitat status
10 and management, research needs and priorities, and other matters as
11 required by this plan. Regional plans shall be consistent with the pro-
12 visions of this plan. When regional plans are agreed to by the parties,
13 they may be submitted to the court for incorporation into this plan.
14

15 14.0 DISPUTE RESOLUTION
16

17 14.1 It is the intention of the Department of Fisheries and the Puget Sound
18 treaty tribes to conduct their business in such a way as to foster the
19 voluntary, informal settlement of disputes. It is expected that through
20 a cooperative planning and management process the parties will continue
21 to resolve the vast majority of issues potentially dividing them.
22 Through this process the parties agree to make litigation a last resort,
23 to be avoided whenever possible.
24

25 14.2 In order to foster the continued vitality and refinement of this
26 cooperative planning and management relationship, the Director of the
27

1 Department of Fisheries and the Chairman of the Northwest Indian
2 Fisheries Commission (or their designees) will jointly plan for and
3 sponsor an annual pre-season meeting to be held no later than February
4 15 at which policy leaders and their technical advisors from all parties
5 will meet. This meeting shall accomplish at least the following
6 items:

7
8 14.2.1 Review and evaluate the previous year's cooperative planning
9 and management activities and discuss ways to improve their
10 working relationship in the coming season;

11
12 14.2.2 Identify issues which may potentially divide the parties or
13 which have been identified in the past but have not yet been
14 resolved and give to policy and/or technical subgroups or com-
15 mittees assignments and schedules for addressing these issues;

16
17 14.2.3 Agree on a schedule for meetings of state and tribal policy
18 leaders, as needed, during the remainder of the calendar year;

19
20 14.2.4 Agree on a deadline by which each issue identified under sub-
21 section 14.2.2 will either be resolved, resolved for the coming
22 season only so that a longer schedule can be used for a perma-
23 nent solution, or referred to the pre-season dispute resolution
24 process of subsection 14.3;

25
26 14.2.5 Identify those individuals (in addition to the Director of
27 Fisheries and the Chairman of the Northwest Indian Fisheries

1 Commission) who will have the authority to invoke the Dispute
2 Resolution process. These designees shall be in policy/
3 leadership positions;
4

5 14.2.6 Agree on individuals to serve on a panel of mediators and agree
6 on the chair of that panel. The panel shall oversee both the
7 pre-season and in-season dispute resolution processes described
8 below;
9

10 14.2.7 Agree on individuals to serve on a Technical Advisory Group.
11 These individuals shall be available as technical advisors to
12 members of the panel;
13

14 14.2.8 Receive and discuss a report from the previous year's chair of
15 the panel which describes the disputes, and particularly the
16 types of recurring disputes, which were not being resolved
17 through the cooperative planning and management process and
18 therefore became the subject of Dispute Resolution;
19 and conduct such other business as they deem advisable.
20

21 14.3 Pre-Season Dispute Resolution
22

23 Should the cooperative planning and management process described in sub-
24 section 14.2 fail to adequately address or resolve a dispute, the
25 dispute may be referred to policy persons designated under subsection
26 14.2.5. They may attempt to resolve the matter themselves without
27 involving a mediator from the panel. If that attempt is unsuccessful,

1 or immediately after the referral, either person may require the matter
2 to be mediated. They may initiate mediation by notifying the chairman
3 of the panel and the other involved party(ies). It shall be the respon-
4 sibility of the chair to appoint a mediator from the panel.
5

6 14.3.1 The first step in the mediation shall be to reach agreement on
7 the ground rules, including such matters as a description of
8 the issue(s) in dispute, a listing of the parties to the
9 dispute, a deadline by which the issue will be resolved, and
10 whether the mediator shall be assisted by technical advisors.
11 Unless any party objects, ground rules will include those
12 specified in Section 14.3.5 A, B, D, E, F, G, H and L (except
13 delete the word "technical"). All parties shall be represented
14 in the dispute by policy level, not technical, persons. Those
15 representatives may have assistance from policy, legal and
16 technical advisors, as they see fit. The mediator may have
17 advisors only from the Technical Advisory Group as specified
18 under 14.2.7.

19 14.3.2 The goal of the mediation shall be to reach agreement that will
20 settle the dispute. If agreement is not achieved on an issue
21 which both parties agree is technical, the parties must proceed
22 to arbitration as provided in Section 14.3.4. If agreement is
23 not reached on a policy or legal issue, either party may
24 proceed to court, or they may agree to attempt further measures
25 to resolve the dispute as provided in subsection 14.3.3.
26

27 14.3.3 Where mediation has failed to resolve a policy or legal

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

14.3.3 dispute, the parties may agree to non-binding arbitration, binding arbitration, or other methods, using ground rules and standards as provided in 14.3.5 A through L (except delete the word "technical"), unless any party objects.

14.3.4 If mediation of a technical dispute has been unsuccessful, a Fisheries Advisory Board (FAB) meeting may be called as provided in the Order Establishing Fisheries Advisory Board, 459 F.Supp. at 1061 (as amended), provided, that the chair of the panel shall appoint a member of the Technical Advisory Group to act as chairman of the FAB in lieu of the court-appointed technical advisor. If no member of the Technical Advisory Group is available, the court-appointed technical advisor shall act as chairman of the FAB. The FAB can only be called by a policy level person and each party shall be presented by a policy level person. An FAB is mandatory before a technical issue is taken to court. A decision by an FAB is binding pending a court determination or other resolution under 14.2.6.

14.3.5 Ground Rules for Technical Issue FAB Meetings

- A) The chairmen shall conduct themselves in a manner appropriate to a neutral party and not to the prejudice of the interests of potential litigants.
- B) Proceedings should be carefully documented to clearly describe the basis for any decision so as not to diminish:

- 1) the rights of any participant to seek judicial review;
- 2) the objectivity of the dispute resolution process; and
- 3) the usefulness of the record to policy makers.

C) The chairman should bring his expertise to bear on the dispute to facilitate resolution by the participants, but any decisions should be made upon the basis of information presented during the dispute resolution proceedings. In making a decision, the chairman should apply principles and objectives outlined in this plan and should employ consistent standards of accountability regardless of whether the issue involved disputes over commercial or recreational fishing.

D) Reasons for requesting a technical dispute resolution proceeding should be presented in writing whenever time permits and exchanged with necessary participants whenever practicable.

E) Once a technical dispute resolution proceeding is initiated, representatives of necessary resource managers must be made available. If reasonable efforts by the chairman to obtain representation fail, emergency technical dispute resolution proceedings can proceed with the chairman using the best available information.

- 1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
- F) Technical dispute resolution proceedings should be formalized through strict adherence to agendas which are arranged and agreed upon prior to the session whenever practicable. Documentation of areas of technical agreement and disagreement should be prepared by the disputants for use in the proceedings.
 - G) Information employed in technical dispute resolution proceedings must meet standards governing the coordinated information systems where such standards exist.
 - H) To the extent practicable, all participants must be provided with a reasonable opportunity to review data and analyses before using them in technical dispute resolution proceedings.
 - I) When an FAB has been called, disputants may not initiate contact with the FAB chair over matters of substance.
 - J) The full report of the FAB decision and proceedings, including any information submitted to the proceedings for consideration and deemed relevant by any participant, may be submitted as at least part of the record for judicial review.
 - K) Each disputant in a technical dispute resolution pro-

1 ceeding shall be provided a reasonable opportunity to
2 review and comment upon the report of the technical
3 dispute resolution proceedings before the report is made
4 final. Comments received shall be considered part of the
5 record of the dispute resolution proceeding. Proceedings
6 may be recorded at the request of any disputant and any
7 recording shall be made a part of the record. Reports of
8 proceedings, together with a copy of the record before the
9 proceedings shall be submitted to the parties to the
10 dispute. Reports of proceedings shall be distributed to
11 any fishery manager upon request. The decision and report
12 shall be made in a timely fashion.
13

14 L) These general procedural ground rules can be modified for
15 any particular dispute upon agreement of the participants.
16

17 14.3.6 Following the procedure of 14.3.3 and 14.3.4, policy leaders
18 from the state and tribes shall meet to discuss the resolution
19 of issues submitted to those procedures. They may then nego-
20 tiate over any and all issues to attempt to reach a mutually
21 agreeable settlement, regardless of the outcome from sections
22 14.3.3 or 14.3.4.
23

24 14.4 In-Season Dispute Resolution

25

26 The purpose of the in-season dispute resolution process is to provide a
27 fair procedure through which timely and often immediate decisions can be

1 made. As with pre-season disputes, it is the parties' intention and
2 purpose to reach voluntary and mutually acceptable solutions to
3 problems, particularly without the need to go to court. It is also
4 recognized, however, that in-season settlements of disputes frequently
5 will have to be made very quickly and with limited or conflicting
6 available data. Therefore, the decisions reached through the in-season
7 dispute resolution process shall be binding only for that season and
8 shall not be considered precedential in any manner. For the purpose of
9 this section, in-season will be defined as the period beginning 10 days
10 prior to the management period for the expected species and area.
11

12 14.4.1 To the extent time is available, all parties are encouraged to
13 use the procedures of 14.3.1, 14.3.2 and 14.3.3 to resolve in-
14 season disputes. Where time is not sufficient, the parties are
15 encouraged to find a temporary solution so that those issues
16 may be deferred to the full processes of Sections 14.1, 14.2
17 and 14.3.
18

19 14.4.2 Where other resolutions are not possible for technical dis-
20 putes, a party may request an FAB in the same manner as 14.3.4
21 and 14.3.5, and must request an FAB before proceeding to court.
22

23 14.4.3 Members of the technical advisory group and the court's tech-
24 nical advisors shall be certain at least one person is on call
25 during all working hours and available to act as chairman of
26 the FAB on 24 hours notice or less.
27

1 14.5 Where both parties agree, the dispute resolution process of 14.1 through
2 14.4 may be waived and the parties may proceed directly to court, pro-
3 vided, that for technical disputes an FAB must be held as provided in
4 14.3.4, 14.3.5 and 14.4.2.

5
6 14.6 There shall be review of this entire dispute resolution process by the
7 parties at the annual meeting provided for in 14.2. The parties shall
8 seek to agree on improvements and modifications of this process in order
9 to promote voluntary and informal agreements and to avoid litigation of
10 disputed issues.

11
12 14.7 The dispute resolution process of Section 14 shall automatically expire
13 on December 31, 1986 unless before that date all parties have jointly
14 filed a request with the Court to extend or modify that section. If
15 Section 14 expires on December 31, 1986, the dispute resolution pro-
16 visions of the Orders Establishing Fisheries Advisory Board, 459 F.Supp.
17 1061, as amended, and Section 11 of the Memorandum Adoption Salmon
18 Management Plan, 459 F.Supp. 1107, 1113, shall be automatically
19 reinstated.