



Quileute Natural Resources

QUILEUTE INDIAN TRIBE

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Robert Lohn
Regional Director
National Marine Fisheries Service
7600 Sand Point Way NE
Seattle, WA 98915-00700

RECEIVED

May 23, 2002

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PFMC

Dear Mr. Lohn:

This letter is to once again voice the Quileute Tribe's serious disappointment with NMFS's continuing failure to take any action to protect the Tribe's treaty crabbing rights. The Tribe hereby informs NMFS that the Tribe is preparing to file suit against Commerce and NMFS if they do not take prompt remedial action.

NMFS has paid only fleeting attention to the Tribe's repeated and consistent demands over the last eight months. Since October 2001, the Tribe has presented compelling evidence on numerous occasions of the State of Washington's mismanagement of the Dungeness crab fishery off the Washington coast, and has explained how this mismanagement has prevented the Tribe from taking its 50% treaty share of the resource for many years. The Tribe presented this evidence to NMFS representatives at a meeting in early December 2001, and has supplemented that information in letters dated January 11, 2002, February 7, 2002, and March 13, 2002. NMFS's only response to the Tribe has been a perfunctory letter dated February 12, 2002, in which NMFS asked a few questions about the crab fishery. Although the Tribe had already addressed those issues, it nevertheless responded with a letter dated March 13, 2002, once again setting forth the reasons why immediate federal action was necessary to protect the Tribe's treaty fishing rights. As of today's date, some two months later, the Tribe has still not received any response from NMFS to the Tribe's March 13 letter, and NMFS has given no indication that it will take action to protect the Tribe's treaty rights in any way.

Tribal representatives were informed by Bill Robinson last week that NMFS will be responding the Tribe's March 13, 2002 letter at some unspecified time in the coming few weeks. The Tribe eagerly anticipates that response and sincerely hopes that NMFS responds with prompt remedial action, and not with further questions or suggestions that a solution be sought elsewhere.

Please understand that the Tribe takes this matter very seriously. The Tribe demands both that NMFS take short-term action (such as implementation of emergency regulations and/or other interim measures) and long-term action (such as the development of an FMP

for Dungeness crab) sufficient to protect the Tribes' treaty fishing rights. There is no dispute that NMFS and Commerce have fiduciary duties to protect treaty fishing rights and to ensure that fisheries are managed in a manner that ensures the Tribe's right to take their 50% share of the resource. *Washington v. Daley*, 173 F.3d 1158 (9th Cir. 1999); *Parravano v. Brown*, 70 F.3d 539 (9th Cir. 1995). The Ninth Circuit has held that this duty requires Commerce and NMFS to implement emergency regulations to protect treaty fishing rights where, as here, those treaty rights are jeopardized by non-treaty harvests. *See, e.g., Parravano v. Brown*, 70 F.3d 539 (9th Cir. 1995). These obligations are not affected in the least by the State's involvement in management of the crab resource or by alternate means the Tribe might have to resolve disputes with the State. The Tribe looks to NMFS as the party to work with the Tribe to solve this pressing issue, as NMFS has non-delegable fiduciary obligations to the Tribe.

The Tribe is concerned that it will be necessary to file suit in the very near future if NMFS does not promptly take satisfactory action. Prior to doing so, the Tribe would like to meet with NMFS representatives one last time. The Tribe prefers that this meeting take place within the next two weeks, and that both policy and legal representatives attend. Please contact me at your earliest convenience to arrange for such a meeting.

The Tribe looks forward to hearing from you as soon as possible.

Sincerely,

Mel Moon 

Mel Moon
Quileute Natural Resources

cc:

Jim Harp, Pacific Fishery Management Council
Hans Radtke, Pacific Fishery Management Council
Stan Speaks, Bureau of Indian Affairs
Randy Fisher, Pacific States Marine Fisheries Commission