

# MEMORANDUM OF AGREEMENT

## Between the Yakama Nation and Washington Department of Fish and Wildlife Regarding Tribal Fishing Below Bonneville Dam

JUN 21 2017

HOWARD  
MAY 2017

### Recitals

Article 3 of the Yakama Treaty of 1855 (12 Stat 951) secures to the Yakama Nation “the right of taking fish at all usual and accustomed places.” Yakama Nation fisheries occur primarily in Zone 6 of the Columbia River, which is the reach between Bonneville and McNary dams, and at other usual and accustomed fishing places within the tribe’s ceded area described in Article I of the Yakama Treaty.

The Yakama Nation additionally reserves a claim to usual and accustomed fishing places below Bonneville Dam, although the scope and nature of Yakama fishing rights in the lower Columbia River have not been adjudicated in a federal court process. The Washington Department of Fish and Wildlife acknowledges that the Washington Supreme Court ruled in *State v. James*, 72 Wn.2d 746, 435 P.2d 521 (1967), that Yakama Indians historically fished at the Cascade Fisheries, but the Court did not specify how far downstream such fishing may have occurred.

WAC 220-32-055(2)(a) identifies the downstream limit of year-round tribal subsistence fishing on the Columbia River as being a line across the river approximately ¼ mile upstream from Bonneville Dam. Under WAC 220-32-055(2)(c), generally-applicable state recreational fishing regulations apply to tribal subsistence fishing downstream of that line.

Yakama Nation fishing regulations allow tribal subsistence fishing with lawful gears “in the waters of the Columbia River” without reference to a downstream boundary in order to preserve possible future claims to treaty-secured usual and accustomed fishing places below Bonneville Dam.

The lack of an adjudication regarding the Yakama Nation’s claim, and the inconsistency in state and tribal regulations pertaining to waters below Bonneville Dam, create uncertainty of the applicable law for enforcement on Yakama Nation fishers. Tribal fishers lawfully fishing below Bonneville Dam under tribal regulations may be exposed to citation under the state regulation in WAC 220-32-055. Neither the Washington Department of Fish and Wildlife nor the Yakama Nation finds it desirable that a state court prosecution under WAC 220-32-055 be the forum for adjudication of the Yakama Nation’s claim of usual and accustomed fishing places below Bonneville Dam.

It is the desire of the Washington Department of Fish and Wildlife and the Yakama Nation to resolve the uncertainty of enforcement and reach agreement on the terms by which Yakama Nation subsistence fishing regulations shall apply to Yakama tribal members fishing below Bonneville Dam.

This Memorandum of Agreement is intended to clarify the conditions that shall govern the enforcement of Yakama fishing regulations in the waters of the Columbia River below Bonneville Dam.

### Principles

1. This Agreement is intended to be applied narrowly to resolve the inconsistency in state and tribal subsistence fishing regulations for the Columbia River below Bonneville Dam. It sets no legal precedent nor does it prejudice any future attempt by the Yakama Nation to prove claims to usual and accustomed fishing places in the lower Columbia River nor the state's claim that state law applies in full to tribal members in the waters of the lower Columbia River.
2. The parties agree that only upriver-bound salmon and steelhead subject to treaty/non-treaty allocation in *United States v. Oregon*, Civil No. 68-513 (D. Or.), are included within the scope of this Agreement. Tribal harvest of lower-river stocks not currently subject to treaty/non-treaty allocation must be addressed in future claims to usual and accustomed fishing places brought by the Yakama Nation.
3. The harvest of upriver-bound salmon and steelhead by Yakama fishers below Bonneville Dam counts toward the treaty shares described in *US v Oregon* harvest management plans.
4. This Agreement is between the Washington Department of Fish and Wildlife and the Yakama Nation. No other entity is entitled to, nor bound by, the terms of this agreement.
5. Yakama Nation fisheries below Bonneville Dam pursuant to this Agreement will be monitored and enforced by the Yakama Nation. Catch numbers will be reported as part of the normal treaty subsistence catch reporting process.
6. The Yakama Nation and the Washington Department of Fish and Wildlife will annually review subsistence regulations and attempt to minimize potential conflicts between the treaty and non-treaty fisheries.

### Terms and Conditions

1. For the purposes of this Agreement only, the Washington Department of Fish and Wildlife will refrain from enforcing WAC 220-32-055 against enrolled members of the Yakama Nation fishing from the Washington shore of the Columbia River in compliance with Yakama Nation subsistence regulations in the waters of the Columbia River from 600 feet below the fish ladder at the Bonneville North shore powerhouse to a line perpendicular to the Columbia River at Beacon Rock.

2. Yakama tribal members fishing below Bonneville Dam pursuant to this agreement and Yakama tribal regulations must carry an official Yakama Nation enrollment card and produce it upon request by state or tribal enforcement agents. A person who produces a Yakama Nation enrollment card will not be required to produce a state fishing license.
3. The parties will meet following the spring chinook season to discuss whether this Agreement should be continued, amended, or terminated. If the meeting does not occur, the Agreement will stay in place for another year.
4. To protect sturgeon that spawn in the area covered by this Agreement, fishing with lures or baits or other gears designed to catch sturgeon is prohibited between May 1 and August 1 of each year. This closure does not apply to any other species.

For the Yakama Nation:

For Washington Department of Fish and Wildlife:

  
Lavina Washines, Chair  
Yakama Tribal Council

  
Dr. Jeffrey Koenigs, Director

Date: July 3-07

Date: 6/12/07