



State of Washington
Department of Fish and Wildlife

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October 16, 2015

Mr. Will Stelle, Regional Administrator
National Marine Fisheries Service
7600 Sand Point Way NE, BIN C15700
Seattle, Washington 98115

Dear Mr. Stelle: *Will*

There were two discussions that occurred at the Pacific Fishery Management Council's meeting in September that caused concern for the Washington Department of Fish and Wildlife (WDFW) regarding the responsibilities of the National Marine Fisheries Service (NMFS) that I wanted to bring to your attention. The first relates to the recent U.S. District Court order determining the usual and accustomed fishing grounds ("U&A") of the Quileute Tribe and the Quinault Indian Nation (QIN), and the other is with regard to groundfish essential fish habitat (EFH). We describe our concerns for both of these topics in greater detail below.

U.S. District Court Order

Prior to the U.S. District Court's order, there had been no formal adjudication of the western boundary for any tribe, except the Makah Tribe. For practical purposes, NMFS promulgated fishing regulations at 50 C.F.R §660.50 that included extending the western boundary for the Makah Tribe southerly for the Quileute and Hoh Tribes and QIN. These federal fishing regulations were developed as temporary management measures in the absence of adjudicated U&As and are now in conflict with the U.S. District Court order relative to Quileute's northern boundary and QIN's western boundary.

Additionally, the western boundary for the Hoh Tribe in NMFS fishing regulations presents another potential conflict. It is the State's position that the law requires the Hoh Tribe request a formal adjudication of the western boundary of their U&A prior to expanding their fisheries into offshore waters. We have no indication from the Hoh Tribe that they are interested in any such expansion at this time and would propose that their current fishing area be reflected in federal regulations until such time their offshore U&A is adjudicated.

We understand that the NMFS rulemaking process takes some time to complete, yet we also understand the court order to have been effective upon issuance. Having conflicting regulations adds management and enforcement challenges to an already complex regulatory system. For these reasons, WDFW requests NMFS revise its fishing regulations to reflect the boundaries consistent with the court order.

Groundfish EFH and Rockfish Conservation Areas (RCAs)

In September, the Pacific Council identified a suite of alternatives to consider revisions to groundfish EFH closed areas (i.e., primarily adding one or more new areas that would be closed to trawl fishing) and

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potential changes to RCAs (i.e., reopening all or portions of areas that have been closed to trawl fishing for the last decade in an effort to help rebuild overfished rockfish stocks).

As part of this discussion, the Coastal Treaty Tribes requested that NMFS have timely government-to-government consultations with them—collectively and/or separately—to discuss these proposed changes prior to the Council and NMFS taking final action. For the past two years, the Coastal Treaty Tribes' requests for government-to-government consultation on this matter had focused solely on the EFH measures (i.e., additional EFH closed areas) and only those that overlapped with their respective U&As, which WDFW agreed was appropriate. However, in September, the Tribes broadened their request to include the consideration of reopening RCAs to the non-tribal trawl fishery and to include the Pacific Ocean waters outside their U&As. This expanded scope was apparently discussed beforehand with NMFS staff (as the NMFS representative actually amended the motion to broaden the scope on behalf of the Tribes), but neither the NMFS nor tribal representatives thought to discuss it with WDFW.

This inaction thereby demonstrates our concern, which is that NMFS does not appear to fully appreciate and support the State of Washington's role as co-managers in this matter. To consult with the Tribes on this issue without the presence of the State is to speak with only a subset of the affected parties.

While we understand that NMFS has a Treaty Trust Responsibility to the Coastal Treaty Tribes, there have been significant consequences to the Washington-based trawl fishery and adverse impacts to our coastal communities as a result of the RCAs. Arguably, the RCA closure north of Cape Alava has negatively affected the Washington trawl fleet more so than the fleets of the other states, and our coastal communities have place-based businesses that rely on healthy, sustainable groundfish fisheries. Therefore, in addition to considering how any proposed actions may affect the Tribes' treaty rights, the potential consequences to the non-tribal fishery and our coastal communities as a result of inaction also need to be taken into account. To that end, we believe it is imperative that NMFS include WDFW as co-managers in discussions with the Tribes to afford us an opportunity to bring our knowledge to the table, and engage in the process directly.

If you have any questions, please contact me at (360) 249-1211 or Michele.Culver@dfw.wa.gov.

Sincerely,



Michele K. Culver
Regional Director

cc: Pacific Fishery Management Council members
Jim Unsworth, WDFW Director