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The Honorable Barbara J. Rothstein

APR 28 1997

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

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

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WESTERN WASHINGTON AT SEATTLE

UNITED STATES OF AMERICA, et al.,

Plaintiffs,

v.

STATE OF WASHINGTON, et al.,

Defendants.

Cause No. 9213  
Subproceeding No. 96-3

STIPULATION AND ORDER  
CONCERNING CO-  
MANAGEMENT AND MASS  
MARKING

1. Stipulation.

1.1. The purpose of this Stipulation is to reaffirm and help clarify established principles and guidelines affecting management of fisheries resources subject to the authorities and obligations of the various Washington treaty tribes and, on behalf of the State of Washington, the Washington Department of Fish and Wildlife ("WDF&W"). This Stipulation does not precisely define nor does it create, expand, or diminish any party's<sup>1</sup> legal rights or jurisdictions, provided, however, that procedural rights are created by paragraphs 1.7, 1.8, and 1.9.

1.2 The WDF&W and each of the signatory Washington treaty tribes have

<sup>1</sup> "Party," as used in this stipulation, means only the signatories to this stipulation, not all parties to United States v. Washington.

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cc: BJK, 9213 encl.

1 independent and differing authorities, mandates and responsibilities for developing and  
2 implementing management programs to protect, enhance, and utilize fish and wildlife  
3 resources in a sustainable manner within their respective jurisdictions.

4  
5 1.3 The WDF&W has certain responsibilities for managing fish and wildlife  
6 resources and non-treaty fisheries within the boundaries of the state and adjacent to the  
7 Washington coast. This jurisdiction and responsibility must be exercised in conformity with  
8 the state's obligations to comply with treaty Indian fishing rights reserved by the tribes by  
9 federal treaty and/or defined by federal court decisions and orders. The treaty tribes have  
10 certain responsibilities for managing fish and wildlife resources and treaty fisheries within  
11 their reservations and certain fisheries resources and treaty fisheries within and/or passing  
12 through their respective usual and accustomed areas. This jurisdiction and responsibility  
13 also must be exercised in conformity with rights reserved by federal treaty, as interpreted  
14 by federal court decisions and orders.

15 1.4 The overlapping nature of their respective jurisdictions and authorities  
16 creates a co-management relationship between the state and the treaty tribes in the sense  
17 that: WDF&W and the respective tribes have certain authorities that potentially pertain  
18 to the same fisheries resource, there is a need for all parties to cooperate in the discharge  
19 of their respective authorities, certain federal court orders prescribe cooperative and  
20 coordinated fishery management actions and activities, and generally, the application of  
21 state law to treaty fisheries is preempted unless such application is in compliance with  
22 applicable federal court orders. Various state/tribal plans and intertribal plans and  
23 numerous federal court orders prescribe how the WDF&W and the tribes are to exercise  
24 their respective authorities. These plans and court orders reflect the fact that actions taken  
25 by one party often can affect other parties, and that the multi-jurisdictional nature of  
26 management can lead to conflicts between the parties.

1           1.5    To minimize such conflicts, and to promote effective and efficient  
2 management of those fish and wildlife resources that are subject to both state and tribal  
3 management, the WDF&W and tribes have developed a cooperative management approach  
4 to the exercise of their respective authorities. The approach was developed and must be  
5 maintained based on the principles of government-to-government relationships. Its  
6 successful implementation depends upon joint planning, regular consultation, explicit  
7 objectives, and agreed data to foster consistent and coordinated management programs,  
8 while respecting the legitimate decision-making authorities of each party.

9  
10           1.6    WDF&W and the treaty tribes shall continue to refine this cooperative  
11 approach to further increase efficiencies, improve resource management, reduce conflict  
12 between objectives, and avoid the need to resort to judicial or other third party dispute  
13 resolution mechanisms. It is expected that the cooperative approach will continue to  
14 resolve the majority of issues. Because the WDF&W and the treaty tribes have legitimate  
15 prerogatives in the exercise of their authorities and conduct of their fisheries, disputes  
16 between competing or coexisting objectives or conflicting interpretations of applicable law  
17 sometimes may arise.

18           1.7    Before taking any fisheries management action which would reasonably be  
19 expected to affect another party's fisheries any party shall give reasonable written notice  
20 of the action to each affected party. Notice shall be considered reasonable if it provides  
21 adequate time under the existing circumstances for any affected party to notify the  
22 proponent that the particular issue is disputed, and allow time for a request for dispute  
23 resolution as provided in this document, as well as application to the court for relief as  
24 contemplated by the provisions of the court's August 23, 1993 Order Modifying Paragraph  
25 25 of Permanent Injunction.

1           1.8     The WDF&W and tribes shall, prior to taking any disputed action affecting  
2 another party, attempt a voluntary resolution of any dispute which the routine cooperative  
3 planning process described above fails to anticipate or adequately resolve. They shall refer  
4 the dispute to policy representatives designated by the affected tribes and the WDF&W.  
5 Any party may request a policy meeting on an issue in dispute upon timely, reasonable and  
6 written notice of the existence of the dispute to all affected parties. Utilizing support staff  
7 as they may desire, they will attempt promptly to resolve the dispute, utilizing a  
8 government-to-government approach.

9  
10           1.9     No party shall take any action regarding the management of its fisheries  
11 which would reasonably be expected to affect another party's management of its fisheries  
12 without agreement of that party or without first following the dispute resolution procedures  
13 contained in paragraphs 1.7 and 1.8 of this Stipulation, Provided, however, that harvest  
14 management regulatory actions or intertribal agreements already subject to existing court  
15 orders shall comply with those orders, rather than this paragraph.

16  
17           1.10    In the event that the WDF&W and treaty tribes are unable voluntarily to  
18 resolve a dispute in accordance with paragraph 1.8, a party may resort to judicial review  
19 and resolution, pursuant to rules and procedures previously established by the federal  
20 court.

21           1.11    To foster the continued vitality and refinement of this cooperative  
22 management approach, the Director of the WDF&W and tribal representatives will  
23 conduct an annual meeting to be held no later than May 15 of each year, unless otherwise  
24 agreed by all parties. The agenda for discussion shall include, but not necessarily be  
25 limited to, the following:  
26

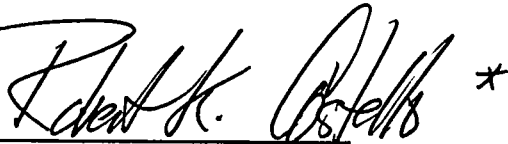
- 1.11.1 Evaluating the effectiveness of the previous year's harvest management plans and practices in meeting established management objectives;
- 1.11.2 Considering new and/or reviewing ongoing management processes, planning activities, policies, and practices;
- 1.11.3 Review the previous year's habitat, enhancement, enforcement, and other fisheries management programs;
- 1.11.4 Establishing priorities and action plans for management activities for the coming year;
- 1.11.5 Identifying any disagreements to be resolved by policy and/or technical subgroups;
- 1.11.6 Identifying ways to improve the cooperative working relationship in the coming year; and
- 1.11.7 Other issues, as jointly agreed.

1.12 In dealing with federal and international fisheries management entities, including, but not limited to the Pacific Salmon Commission or its successor-in-interest, the parties shall be guided by this document and the co-management principles enunciated herein, and shall cooperatively develop regulatory or management actions which are consistent with federal court orders in *U.S. v. Washington* and *Hoh v. Baldrige*.

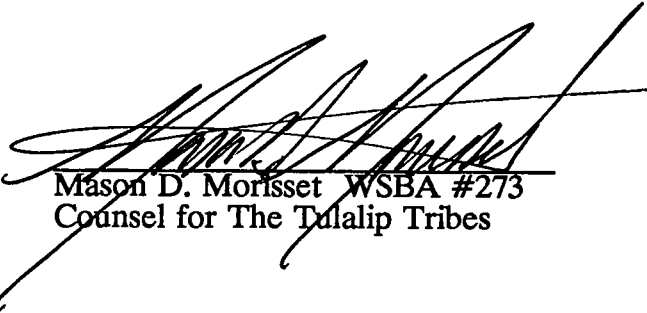
1.13 The parties hereby agree to the Coho Mass Marking and Selective Fisheries Implementation Plan ("Implementation Plan"), attached hereto as Exhibit A and incorporated herein by reference.

1 1.14 The undersigned parties agree to jointly request that the court adopt this  
2 Stipulation and Implementation Plan as an order of the court.

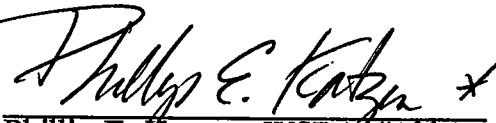
3 DATED this 28<sup>th</sup> day of April, 1997.  
4

5  \*

7 Robert K. Costello WSBA #12920  
8 Assistant Attorney General  
9 Counsel for the State of  
10 Washington

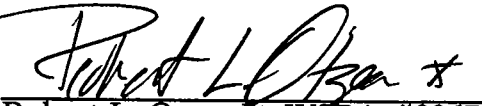


Mason D. Morisset WSBA #273  
Counsel for The Tulalip Tribes

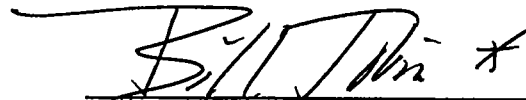
11  \*

12 Phillip E. Katzen WSBA #7835  
13 Counsel for Jamestown, Lower  
14 Elwha, and Port Gamble Bands  
15 of S'Klallams, Skokomish  
16 Tribe, Nooksack, Stillaguamish,  
17 Squaxin Island, and Nisqually  
18 Tribes

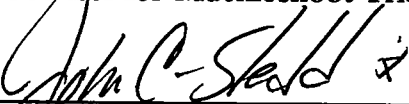
Daniel A. Raas WSBA #4970  
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19  \*

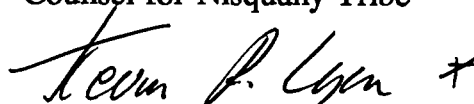
20 Robert L. Otsea Jr. WSBA #9367  
21 Counsel for Muckleshoot Tribe

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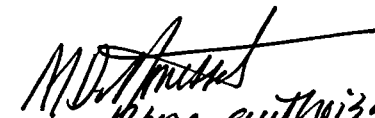
22 Bill Tobin WSBA #4397  
23 Counsel for Nisqually Tribe

24  \*

25 John C. Sledd WSBA #19270  
26 Counsel for Suquamish Tribe

 \*

Kevin R. Lyon WSBA #15076  
Ron Whitener WSBA #24072  
Counsel for Squaxin Island Tribe

\* By  per phone authorization

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*Allan E. Olson \**

Allan E. Olson WSBA #11520  
Alix Foster WSBA #4943  
Counsel for the Swinomish Tribe

Richard Reich WSBA #8178  
Counsel for Quinault Indian  
Nation

*Marc D. Slonim \**

Marc D. Slonim WSBA #11181  
Richard M. Berley WSBA #9209  
Counsel for Makah Indian Tribe

Nettie L. Alvarez WSBA #12283  
Richard Ralston WSBA #8546  
Counsel for the Hoh Tribe

*Debra S. O'gara \**

Debra S. O'Gara WSBA #21246  
Counsel for Puyallup Tribe

*\* By [Signature]  
Per [Signature]*

ORDER

1  
2           1.       The court has jurisdiction over the subject matter of this subproceeding.

3  
4           2.       The court has examined the foregoing Stipulation and the attached "Coho  
5 Mass Marking and Selective Fisheries Implementation Plan." The court finds that the  
6 Stipulation and Implementation Plan represent a fair and equitable settlement of the  
7 disputes in this subproceeding.


8           3.       The Stipulation and "Coho Mass Marking and Selective Fisheries  
9 Implementation Plan" are hereby adopted as a court order and incorporated herein. This  
10 Order is binding on the signatories to the Stipulation and shall be enforceable by them in  
11 the same manner and same respect as any other district court order in this case. In the  
12 event that the continuing jurisdiction of the court in *United States v. Washington* shall be  
13 terminated, then the court retains such jurisdiction as is necessary to enforce the terms of  
14 this Agreement.

15           4.       This order binds all parties which signed the Stipulation, including the State  
16 of Washington. However, the provisions concerning the notice and dispute resolution of  
17 actions reasonably expected to affect fisheries, shall, at this time, apply only to the  
18 Washington Department of Fish & Wildlife or its successor-in-interest, and any other state  
19 agency which may in the future be assigned any of the current functions of the  
20 Department, whether by legislative, judicial or executive action, and to other state agencies  
21 carrying out fisheries management functions pertaining to fin fish. This order is not  
22 intended to affect the claims of the treaty tribes that all departments of Washington state  
23 government should be bound by similar provisions. This order is without prejudice to those  
24 claims or positions being raised or advocated in the future.  
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1  
2 5. This is a final order in this subproceeding. The agreed preliminary  
3 injunction, and the Order Modifying Temporary Restraining Order and Establishing  
4 Schedule dated December 24, 1996, are hereby dissolved and replaced by this order. This  
5 subproceeding is deemed complete.

6 DONE IN OPEN COURT this 28<sup>th</sup> day of April, 1997.

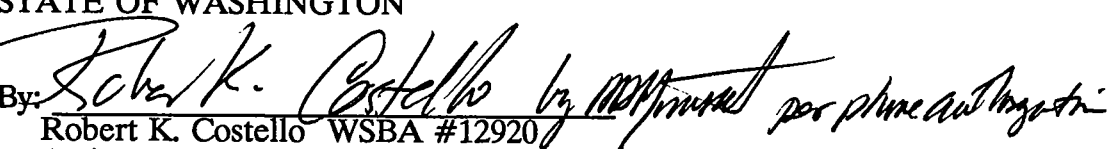
7  
8   
9 Hon. Barbara Jacobs Rothstein  
United States District Judge

10 Presented by:

11 MORISSET, SCHLOSSER, AYER & JOZWIAK

12  
13 By:   
14 Mason D. Morisset WSBA #273  
Counsel for The Tulalip Tribes

15 STATE OF WASHINGTON

16  
17 By:  by *not present per phone call to judge*  
18 Robert K. Costello WSBA #12920  
Assistant Attorney General  
19 Counsel for the State of Washington

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21 t:\txt\0075\95804\stip-ord.wp  
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