



June 2015

Northwest Indian Fisheries Commission

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William Stelle
NOAA NMFS Western Region
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Seattle, WA 98115

Dorothy Lowman
Chair, PFMC
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Portland, OR 97220-1384

Dear Mr. Stelle and Ms. Lowman:

We are writing to you as leaders of your respective organizations, to seek your assistance towards 1) improving relationships with the treaty tribes in the conduct of Pacific Fishery Management Council (PFMC) business, 2) conforming to law in dealing with tribes, and 3) using the best available science in establishment of Essential Fish Habitat designations and management measures for groundfish in the Pacific Ocean. The Northwest Indian Fisheries Commission (NWIFC) supports its Pacific Coast members and shares their concern regarding recent decisions affecting Pacific groundfish habitat—decisions made within the PFMC and by NOAA staff.

The treaty tribes of the NWIFC have been extremely disappointed with the PFMC and National Marine Fishery Service (NMFS) handling of the Pacific groundfish essential fish habitat (EFH) review process. The coastal tribes—Hoh, Makah, Quileute, and Quinault—have committed considerable resources to this process. Their policy representatives and technical staff are heavily involved and have played a leadership role in the EFH review, as we are with all PFMC matters, because we know that working together to find solutions is more effective than acting as adversaries. Unfortunately, the current EFH review is repeating the past mistakes of politics trumping science. We understand that science must always be weighed with policy and politics, but when such decisions put treaty rights at risk, we must call that to your attention. The treaties are the highest law of the land (Article VI, Constitution), but this is a glaring example of our treaty rights being put at risk.

Our usual and accustomed fishing grounds (U&As) are not just fishing areas for us. They are the areas of the ecosystem that we *reserved* (i.e. they were not granted to us) in treaties with the United States to support our people and our way of life. Anything that happens within these areas affects us. We have the right, and take very seriously the responsibility, to co-manage our treaty-reserved resources and the habitat they depend on using the best available science. Likewise, we

expect NMFS to uphold its trust responsibility to support us in co-managing habitats in our U&As consistent with Executive Order 13175. That Order states, in part, *“Agencies shall respect Indian tribal self-governance and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.”*

During development of Amendment 19 to the Groundfish FMP in 2005 our coastal tribes told NMFS that the closures in their usual and accustomed (U&A) areas were an erosion of treaty rights and that there was insufficient consultation. There were also no clear, measureable management goals identified for the ecological closures put in place with that action. Please understand that even if tribes can fish in EFHs, the changes in fishing pressures can have impacts on our fishing grounds, indirectly, so all decisions as to usage and applicability affect us.

A recent vote on the geographic scope of EFH proposals for the west coast was held at the PFMC meeting held in Rohnert Park, California (April, 2015). The original motion by Washington State referred to the work being conducted with the coastal treaty tribes and NOAA to develop a Habitat Framework to better characterize habitats and species dependence on them within the treaty U&A areas. That motion asked that the treaty ocean areas north of Grays Harbor, Washington be removed from consideration for EFH proposals while the State of Washington, coastal treaty tribes, and NOAA developed that Habitat Framework. An amendment to the motion was made by Oregon striking exclusion of these tribal U&A areas which passed by a margin of 8 to 5. While we were disappointed by all of the Council members that supported this amendment, we were shocked when the NMFS representative, our treaty resource trustee, voted in favor of the amendment that would allow EFH proposals by any parties to be considered within these U&A areas. This is especially puzzling since 1) NOAA is a major partner in the Habitat Framework and understands its importance and 2) unlike Oregon, has familiarity with treaty tribes’ ocean co-management rights. From our perspective, it appeared that there was a concerted effort to circumvent the Habitat Framework effort in favor of a behind-the-scenes bargain being struck by environmental non-governmental organizations and trawl industry representatives.

The recent action at PFMC to include the coastal tribes’ U&A areas in the geographic scope of action over our objections is a huge step backwards in our relationship. It was reminiscent of earlier days when our treaty rights were outvoted by non-tribal interests, rather than a reflection of our current leadership and co-management within PFMC. It is dismissive of the considerable efforts of the tribes and our staff in the PFMC process and it is dismissive of the Olympic Coast Intergovernmental Policy Council efforts to work with NOAA to develop a scientific process for describing, understanding, and managing habitats. Further, it appears to conflict with the Habitat Framework goal towards developing sound science for decisions regarding marine ecosystems. We remind NOAA again at this point of EO 13175 and the requirements of Section 3 on Policy making Criteria in particular, which require the federal agencies to defer to Indian Tribes when adopting standards for policy objectives. We understand that PFMC is not a federal agency. We therefore prevail upon NOAA as our trustee to act in ways that will encourage PFMC members to protect treaty rights.

Further, we recently learned that the NMFS staff lead on EFH, Mr. Steve Copps, was reassigned. Mr. Copps was not only the agency expert on EFH, he has done considerable work with treaty tribes to improve the working relationship and communication between tribes and the agency, to support treaty rights and sound science in the EFH review process, and to uphold the trust responsibility in a meaningful way. The timing of his reassignment along with his vocal support of treaty rights and outspoken criticism of process deficiencies lead us to believe that he was reassigned to silence him. The message that this action sends to other NMFS staff is more than troubling. To us it represents direct hostility to treaty rights and the agency's trust responsibility.

The four coastal tribes believe that there is still room to fix this process and they have the support of all 20 tribes in the NWIFC. We want to schedule a meeting with you and coastal tribes' representatives to discuss how we can find consistency between federal and tribal policy within this current review process and meaningfully reaffirm the trust responsibility within NMFS. Steve Copps needs to be reinstated to be working on groundfish EFH and other PFMC processes related to habitat, and coral and sponge management. Just as importantly, we want to improve the process in the future so that it includes meaningful consultation with tribes and is founded on sound science and the habitat needs of fish.

Sincerely,



Lorraine Loomis
Chairperson

cc: Barack Obama
Raina Thiel, Whitehouse
Kathryn Sullivan, NOAA
Christy Goldfuss, CEQ
Jay Jensen, CEQ
Senator Maria Cantwell
Senator Patty Murray
Congressman Derek Kilmer
NWIFC Commissioners