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COMPILATION OF MAJOR POST-
TRIAL SUBSTANTIVE ORDERS
(Through December 31, 1986)

ORDER ADOPTING PUGET SOUND
SALMON MANAGEMENT
PLAN

(sub no. 85-2)

(October 17, 1985)

WALTER E. CRAIG, District Judge.

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. 1020, 1107 (W.D.Wash.1978), 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 Fisheries, since the 1977 plan was enacted. The new plan includes provisions for continued annual review and possible modifications as well as provisions for the development of more detailed regional plans by agreement of the affected parties.

The State of Washington, the Puget Sound Area tribes and the United States have asked this court to approve the new

plan and incorporate its provisions as an order of the court.

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

“However, nothing herein is to be construed as relieving any party of any obligation under any law or any administrative or judicial order to timely furnish any information or data to any state, federal, or international governmental body or officer.”

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

PUGET SOUND SALMON
MANAGEMENT
PLAN

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1.0 PREAMBLE

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

1.2 This plan is intended to ensure that treaty fishermen and non-treaty fishermen, subject to their respective regulatory authorities, shall be afforded the opportunities to harvest their shares as determined in *United States v. Washington*, 384 F.Supp. 312 (W.D.Wash.1974), *aff'd* 520 F.2d

676 (9th Cir.1975), *cert. denied* 423 U.S. 1086, 96 S.Ct. 877, 47 L.Ed.2d 97 (1976), *aff'd sub nom. Washington v. Washington State Commercial Passenger Fishing Vessel Association*, 443 U.S. 658, 99 S.Ct. 3055, 61 L.Ed.2d 823 (1979) and other orders under the court's continuing jurisdiction.

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

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

1.4 The parties shall advocate and recommend to the appropriate

governmental and regulatory entities, international agreements to reduce foreign interceptions of salmonids originating from Puget Sound.

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

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

- 1.6 Where action of the parties is required in this plan, failure to act or to reach agreement shall be resolved as provided in Section 14.
- 1.7 When adopted by the Court, this plan supercedes and replaces the Memorandum Adopting Salmon Management Plan, 459 F.Supp. at 1107, as extended by the Order of June 1, 1982 (Docket Number 8421); it also supplements, and where inconsistent, modifies the Order on Certain Questions Re Salmon Fisheries Management, dated April 13, 1976, 459 F.Supp. at 1069, which is hereby extended and shall remain in effect until further order of the Court, provided, that nothing in this plan is intended to

modify or supercede the answer to Question No. 2 as set forth in that Order. This plan also supplements and where inconsistent modifies the Order for Program to Implement Interim Plan, 459 F.Supp. at 1035, the Orders Establishing Fisheries Advisory Board and Prescribing Procedures for State Emergency Regulations, 459 F.Supp. at 1061, and Order Re Notification and Effective Date of Emergency Regulations dated August 29, 1980, Docket Number 7158. All orders not expressly modified remain in effect.

- 1.8 The parties agree that the permit processes of the parties will remain intact. For any project or activity which has been agreed upon by the parties, the issuance of a Washington Department of Fisheries permit will be automatic. Disputes which might arise over issuance of a permit will be submitted to the dispute resolution process described in Section 14.
- 1.9 All fisheries, both recreational and commercial, are covered by the provisions of this, plan unless specifically indicated otherwise. It is the Intent of the parties that recreational fisheries be managed consistent with the standards and principles set forth in this plan, and particularly that the recreational fishing regulations adopted by the Washington Department of Fisheries shall be made in accordance with the escapement and allocation provisions of this plan. However, it is recognized by the parties that because of the na-

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

2.0 DEFINITIONS

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

Adult Fish

A mature salmonid returning to spawn.

Affected Party

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

Allocation Equivalent

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

Allocation Unit

A management unit or group of management units with similar timing for which harvest scares are calculated.

Equilibrium Brood Program

The standard mode of operation for existing facilities/functions, associated with intervention in one or more of a salmon's life history stages.

Escapement

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

Evaluation Fishery

A commercial fishery conducted for the purpose of acquiring technical or management information.

Future Brood Planning Report

The annual expression of the equilibrium brood program as it pertains to the coming year's run of salmon.

Management Period

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

Management Unit

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

Maximum Sustained Harvest (MSH)

The maximum number of fish of a management unit that can be harvested on a sustained basis, measured as the number of fish that would enter fresh water to spawn in the absence of fishing after accounting for natural

mortality. MSH is intended to mean maximum sustained harvest to Washington fisheries.

MSH Escapement

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

Natural Spawning Area

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

Parties

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

Primary Management Unit

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

Prior Interceptions

Harvest of a run by fisheries outside of its region of origin or immature fish within their region of origin computed separately for treaty and non-treaty fishermen.

Region of Origin

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

- (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)

Oncorhynchus gorbuscha (pink, humpback, humpy salmon)

Salmo gairdneri (Steelhead)

Secondary Management Unit

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

State

Washington Department of Fisheries (WDF)

Stock

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

Test Fishery

An agreed-upon fishery conducted on a limited basis for the purpose of acquiring technical or management information. Any fish taken in test

fisheries may not be sold for personal profit.

Tribes

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

3.0 ESCAPEMENT

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

3.2 The parties shall determine and agree as to primary and secondary management unit status. In making this determination, at least the following factors should be taken into account: (a) harvest management conflicts between harvest rates appropriate to harvest fish returning to hatcheries and fish returning to natural spawning areas simultaneously; (b) the management history pertinent to the stocks; (c) the present or future production potential of the stocks; (d) unique characteristics of the

stock with respect to behavior, physiology, or morphology which might be desired for future stock enhancement; (e) the technical feasibility of achieving escapement allowances in the short and/or long term; (f) legal obligations of the parties; (g) substantial intra- and inter-specific conflicts; and (h) impacts on existing fisheries of attempting to reach MSH escapement level according to a set time schedule. The primary or secondary status of a unit may be changed only by agreement of the parties.

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

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

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

- (1) Test fisheries
- (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 escapements 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 circumstances, 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.
- 3.10 Escapement goals shall be established annually by agreement between the parties within the time frame outlined in Section 6 of this plan.
- 3.11 Except as otherwise agreed by all affected parties, escapement goals established under this section shall not be changed during the season.
- 4.0 EQUILIBRIUM BROOD PROGRAM
- 4.1 The affected parties shall reach agreement in a document on an equilibrium brood program, in conjunction with the development of the regional plans (Section 13).
- 4.2 The equilibrium brood document shall provide a description of the agreed-to equilibrium brood program. This document will express a description of each facility and its functions, including at least the following:
- I. Operating Entity
 - II. Station/Facility Name
 - III. Station/Facility Description (characteristics)
 - IV. Species
 - Activity (transfer, release, etc.)
 - Number
 - Type (egg, fry, fingerling, etc.)
 - Size of Release/Transfer
 - Time of Release/Transfer
 - Preferred Stock
 - Destination (disposition of fish)
 - V. Station Contingency Plans (allowable operation alternatives)
 - VI. Comments/Footnotes
- 4.3 The equilibrium brood document as it exists on November 1 (or other

agreed-to date) provides the basis for the development of the future brood planning report, as outlined in Sections 5 (status reports) and 6 (schedules) of this plan.

- 4.4 No modifications may be made to the equilibrium brood program without prior agreement of the affected parties. Notice of proposed modification shall be provided at least 30 days prior to the proposed action, unless otherwise agreed to by the affected parties.
- 4.5 Changes or additions to the equilibrium brood program must be compatible with the management of primary management units and with the rights of the affected parties. Any party proposing a modification to the equilibrium brood program shall provide the following information:
- I. Name of Project
 - II. Originating Entity
 - III. Purpose
 - IV. Analysis of benefits and costs, including at least consideration of species interactions, effects on genetic stock integrity, and cost-effective mitigation of adversely affected stocks
 - IV. Analysis of benefits and costs, including at least consideration of species interactions, effects on genetic stock integrity, and cost-effective mitigation of adversely affected stocks
 - V. Facility Characteristics
 - A. Location
 - B. Design
 1. Water Source
 2. Anticipated Watershed Modification
 - VI. Species

Number

Activity (transfer, release, etc.)

Type (egg, fry, fingerling, etc.)

Size of Release/Transfer

Time of Release/Transfer

Preferred Stock

A. Timing

B. Disease History

C. Source

Destination

VII. Harvest Management Strategy

A. Harvest Area

B. Harvest Time

C. Expected Exploitation Rate

D. Conflicts With Other Stocks or Fisheries

E. Allocation Implications

F. Number of Adults Needed for Escapement

VIII. Station Contingency Plans (addressing VI and VII)

IX. Other Comments (marks, etc.)

5.0 TECHNICAL AND MANAGEMENT REPORTS AND DOCUMENTS

The timely exchange of Information and management recommendations is vital for the preparation of management options as well as for the review and performance auditing of the management actions undertaken by the parties. Management reports and documents prepared by the parties facilitate the management process by:

- a) presenting data, methods, analyses, and recommendations in an organized fashion;
- b) identifying areas of disagreement; and
- c) providing a basis from which the parties may proceed to technical and policy agreements. Annually, the parties shall provide the reports and documents listed below

within the time frame established in Section 6 of this plan.

5.1 Basic Resource Management Documents

Certain components of Puget Sound salmon management form the basis for specific annual management plans and are not expected to change significantly from year to year. Basic resource management documents describe these components separately from the detailed pre-season planning for a specific season. The parties shall jointly develop the following basic resource management documents and shall reach agreements on any modifications to these documents on an annual basis in accordance with the schedule in Section 6. The parties shall also reach agreement on the exact form of these documents (e.g., they may consist of annual written reports, computer files, a single source document with annual amendments, etc.), and which if any documents may be combined for simplicity.

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

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

5.1.3 A third basic resource document shall contain the best cur-

rent estimate of MSH escapements for management units, required in Section 3, and the data, analyses and methods used to establish these estimates. This document shall also contain agreed-upon methods for estimation of actual spawning escapements achieved each season.

5.1.4 A fourth basic resource document shall contain agreed-upon methods for conducting post-season run reconstruction. This document shall detail methods by area for post-season estimation of total run size for each Puget Sound management unit.

5.1.5 The parties may, by agreement, formulate other basic resource documents.

5.2 Pre-Season Management Reports

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

5.2.1 One pre-season report shall provide an assessment of the status of all management units which return and/or are harvested in Puget Sound and justification(s) for management recommendations. The following topics shall be included: (1) recommended management periods for each run by management area; (2) pre-season run size forecasts for each

management unit, including such background information as brood year escapement to natural spawning areas, quantities of off-station plants, and releases from hatcheries; (3) an outline of the methods and analyses used to compute the forecasts, along with quantitative measures of the degree of precision or confidence that can be applied to the forecasts; (4) recommended spawning escapement goals for each management unit and methods and rationale to determine them; (5) predicted levels of harvest and/or harvestable numbers, including expected incidental catches; (6) quantitative forecasts of prior interceptions and remaining allocations for each allocation unit and all background information and estimation methods used; (7) harvest management recommendations and justification for each management area covered by this plan; and (8) an outline of anticipated test and evaluation fishery needs.

5.2.2 A second pre-season report shall be the future brood planning report which will contain the following information for each facility in the equilibrium brood document: (1) escapement needs and details of the utilization of adult spawners by species and stock, and (2) details of the rearing and release of juveniles by species and stock, transfers between facilities, marks to be applied, release location and schedule, and age, size and numbers of juve-

niles at release. In addition, this report shall indicate any anticipated deviations from the equilibrium brood document.

5.2.3 A third pre-season report shall contain methods to provide in-season estimates of run size and allocation. It shall also include methods to apportion catches from areas having a mixture of stocks from two or more regions of origin. Pre-season forecasts have often been found to be unreliable. In-season estimates of run sizes obtained during the passage of a run are direct measures of the quantity of fish present and are generally more accurate than pre-season forecasts. In-season run size estimates shall be made for every run unless the parties agree that a usable updating method is not available. Topics in this report shall include: (1) a description of the quantitative methods (models) to be used for in-season run size estimation, the data or other information on which these models are based, quantitative indications of the reliability of the models, expected impact on escapements and/or allocations, and limitations on the use of the models; (2) methods for the in-season adjustment of management periods; (3) methods for the in-season adjustment of allocations; and (4) methods for apportioning mixed-stock catches to each management unit.

5.3 Post-Season Reports

A post-season audit report is necessary in order to permit an assessment

of the parties' annual management performance in achieving spawning escapement, enhancement, harvest and allocation objectives. A post-season report will be jointly prepared by the parties. Differences among the parties in data or information interpretation shall be documented in this report. This report shall be prepared in accordance with the schedule in

Section 6 and will generally include at least two years of information: preliminary data for the immediately preceding season and final data for prior years. The parties are encouraged to reach agreement on the various data and analyze components of this report as data become available throughout the year.

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	Chum
Basic resource management documents finalized				11/1		
Co-op egg requests received	12/15	1/1	1/15	1/15	2/1	2/1
Escapement estimates compiled and available	12/15	1/15	2/15	2/15	3/1	3/15
Preliminary PSF established ^{1/}	-	12/1	1/8	12/1	1/8	1/8
Post-season audit report and soft catch available	1/1	1/23	3/1	3/1	3/15	3/15
Recreational management proposals available				1/15		
Pre-season forecasts completed/exchanged	1/8	2/1	3/8	3/8	3/23	4/23
Pre-season recreational management planning completed				2/15		
Scale data available				3/1		
CWT data available	3/1	3/1	3/1	3/1	3/15	3/15
Resolution of pre-season forecast conflicts completed	1/23	2/15	3/23	3/23	4/15	5/8
Future brood egg requests, commercial management recommendations, and proposed escapement goals exchanged	2/1	3/1	4/8	4/8	5/1	5/23
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
Resolution of pre-season commercial management conflicts completed	3/1	4/1	5/23	5/23	6/15	7/8
Initial position statement on co-op egg requests sent out	2/15	3/15	4/23	4/23	5/15	6/8
In-season update methods exchanged/completed	2/15	4/1	5/1	5/1	5/15	6/15
Response from co-ops to initial position received	3/1	3/23	5/8	5/8	6/1	6/23
In-season update method conflicts resolved	3/1	4/15	5/23	5/23	6/8	7/8
Draft update method report released	3/15	4/23	6/1	6/1	6/15	7/15
Final position on co-op requests sent out	3/15	4/15	6/1	6/1	6/23	7/15
Final status and future brood reports released	3/15	4/15	6/1	6/1	6/23	7/15
Final update method report released ^{2/}	4/1	5/1	6/15	6/15	7/1	8/1
Commercial hard data available				7/1		
Sport hard data available				8/1		

^{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 PFMC.

^{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.

Editor's Note: The preceding image contains the references for footnotes: ¹, ².

7.0 MANAGEMENT PERIODS

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

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

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

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

7.5 Management periods may be adjusted to begin on the nearest Sunday

and end on the nearest Saturday to simplify processing of regulations.

8.0 TEST AND EVALUATION FISHERIES

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

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

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

8.3 Certain criteria shall be evaluated before these proposed test and evaluation fisheries are implemented. These include, but may not be limited to: (1) whether the information to be collected is needed to meet in-season or general management needs; (2) whether the fishery will significantly impact escapement and/or allocation objectives; and (3) whether the pro-

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 PFMC.

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.

posed fishery is an appropriate method for collection of the desired data.

8.4 All test fisheries shall be monitored by fisheries management agency 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.

9.4 The maximum harvest rates in each catch area shall be determined separately for each primary management unit, taking into account catches of that unit that have occurred or are expected to occur. Of the harvest

rates computed for each catch area, the lowest rate shall prevail in the management of the area during the course of the run, provided, however, that all affected parties may agree to a lower harvest rate.

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

10.0 ALLOCATION OF HARVEST

10.1 Shares shall be computed separately for each species and region of origin, unless otherwise agreed by all affected parties.

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

10.3 The parties agree to consider annually methods that provide management flexibility to achieve fair sharing of fish in ways that will minimize or eliminate the need for equitable adjustments. Methods to be considered include, but are not limited to, special fisheries, adjustments across regions or species, hatchery fish agreements, production increases or changes, stratified allocations, allocation of species separated by timing, and management refinements. The methods to be employed must be agreed to by all affected parties; they shall be decided upon

annually on a regional basis (except where more than one region is affected).

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

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

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

or

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

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

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

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

10.8 Catches made in Puget Sound marine waters having a mixture of stocks from two or more allocation units will be apportioned in accordance with

methods established pursuant to Section 5.2.3.

11.0 COORDINATED INFORMATION SYSTEMS

Coordinated information systems are the means by which the parties compile, exchange, and utilize fisheries resource management information. The coordinated information system shall contain resource data and information required for coordinated fisheries resource management. This information may be broadly classified into three categories.

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

11.0.2 Analytical tools and procedures consisting of methods used for run forecasting, updating, catch allocation, regulation, evaluation, escapement estimation, and other resource management tasks.

11.0.3 Biological parameters and analytical results, including resource inventory Information, mortality rates, etc.

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

11.1.1 Detailed and consistent documentation is fundamental to the utility of fishery resource management information. This documentation is necessary to ensure that

quality, consistency, and validity of information can be assessed by all parties. This documentation should include criteria useful in discriminating between alternative candidates for best available data, such as bias, precision, correlation coefficients and other statistical properties of estimation methods. Adequate documentation is a prerequisite to making an informed decision as to what constitutes the best available information for any management application.

11.1.2 The timeliness of information availability to all parties is crucial to the planning and regulatory processes. Deadlines for preparation and submission of management information will be in accordance with Sections 5 and 6 on reports and schedules.

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

11.1.4 All information provided to the coordinated information system is the sole property of the party providing it. Disclosure of fisheries information by a party to another party is not a waiver of confidentiality nor is it deemed to be a release of such information for purposes other than fisheries management planning and management under this plan. No party may voluntarily release information or data received from another party without that party's consent, whether to another party or an outside agency, including agencies of the United States

Government. If a party is compelled by legal process to release such information, it shall do so only after notification to all affected parties. However, nothing herein is to be construed as relieving any party of any obligation under any law or any administrative or judicial order to timely furnish any information or data to any state, federal, or international governmental body or officer.

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

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

11.3.1 The hard and soft data systems shall include all commercial catches for treaty and non-treaty fishermen. The systems shall also include fishing effort information, ceremonial and subsistence catches, and the number of fish taken home by fishermen during commercial fisheries.

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

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

11.3.4 Processing of fish tickets, collection of data, correction of errors, and finalization of data shall be carried out under an agreed-upon joint catch monitoring system which recognizes the need and responsibility of each party to correct its own fish ticket information. Primary emphasis will be on achieving completeness and accuracy in the initial preparation of the fish ticket. Further, the parties recognize the need for rapid entry of ticket information into the soft and hard data system.

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

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

12.0 TIMING AND CONTENTS OF FISHING REGULATIONS

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

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

12.3 The filing of all emergency regulations shall be in accordance with the Order re: Notification and Effective

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

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

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

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

13.0 REGIONAL MANAGEMENT PLANS

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

14.0 DISPUTE RESOLUTION

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

14.2 In order to foster the continued vitality and refinement of this cooperative planning and management relationship, the Director of the Department of Fisheries and the Chairman of the Northwest Indian Fisheries Commission (or their designees) will jointly plan for and sponsor an annual

pre-season meeting to be held no later than February 15 at which policy leaders and their technical advisors from all parties will meet. This meeting shall accomplish at least the following items:

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

14.2.2 Identify issues which may potentially divide the parties or which have been identified in the past but have not yet been resolved and give to policy and/or technical subgroups or committees assignments and schedules for addressing these issues;

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

14.2.4 Agree on a deadline by which each issue identified under subsection 14.2.2 will either be resolved, resolved for the coming season only so that a longer schedule can be used for a permanent solution, or referred to the pre-season dispute resolution process of subsection 14.3;

14.2.5 Identify those individuals (in addition to the Director of Fisheries and the Chairman of the Northwest Indian Fisheries Commission) who will have the authority to invoke the Dispute Resolution process. These designees shall be in policy/leadership positions;

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

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

14.2.8 Receive and discuss a report from the previous year's chair of the panel which describes the disputes, and particularly the types of recurring disputes, which were not being resolved through the cooperative planning and management process and therefore became the subject of Dispute Resolution;

and conduct such other business as they deem advisable.

14.3 Pre-Season Dispute Resolution

Should the cooperative planning and management process described in subsection 14.2 fail to adequately address or resolve a dispute, the dispute may be referred to policy persons designated under subsection 14.2.5. They may attempt to resolve the matter themselves without involving a mediator from the panel. If that attempt is unsuccessful, or immediately after the referral, either person may require the matter to be mediated. They may initiate mediation by notifying the chairman of the panel and the other involved party(ies). It shall be the responsibility of the chair to appoint a mediator from the panel.

14.3.1 The first step in the mediation shall be to reach agreement on the ground rules, including such matters as a description of the issue(s) in dispute, a listing of the parties to the dispute, a deadline by which the issue will be resolved, and whether the mediator shall be assisted by technical advisors. Unless any party objects, ground rules will include those specified in Section 14.3.5 A, B, D, E, F, G, H and L (except

delete the word "technical"). All parties shall be represented in the dispute by policy level, not technical, persons. Those representatives may have assistance from policy, legal and technical advisors, as they see fit. The mediator may have advisors only from the Technical Advisory Group as specified under 14.2.7.

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

14.3.3 Where mediation has failed to resolve a policy or legal 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 ex-

changed 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.

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 proceeding shall be provided a reasonable opportunity to review and comment upon the report of the technical dispute resolution proceedings before the report is made final. Comments received shall be considered part of the record of the dispute resolution proceeding. Proceedings may be recorded at the request of any disputant and any recording shall be made a part of the record. Reports of proceedings, together with a copy of the record before the proceedings shall be submitted to the parties to the dispute. Reports of proceedings shall be distributed to any fishery manager upon request. The decision and report shall be made in a timely fashion.

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

14.3.6 Following the procedure of 14.3.3 and 14.3.4, policy leaders from the state and tribes shall meet to discuss the resolution of issues submitted to those procedures. They may then negotiate over any and all issues to attempt to reach a mutually agreeable settlement, regardless of the outcome from sections 14.3.3 or 14.3.4.

14.4 In-Season Dispute Resolution

The purpose of the in-season dispute resolution process is to provide a fair procedure through which timely and often immediate decisions can be made. As with pre-season disputes, it is the parties' intention and purpose to reach voluntary and mutually acceptable solutions to problems, particularly without the need to go to court. It is also recognized, however, that in-

season settlements of disputes frequently will have to be made very quickly and with limited or conflicting available data. Therefore, the decisions reached through the in-season dispute resolution process shall be binding only for that season and shall not be considered precedential in any manner. For the purpose of this section, in-season will be defined as the period beginning 10 days prior to the management period for the expected species and area.

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

14.4.2 Where other resolutions are not possible for technical disputes, a party may request an FAB in the same manner as 14.3.4 and 14.3.5, and must request an FAB before proceeding to court.

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

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

14.6 There shall be review of this entire dispute resolution process by the parties at the annual meeting provid-

ed for in 14.2. The parties shall seek to agree on improvements and modifications of this process in order to promote voluntary and informal agreements and to avoid litigation of disputed issues.

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

ORDER RE HOOD CANAL
MANAGEMENT PLAN

No. 9213, Ph. I

(Proceeding 83-8)

(July 3, 1986)

McGOVERN, District Judge.

On October 6, 1983 the Point No Point Treaty tribes requested declaratory and injunctive relief to implement a Hood Canal Salmon Management Plan that had been agreed to in 1980. That request was referred to United States Magistrate John I. Weinberg for a Report and Recommendation. During the proceedings before the Magistrate the Point No Point Treaty tribes and the Washington Department of Fisheries agreed to settle their dispute by negotiation of a new Hood Canal Salmon Management Plan. The parties have now negotiated a new plan.

It is therefore ORDERED that:

1. The request of the Point No Point Treaty tribes for declaratory and injunctive relief is dismissed, and

2. The Hood Canal Salmon Management Plan, dated October 9, 1985, attached to this Order, is made an order of this Court and is enforceable as such.

HOOD CANAL SALMON
MANAGEMENT
PLAN

1.0 Preamble

1.1 This plan is the result of a series of discussions and negotiations between policy makers and the technical staffs of the parties with the intent of establishing a long-range management plan for salmon in Hood Canal. This plan is intended to comply with and address all regional issues required by the Puget Sound Salmon Management Plan and meet the guidelines for regional plans as suggested by the Salmon and Steelhead Conservation and Enhancement Act. This plan supersedes the previous Hood Canal Plan (signed December 30, 1980).

1.2 This plan recognizes that a detailed watershed management planning process is beginning for all of the Puget Sound sub-regions. It is understood that the Hood Canal Salmon Management Plan is one component in the development of an overall Puget Sound Regional Plan. It is also understood that tribal and state representatives who participated in developing the Hood Canal Plan will also be involved in the reconciliation process that is necessary between sub-regional plans and eventually regional plans; i.e., Puget Sound, Coast and Columbia River.

1.3 The purpose of this plan is to establish guidelines for the harvest, pro-