

HISTORICAL RECORD OF FISH RELATED ISSUES ON THE
SKAGIT RIVER

SKAGIT COUNTY, WASHINGTON

1897 THROUGH 1969

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June 4, 2005

Updated and republished June 2008



www.skagitriverhistory.com



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PREFACE

This paper is the third of a series of papers that will be prepared regarding issues concerning the history of the Skagit River floods and other issues as well. Ninety eight percent of the verbiage contained herein comes directly from historical newspaper articles gleaned from a project that began in July 2004, when Skagit County Public Information Officer, Dan Berentson, contacted me and asked if I would like to help him review all the old articles of the Skagit Argus. I and my son Josef, jumped at the opportunity. We had barely began the project when we all realized that this was an opportunity to preserve the past for use in the present and future generations of our valley and we expanded the project to include not only the Argus, but the Burlington Journal, the Courier Times and the Skagit Valley Herald.

It was originally planned to just concentrate on flood events themselves, however we quickly realized that this was an opportunity to preserve the written record of the history of our valley on many issues. Three hard copy books have been published and are available in local libraries and from the Skagit County Public Works Department containing the hard copy articles mentioned herein. The individual articles are also accessible by clicking on the PDF versions in this paper as well as the following two web sites: www.skagitriverhistory.com and http://www.skagitcounty.net/Common/Asp/Default.asp?d=PublicWorksSalmonRestoration&c=General&p=HistoricIndex.htm#_ftnref1. Neither Dan nor I benefit in any monetary gain for this project.

I would like to take this opportunity to publicly thank Stedem Wood, publisher of the Skagit Valley Herald for his cooperation on this project as well as Tony Flynn of the Argus and Ruth Richardson of the Courier Times. Local newspapers do not just bring us the day to day news. They are the recorders of history in the making and are without a doubt one of the most important elements in our society. Without them, the past could so easily be forgotten.

I would also like to thank the members of my immediate family, my wife Linda of 25 years, and my two sons, Josef (my webmaster) and Jeffery (my PDF master). Having your family's support and understanding on any endeavor you set out on is priceless.

Larry Kunzler





Levees and Fish Discussed Early in Skagit History

Fish issues have been important and discussed publicly almost from the beginning of Skagit County's history.

Upon the call of Representative J. E. Nelson quite a large number of Skagit county people who are interested in the subjects of dikes and fisheries gathered in the court house in Mount Vernon last Tuesday and a thorough discussion was had of the needs of the county in relation to the above subjects. In the matter of improving the diking system it was the universal opinion that the first and most important steps to be taken is to secure the removal of the "boom works" from the mouth of the river so that the water will carry its load of debris out to sea instead of depositing it in the river channels where it forms a dam to the free outlet. Old settlers related that in the early days before the erection of the "boom works" there were three clear channels out to deep water with a depth of from 16 to 18 feet of water, but immediately following the construction of the "boom works" the channels began to fill up with drift until now there is but one navigable channel and that has only a depth of about 6 or 8 feet in a most tortuous channel. . . . In regard to the fishing interests it was the general opinion that laws should be passed prohibiting the erection of traps in or near the mouth of any river or in any "fish runway." And further that the state would foster the fishing industry by the establishment of an additional number of hatcheries. (Source: [1/4/1897 TSN](#))

Flood Control Projects Impacted Fish Runs

The cutting off of old channels especially in the estuaries no doubt had a serious impact on fish runs.

"Beginning with the junction of the north and the south forks in the delta of the river, **the energy of the current is greatly dissipated by numerous channels and on the tide flats by a general dispersion of the current in all directions.**" The report¹ favored the partial closing of the North Channel to increase the current energy in the main channel by way of the south fork. For this work Maj. Chittenden estimated a cost of \$95,250. . . . In a previous report, April 15, 1907, he had pointed out that the total commerce on the river for 1906 reached 188,283½ tons, valued at \$1,766,452. . . . As a result of a personal examination of the Skagit river from Sedro-Woolley to its mouth, including both north and south forks, the conclusion has been reached that the only means of securing a reliable channel or entrance to this river that will benefit existing commerce is by the construction of a dike at the mouth of the south fork, following generally the line laid down in the report of Maj. Chittenden, **and by cutting off or regulating the flow**

¹ Several times this report recommends cutting off the flow of river water through the subsidiary channels. The work that was carried out was further described in COE Cavanaugh Report 12/6/12 & COE Woodruff Report 10/10/19 and COE Butler Report 2/8/28. What this strongly suggests is that it was not the farmers at least on Fir Island that blocked off the estuary flows but the U.S. Army Corps of Engineers. Clearly this had a tremendous impact on fish.



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through the other channels. . . . “The estimate is as follows: 16,000 feet of retaining dike, at \$80,000; regulating dikes and mattress sill at head of north fork, \$6,000; **cutting off subsidiary channels at the delta**, \$5,000; superintendence and contingencies, 10 percent, \$9,000, total \$100,000. (Source: [2/15/09 TSN-H](#))

Fish Hatchery At Baker Lake Stops Work For Winter

There used to be a fish hatchery on Baker Lake before the construction of the dams. Construction began on the hatchery in 1898. It was operated by the federal government. They used to carry out the sockeye and steelhead fry by horseback to the other fish hatchery at Birdsvew.

Foreman Joe Kemmerick of the Baker Lake fish hatchery came into town Thursday with the news that work at the hatchery had been stopped for the winter and all extra men laid off. Only enough men will be retained at the fisheries station to look after the eggs in the hatchery building and care for to property at the lake. . . . These men will keep things moving until the weather moderates in the spring, when the full crew will again be put to work running the station and rebuilding the plant destroyed by fire last summer. During the severe cold last month Baker Lake was frozen over and work at the sawmill stopped because logs could not be towed across the lake to operate the mill. . . . The men now at the hatchery will have a considerable job on their hands in about a month, when about **two and a half million eggs** now being eyed at the lake will have to be carried out and shipped to the Birdsvew hatchery, where they will be hatched. These will have to be packed out on horses, with the trail at its worst. . . . It will require about eight trips with the pack train to carry out all the eggs to be sent to Birdsvew. (Source: [1/17/20 C.H.](#))

Seattle To Build State Hatchery On Upper River

Seattle City Light was supposed to build a state ran fish hatchery on the Upper Skagit. This is further evidence which strongly suggest that the fish made it past Newhalem. 38 fish hatchery's existed in the State of Washington in 1920.

C.F. Uhden, engineer in charge of the Seattle power project on the upper Skagit, has notified the state fish commissioner that the city will construct a state fish hatchery on the Skagit. The city is required to build fishways over all its power dams to permit salmon to reach spawning grounds or build a hatchery. As there will be five large power dams in the completed unity the city has decided to build the hatchery. . . . It is believed that a site near the first dam will be selected. The hatchery will cost between \$10,000 and \$15,000, and will be the thirty-ninth in the state, which gives this state the largest number of any state in the United States. (Source: [3/20/20 C.H.](#))



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Forest Service To Survey Road From Here To Baker Lake

There was proposed a road "Wagon trail" to be built to Baker Lake Hatchery which would replace the "horse trail" that had been used for 20 years to pack out the salmon/steelhead fry to Birdsvew.

According to an announcement made this week by George H. Cecil, district forester of the Portland office of the forestry service, the government will survey a route for a wagon road from this city to the Baker Lake fish hatchery this summer, and that the road will be built next year. It is reported that the money for the construction of the road is available, as \$100,000 of the funds appropriated for road building within forest reserves has been set aside for this project. There are two routes to the Baker Lake hatchery from this city, one on each side of the Baker River, and so far there has been no information given out as to which route will be used by the forestry service, but it is the general opinion that the road will be on the west side of the river. (Source: [4/1/22 C.H.](#))

O'malley Is Appointed As Fish Commissioner

Henry O'Malley of Seattle was appointed Wednesday by President Harding to the office of commissioner of the bureau of fisheries, to succeed Dr. Hugh M Smith, who resigned some months ago. ... Mr. O'Malley entered the fisheries service 20 years ago as apprentice fish culturist at St. Johnsburg, Vt. In 1898 he was transferred to the Pacific coast and placed in charge of the government hatchery at Baker Lake, near this city, and made his headquarters here for several years, later serving in the Columbia river district and in Alaska before he was placed in charge of all coast hatcheries four years ago. (Source: [5/13/22 C.H.](#))

Fish Hatchery Man Has Exciting Trip To Lake

Seth Meadows, who is employed at the Baker lake fish hatchery, made the trip to the lake last Friday, just following the snow storm, and had an exciting time before he reached his destination. He left Concrete in the forenoon on a saddle horse and leading two pack horses. He made the trip easily until some distance beyond the ranger station on the Baker River, when he found the trail filled by snow slides and traveling difficult. When he reached the 15-mile board he was compelled to unpack and leave his pack horses and continue with his saddle horse, alternately riding and walking. When he had gone a short distance farther he ran into a heavy slide and in digging a trail through the horse broke away and in some way went over the bank into the canyon. As it was quite dark at that time, he could not see what became of the horse, but naturally concluded that it had been killed, so went on foot until he reached a forestry service cabin, where he camped for the night, walking on in to the lake Saturday morning. Meanwhile his non-arrival caused uneasiness among the crew at the lake, and after several telephone messages along the line, searching parties were formed and covered a part of the trail. After a good rest Meadows was none the worse for his trip; the horse presumed killed managed to get back on the trail and was found Saturday, unhurt, so no damage was done. However, Meadows is not anxious to make the trip again after a heavy fall of snow. (Source: [2/24/23 C.H.](#))



Preliminary Work On Baker Lake Road Started This Week

The Baker Lake fish hatchery was located across the lake from the hot springs.

There will be a passable road from Concrete to Baker Lake before the end of this year, according to plans of the government forestry service. ... It is understood that the terminus of the road to be built this year is near **the hot springs, across the lake from the fish hatchery**. ... The present plan is to build a passable road nine feet wide, with turnouts at convenient points, the road to be widened and otherwise improved later when more funds are available and more data at hand as to amount of the traffic the road will have to stand. ... It will be necessary for Skagit county to build about two miles of road from the end of the present road at Bear creek to the boundary of the forest reserve, and plans are now being made to open up this piece of road, so as to have it ready for use by the time the highway in forest reserve is under construction. (Source: [6/16/23 C.H.](#))

Power Company To Continue Work On Baker River Plant

Work was to start on Lower Baker dam by April 1st. U.S. Fish & Wildlife Service filed protest to building of dam due to impacts on salmon runs and fish hatchery. The Baker Lake hatchery was the only one handling sockeye salmon.

The Stone & Webster Corporation has definitely decided to proceed with the development of the Baker River project, and the latest reports are that actual work towards building the huge dam and power plant will be started next week. The men in charge of the preliminary work at the camp and at the dam site have been notified to have everything in readiness for a crew of 150 men by April 1, and the buildings are being rushed, provisions, and supplies hauled in and other work hurried to completion in order that the camp will be ready for the new men. ... Dennis Winn of the United States Bureau of Fisheries has filed a protest with the state against granting a permit for the dam, claiming that it will put the Baker lake fish hatchery out of commission. The Baker lake hatchery is the only hatchery in the country handling sockeye salmon, and if the fish are stopped from coming up the Baker river, the plant will be unable to secure eggs for hatching. It is believed that this matter will be adjusted at the hearing before the state board next month. (Source: [3/27/24 C.H.](#))

Steelhead Trout Are Planted In Grandy Lake

George Gallagher, deputy county game warden, made a trip to Grandy Lake yesterday, forenoon with 50,000 steelhead trout fry from the government fish hatchery at Birdsvew and liberated the little fishes in the lake for the benefit of fishermen in years to come. The county game commission has received over 400,000 trout fry from the hatchery, which have been planted in various lakes and streams in the county. (Source: [8/7/24 C.H.](#))



167 Commercial Fishermen Charged With Illegal Fishing

As of June 1924 it was illegal to not only put a gill net in a river but within 3 miles of the mouth of the river.

Notice of a restraining order and order to show cause, with summons and complaint are being served this week upon 167 fishermen who have been charged with operating in the protected area at the mouth of the Skagit river. The restraining order was obtained in the superior court here Friday and states that the fishermen were violating Order No. 8 made in June 1924 by the State Board of Fisheries. These fishermen are alleged to have used gill or drift nets. (Source: [10/2/24 Argus](#))

Continuance of the LaConner fish case until after the supreme court of the state has given a decision on a similar case, now pending in the higher court, has been announced. . . . **167 FISHERMAN CHARGED** Notice of a restraining order and an order to show cause, with summons and complaint were served the first week in October on 167 fishermen, charging them with operating within the closed area at the mouth of the Skagit river. The fishermen were alleged to have used gill nets. (Source: [10/23/24 MVDH](#))

Fish Expert Here To Study Problem Of Saving Salmon

Professor at University of Illinois employed to study how to save the sockeye from dam construction. He also studied the Baker River fish hatchery in 1915. *“Around the country dams have prevented millions of salmon from getting to their spawning streams.”*

Dr. Henry B. Ward, professor of zoology at the University of Illinois and who is known as the leading authority in the United States on the sockeye salmon is spending several weeks in this city and at Baker lake is trying to study out some feasible means of getting the salmon past the power dam of the Stone & Webster company on the Baker river to the spawning grounds at Baker lake, and of getting the small salmon fry from the government hatchery at the lake down the Baker on their way to salt water. Dr. Ward was here ten years ago and made an investigation and collected data at the Baker Lake hatchery and on this trip is also checking up the results of his investigation at that time. Dr. Ward says that on account of the damming of the streams in various parts of the country for power projects, million of salmon are prevented from getting to their spawning grounds, and the small fish are prevented from going down stream, and that careful and scientific study must be given the problem of getting the fish over the dam. He believes that a solution is possible, but is not ready to announce what it may be. According to Dr. Ward, the Baker river sockeyes are the best in the country, and the Baker Lake hatchery has been doing excellent work, but that the salmon in the river will be practically exterminated unless some means is devised to get the fish past the dam. In some places experiments have been made to get the small fish down the river by having them go through the turbines, but the pressure is so great that nearly all the fish were killed. (Source: [7/29/25 C.H.](#) See also [The Influence Of A Power Dam In Modifying Conditions Affecting The Migration Of The Salmon](#), by Dr. Henry B. Ward, University of Illinois, 1927)



Fish Hatchery At Birdsview Damaged

As referenced in previous articles, there used to be a fish hatchery at Birdsview.

Warm winds and rain Wednesday following several days of warmer weather caused the Skagit river and its tributary streams to overflow in several places east of this city, blocking the road west of Hamilton and undermining the Great Northern track between Lyman and Sedro-Woolley. Other damage all along the river between here and Marblemount was reported, but so far the main river had not flooded any territory. Backwater and high water in the creeks was responsible for most of the damage, together with slides along the road. . . . Grandy Creek is a foot higher than it has been in years, and washed out the dam at the fish hatchery at Birdsview. (Source: [10/15/25 CT](#))

Where Salmon Scale Ladder At Baker River Dam

The Steelhead salmon “run” was used as a “test” of the fish ladder in the article below. Compare this article to what was stated by the U.S. Fish & Wildlife Service in 1949 ([USFW letter to Corps](#) (re dams at Faber & Sauk sites) and 1969 ([USFW Interim Report to Corps](#)).

The above pictures of the fishway of the Baker river dam, near this city, show the first device ever perfected for raising fish over an obstruction over 50 feet high. The fishway has been proven successful during the past month while the sockeye salmon run was on, when thousands of salmon on their way to the spawning grounds at Baker Lake were lifted over the dam. About two years ago three important power developments were under way in this state, each of which would apparently close an important spawning stream to the propagation of salmon. The Baker river project was the first that would be completed and as the Baker is the only stream in the state in which the sockeye salmon spawn, the problem here was the first to be considered. A conference between state and government fisheries officials and representatives of the power companies was called and at this meeting various means for lifting the salmon spawn, the problem here was the first to be considered. A conference between state and government fisheries officials and representatives of the power companies was called, and at this meeting various means for lifting the salmon over the dam were taken up and considered. From the many plans, submitted, the fishway now in operation was worked out and was installed by the Puget Sound Power & Light company at a cost of about \$75,000. The plans finally worked out by the engineers of the power company, with the assistance and cooperation of Chase Pollock, state supervisor of fisheries, and L. E. Mayhall, state superintendent of hatcheries. During the course of construction and while experiments were being made with a run of steelhead salmon, it developed that if this could be retained at each point of his journey up the fish ladder, one of the difficulties of handling the fish would be solved. . . . The whole scheme of the Baker river ladder consists of a huge forebay where a fish can fight the swift water and when tired enter the traps on the upstream side of the fishbay, and once entering one of these traps, cannot return. The ladder begins at this point and goes by easy stages up the canyon walls until it reaches a series of flumes built along the river channel. The length of the flume is about 700 feet. The last ladder has for a pool a moveable car. When a quantity of fish of sufficient



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number has negotiated the last pool of the ladder, the car, which is fitted with a door, is then pulled up a steel incline where the salmon and water combined are emptied into a trough leading to Lake Shannon above. The salmon, therefore, do not at any time leave the water and are simply transported in a large tank full of water to the lake above. (Source: [7/15/26 C.H.](#)) (See also [PSE Fish Enhancement Handout, Press Release: "PSE's new Baker River \\$50 million fish passage system generating success in first few weeks of operation"](#))

Baker River Sockeye Saved From Extinction

Fish ladders on Baker Dam attributed to saving Sockeye Salmon run.

The Puget Sound Power & Light Company is expending \$200,000 according to announcement just made by President A. W. Leonard, to practically double the water storage capacity behind the great Baker River concrete dam at Concrete in Skagit County. . . . This enlargement of capacity is being accomplished by increasing the height of the Baker River dam by 33 feet from its present 260 ft. to a total of 293 feet, making it one of the highest concrete structures of the kind in the world. Water storage in Shannon Lake created by the building of the Baker River Dam two years ago, is now 10,000 acre-feet but will be increased to 130,000 acre-feet by the heightening of the dam. . . . The Baker River sockeye salmon have a reputation far and wide as among the most toothsome of the salmon tribe. But for the construction of this salmon ladder and railway for the salmon they could not have survived the installation of this mighty dam. A force of some 200 men is at work on these improvements at Baker River. (Source: [5/5/27 CT](#))

New Construction On Baker River Dam Doubles Capacity

Dam height raised 33 feet to new height of 293 feet high. Almost doubled water storage capacity from 70,000 to 130,000 acre feet and they built a new discharge apron because they were worried about having the dam undermined from the fall of the water.

A few months ago the Puget Sound Power & Light company started work on raising the height of the big power dam on the Baker River, just north of town, and this work is now nearing completion. The dam has been raised 33 feet from the former level and is now 293 feet high from the bottom of the river. While the new work is only a small proportion of the total height of the dam, it just about doubles the water storage capacity of the dam, the total being increased from 70,000 acre-feet to 130,000 acre feet and so makes it one of the highest concrete structures of its kind in the world. . . . The new construction on the dam was finished just in time to avoid the spring freshet on the Baker River, the employees just having time to pour the last of the cement and remove the tools before the water started flowing over the dam, with the additional 33 feet in place. There is now about eighteen inches of water falling over the dam, and the waterfall is one of the most beautiful in the state. The construction work here has been delayed by the high water, but some of the incidental work is now being completed, and as soon as the freshet is over, the balance of the work will be finished, including the apron in front of the dam which is intended to spread the fall of the water and avoid all danger of having the dam



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undermined. The apron is also expected to greatly lessen the loss of salmon fry from the Baker Lake hatchery, a considerable percentage of which is now killed in passing over the dam. While the number of fish killed has been comparatively low, considering the millions of fry passing over the dam, it is reported that the construction of the apron will reduce the loss by more than half. ... The Baker River salmon ranks as one of the best fish in the world for table use, and but for the construction of the new plan of ladder and fishway they could not have survived the construction of the dam. (Source: [5/19/27 C.H.](#))

New Fish Hatchery Near Concrete Is Planned

The budget of the Puget Sound Power and Light company for 1929, which has been awaited by local people who were anxious to learn what improvements, if any, were planned for this vicinity, was released this week. According to Mr. Sewell, manager of the Northern district, the budget for 1929 is the largest in the history of the company and covers the most ambitious program of power development and service extension and improvement ever undertaken in a single year. ... The budget for this year does not include any appropriation for any new dam or a new unit in connection with the Baker river project. An appropriation is made for the construction of a new fish hatchery on the Baker River to obviate the necessity of transporting salmon over the dam and to replace the government hatchery on the Baker River to obviate the necessity of transporting salmon over the dam and to replace the government hatchery which has heretofore been operated at Baker lake. It is expected the new hatchery will be built before the dam, and will probably be somewhere in east Concrete. No information has been received as to when construction work would start or in regard to the size of the hatchery. This item is included in an appropriation of \$300,000 for betterments and improvements to existing plants, and it is probably that some other work will be done here during the year, in addition to the usual routine of operating the plant. (Source: [1/10/29 C.H.](#))

Skagit River Is A Mecca For Fishermen

People came from all over to fish the Skagit for Steelhead.

Fine fishing on the Skagit River plus fast automobiles plus lots of publicity has resulted in lots of fishermen. This fact has come to light recently with Sedro-Woolley and the Skagit running rampant through headlines of the metropolitan press while metropolitan fishermen clog up the trails that skirt the log jams along the river bank. . . . During the last few weeks the average daily roster compiled by the steelhead that escaped would contain names from nearly every city and hamlet north of the Columbia and local nimrods are finding it difficult to crowd their bait into the ripples of the mighty Skagit. (Source: [1/15/31 CT](#))



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Baker Lake Foreman To Supervise Hatchery

Leslie W. Dunn, foreman at the government fish hatchery at Baker Lake, left this morning for Enumclaw, where he will supervise the construction of a new government hatchery about thirty miles from that city. Mr. Dunn expects to remain at Enumclaw until the hatchery is completed, which he estimates will take two or three months. Ralph W. Young, who was recently transferred from Baker Lake to Lake Crescent hatchery, will return to Baker Lake and act as foreman until Mr. Dunn returns. Mr. Young is expected to arrive here in about two weeks, and until he comes, Harry Hill will be acting foreman at the hatchery. (Source: [7/9/31 C.H.](#))

Concrete Man Lands Whale Of A Salmon

The biggest fish story ever told in Concrete, with the fish to prove it, was spun here last Friday when Harry Harris came back from a fishing trip up the Skagit with a 61 pound Tyee salmon. This finny monster, which measured over four feet in length, was landed on ordinary casting tackle on the bar at the mouth of Rocky creek after a fight of over an hour and a half. As far as known it is the biggest fish ever taken from the Skagit near here on a hook and line. The fish was on display at the Concrete Market and Grocery most of the day Saturday and drew a large crowd, both local people and those from out of town who had heard of it while passing through. Even after being cleaned and with the head off the salmon weight 49 pound, which is a lot of weight for any whole fish. Of interest to fishermen, the Tyee was caught on a No. 4 Colorado spinner, and landed with a 38 pound test gut line. (Source: [8/16/34 C.H.](#))

Fishermen Get Break On Season This Year

The 1936 season, extending from the first Sunday in April through the last day of October, was set at the last meeting of the state commission and will remain the regular trout season until further changed by the commissioners. Bag limits on game fish will be the same as last year, anglers being allowed to catch or have in possession not more than 20 whitefish fish and one game fish. An exception lists the whitefish limit as 20 whitefish or 15 pounds and one fish. (Source: [3/12/36 C.H.](#))

Former Fisheries Commissioner Dies

Death closed the long and active career of Henry O'Malley, former United States fisheries commissioner, Friday when he passed away at his home in Seattle from heart disease, O'Malley was well known in this district, having established the government fish hatchery at Baker Lake many years ago and continuing in charge of the station for about five years after it was built. From this beginning he worked up through the department to become head of all state and then all coast stations. (Source: [4/30/36 C.H.](#))



Skagit River Fish Projects Proposed

. . . Erosion control and fishery development comprised the major items of discussion with representatives of the state department of fisheries and the Skagit soil conservation district present. . . . That plans are now being initiated for post war work in fisheries was revealed by Clausen who pointed out that the future work must **make possible greater spawning areas** and protection of river assets now available in Skagit County. In the wide-scale postwar program for Skagit county, he listed eight projects headed by the creation of a Skagit river fish hatchery. . . . Other projects in Skagit county include the **removal of barriers and dam** at Nookachamps creek; survey of additional water supply . . . Sauk river power and flood control dam site; study of the proposed Cascade river power and flood control dam site; **installation of facilities at the Baker river dam to aid fish in entering and leaving the Baker river area**; and fish way over the east fork falls of Nookachamps creek. Present work on the Skagit water problem includes the establishment of 16 gauge stations in the county. . . . The need for immediate work on the erosion problem was emphasized by Mr. Dickey as the critical situation in the Lyman-Sedro-Woolley area was again cited. (Source: [8/10/43 MVDH](#))

With the Skagit river listed as the second most valuable stream in the State of Washington, from the fisheries standpoint, representing as it does a total value of some \$1,600,000 from takes for commercial and sport fishing, the state department of fisheries is scheduling a post-war fisheries program headed by the creation of a Skagit river fish hatchery and three large stations on the main Skagit river for the study of fishing, greater spawning areas and general protection of river assets now available in Skagit County. (Source: [8/19/43 CT](#))

Skagit River Closed To Sports Fisherman

Effective April 1 and through the period ending May 27, the Skagit river will be closed its entire length from the government marker on saltwater, to the Canadian border to all sport fishing, according to the new game laws as issued by the State Game Commission. This announcement comes as a blow to the fisherman of the entire state. Hardest hit, are the residents of Skagit county who have fished the river the year around since white men first settled in the valley. With gasoline rationing pared down to two gallons per week, residents living in the towns and on the farms along the banks of the Skagit will now have to give up their "backyard" fishing and burn their precious gasoline on trips to some lake in the adjacent area on and after April 2. . . . Oddly enough effective May 1, commercial fishermen will be permitted to pursue their fishing with gill nets in the waters of the Skagit River from the junction of the north and south forks to saltwater. (Source: [3/23/44 CT](#))

Opposition of Seattle anglers swung the Washington Sports Council against supporting the newly-formed Skagit Sportsmen's association demand for keeping the Skagit River open to fishing during the next two months, Acting President Floyd McKeon reported following his return from the Council's weekend session at Yakima.² (Source: [3/30/44 Argus](#))

² 12 members of the council were from Seattle and 1 was from Everett.



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Editorial: The commission's closure order may have been ill-advised, or at least unnecessary in itself; certainly, the manner of its making was ill-advised and most unfair. . . . And little was said or heard of the decision to close the river for two months until the commission issued its 1944 season regulations in printed form a short time ago. Skagit County fishermen feel they should have had something to say about what was done to their river fishing grounds. They feel, too, that, granted the river's fish population does need some attention; there are factors other than the take of the anglers that may be diminishing the steelhead runs.³ Why doesn't the game commission do something about the seal herds that are reported to be invading the delta in increasing numbers—they're voracious when it comes to fish—and why doesn't the commission take some steps toward wiping out some of the birds that continually prey on small fish up and down the river? Not to mention a stronger fish hatching and planting program? These are some of the questions Skagit fishermen are asking. . . . The game department should have to answer more fully than just to say, "We have set a precedent for closing streams that have flipper or cut-throat runs at this time of year." (Source: [3/30/44 Argus](#))

So much interest and open condemnation of the state game department was expressed by sportsmen and others, following the recent announcement of the closing of the Skagit for its entire length to all sport fishing, from the first of April to the twenty-eighth of May that it seemed advisable to contact Game Protector Morris Splane and learn the game department's side of the story. . . . Splane gave the following reasons for the closing of the Skagit . . . "...Fundamentally it was for the management of the steelhead and cutthroat in the costal waters, and for their protection during two periods or stages in their life's history. We have assembled considerable data which indicates that the majority of young steelhead go to salt water when the approximately two years of age. At this time many of them, if not most of them, are legal sized fish. Their migration from fresh to salt water extends over a period of several months. It is heaviest from about the first of April to the middle of May. It has been found that these fish may be readily taken at this time and it follows that if the catch of these immature fish is large, the numbers of returning adults is proportionately reduced. Therefore, in order to avoid depletion from this cause, we find that it is necessary to have a closed period so as to guarantee a sufficiently large escapement. In some of the streams, such as the Skagit, returning adult steelhead will ascend the stream during every month of the year. The winter run fish reach the peak of their run from February to April. . . . Also remember that steelhead are primarily a four year fish- that is, they reach maturity at the age of four years. ..." (Source: [3/30/44 CT](#))

Skagit Soil Conservation District Helps Farmers and Fish

Supervisors of the Skagit Soil Conservation District this week plan to "make the dirt fly" on 3750 lineal feet of open ditch construction on the Curt Wiles place, on the East Fork of Nookachamps Creek. Jack Turner, of Bow, has been engaged to complete the project with his power shovel. The drainage job is one of several in progress under the sponsorship and technical guidance of the Skagit District. . . . East Fork of Nookachamps creek is well known to local people because of the aggravated drainage problem present. Logs coming down stream during

³ One has to wonder if the "diminishing Steelhead runs were the beginning of the impacts of the dams and the other flood control efforts on the Skagit River.



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earlier logging days clogged up the stream and became compacted and then silted, until today the stream bed runs about three feet above the level of the surrounding territory. The long time drainage program to be worked out by the Skagit Soil Conservation District not only will benefit individual farmers and the general area, but also should help restore fish populations in this obstructed stream. (Source: [6/4/44 CT](#))

Loggers Warned Against Practice Harmful To Fish

A warning was issued yesterday to logging companies throughout the state by Fred J. Foster, Director of Fisheries, against unauthorized removal of gravel from stream beds and other practices by some of the operators that seriously affect the natural habitat and passage of migratory fish. ... In commenting upon the warning to loggers Foster said, "Many of the state's best salmon producing streams have been rendered impotent by practices that completely blocked the passage of spawning fish. Others have been seriously affected by gouging out valuable spawning beds for the purpose of securing gravel for road construction, while some have actually been completely diverted in order to use the stream bed for a truck road. This is especially destructive during the time the fish are spawning and when the eggs are in the gravels. (Source: [8/24/44 C.H.](#))

Large Fish Hatchery Will Be Situated Near Marblemount

Announcement was made last week that land had been purchased near Marblemount for the site of the Skagit Fish Hatchery, for which \$150,000 in funds was appropriated at the last legislature. The state fisheries, department hopes to have the new Skagit county salmon hatchery in operation within the next year, staff chiefs and members of the state legislature's joint interim committee on fisheries announced. (Source: [8/9/45 C.H.](#))

New Fish Hatchery Proposed At Marblemount

Bids will be open the first of April for the construction of the new state game department fish hatchery to be located above Marblemount, Milo Moore, state director of fisheries stated at a meeting of the Sedro-Woolley Wildcat Steelhead club at the American Legion hall here last Friday evening, which was attended by state director of game Don Clarke and other officials. The new, modern hatchery for which land has already been purchased and money appropriated, will be completed by the end of next year, Moore said. An appropriation of \$129,000, plus an additional grant of \$118,000 recently approved by Governor Wallgren, will assure Skagit county and the northwest one of the finest salmon hatcheries possible, it was pointed out. The new plant will have forty 20X80 ft. rearing ponds capable of holding 25,000 salmon fry at the start of operation. When completed the hatchery will be capable of liberating 75,000 fish a year of an average length of five inches. (Source: [12/6/45 CT.](#))

The hatchery which is intended as a rearing station, from which the Skagit, Nooksack, Stillaguamish Rivers and their tributaries will be stocked, will operate 40 concrete rearing



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pounds 80 feet long and 20 feet wide. . . . Jordan Creek, a cool mountain stream, will furnish the main water supply which will be supplemented by the almost constant temperature spring water of Clark Creek. . . . Each rearing pond will begin the season with the introduction of 150,000 young salmon. . . . The overall capacity of the station will include more than four million fish reared for a period of three months or more, and in addition approximately a million and a half will be retained and released as yearlings. . . . The Skagit hatchery has evolved as a product of the experiments and scientific knowledge gained by the State Department of Fisheries through years of experience. Actual construction is slated to begin in the spring of 1946, and the entire project will cost approximately \$165,000. (Source: [12/27/45 CT](#))

The new hatchery will be a rearing station from which the Skagit, Nooksack, and Stillaguamish rivers will be kept stocked. The new station will operate forty concrete rearing ponds 80 feet long and 20 feet wide. Also there will be constructed a hatchery building 172x46 feet, which will be of concrete with a high pitch shake roof. Each rearing pond will begin the season with 150,000 young salmon fingerlings. As planting progresses this figure will be cut to 40,000 within three months. The remainder of the fish in the ponds will be kept for a rearing period of one year. The total capacity of the hatchery will be more than four million fish reared for a period of three months or more and approximately a million and a half will be retained and released as yearlings. (Source: [1/3/46 C.H.](#))

Game Dept. To Study Fish Runs

In a move by the state game department to make close hand observations and studies of fish runs in the Skagit river and its tributaries, Biologist Douglas Williams has been assigned to Sedro-Woolley, where he will conduct extensive work for the next several years. The location of a biologist here for the sole purpose of studying the migratory runs of fish, especially in steelhead, in the Skagit, comes as a result of the game department's decision to send biologists into the field where they can make first-hand observations and obtain data necessary for the perpetuation and eventual increasing of the fish runs. . . . The location of a biologist in this area is only logical, he said, as the Skagit has probably the largest run of steelhead and migratory fish in the state. (Source: [1/11/46 CT](#))

Discuss Skagit River Projects

The upper Skagit was one of the principal subjects at the meeting of the Skagit County Planning Council, held Monday evening at Mount Vernon. Proposed subjects for the upper valley were the establishment of the federal forest experiment station, study of fish development and recommendations on flood control and hydro-electric power. The Water Resources and Fisheries sub-committee, Arthur Ward of Sedro-Woolley, chairman, made the following recommendations to the planning commission: Joint study by the Department of Fisheries and the Puget Sound Power & Light Co., of the possibility of construction a fishway over the Baker river dam; A joint study by the same parties of downstream migration of fish over the dam to determine possible ways of reducing fish loss; Joint study by the department and City Light of



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means of stabilizing flow from the power stations to reduce fish loss due to stranded fingerlings and exposed eggs at low water. (Source: [3/7/46 C.H.](#))

Dams Are A Menace To Salmon Runs

Stating that new proposals for dams in state waters are threatening the very existence of Washington's salmon runs, Milo Moore, state director of fisheries, has announced creation of a new division of his department to determine the requirements of fish life at these new developments. . . . Vigorous planning and a sensible distribution of available water supplies are the only means of providing a balanced state economy, said Moore in announcing plans for the new division. (Source: [12/15/45 MVDH](#))

Strong opposition to the proposed Faber dam on the Skagit River can be found elsewhere than in the upper Skagit valley, we find. At a Kiwanis club meeting in Mount Vernon Monday afternoon, State Senator Barney Jackson, public relations officer of the state department of fisheries, voiced his opinion that such a dam would seriously jeopardize the entire Skagit river basin's \$1,185,500 commercial fishing industry, while still remaining an ineffective solution to the flood control problem. In his talk he said that the Faber dam, if constructed, will so diminish the Skagit river in fisheries importance that it will no longer rank as a contributor to the wealth of the state. At present the river is second in importance to the Columbia river, and the new Marblemount hatchery and other work planned for the future will raise it's value over a million and a half dollars. At present the Skagit river contributes 48 percent of the commercial Chinook salmon fishing industry of the Puget Sound area. Along with this there is the sport fishing that brings many dollars to this county because of the river. (Source: [5/2/46 C.H.](#))

"You can kiss steelhead runs in the Skagit and sockeye runs at the Hope island goodbye if the army engineers go through with their plans of constructing a dam at Faber's ferry." Those were the words of Ken McLeod, well-known Seattle sportsman and writer who addressed a large gathering of sportsmen at the annual banquet of the Wildcat Steelhead club held here Thursday evening at the city hall. Faber Ferry on the Skagit River has already been surveyed by the army engineers as a site for a flood control dam. . . . The commercial and sport fishing value of over a million dollars annually as set by the department of fisheries, hardly scratched the surface, the speaker asserted. Taking into consideration the money spent by out-of-county fishermen who pay for meals, lodging, guides and sporting goods here, this figure comes close to 38 million, he said. (Source: [5/9/46 CT](#))

Editorial: The question will soon arise as to which is more important, several acres of river Skagit valley bottom land or a river full of fish for the sportsman and the commercial fisherman. We are referring specifically to the unquestionable possibility of one or more flood control dams that may be erected on the Skagit River. Surveys for such a dam at the Faber ferry have already been taken and these water barriers have a habit of popping up suddenly, especially in periods of unemployment. If such a dam were to erected on the Skagit River it would mean the saving of several acres of rich soil that is being washed away by floods. However, on the other hand, it would in all probability mean the eventual elimination of the great migratory runs of fish in the river. Past experiences with river dams have proven that even with so-called



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efficient fish ladders, they have in many cases completely destroyed fish runs. Is the value of fish runs in the Skagit more or less that the threatened farm land? In our estimation and that of state game officials and sportsmen, the fishing value is by far greater. . . . It doesn't make sense to save a few acres of farm land at the expense of one of our most important resources. (Source: [6/20/46 CT](#))

To the Editor: Your editorial of June 20, entitled "Farm Land or Fishing" states that there is a pending conflict of interest between the fishermen and the farmers of this community over prospective flood control dams on the upper Skagit river and aligns the editorial policy of your paper with the fishermen and against the interests of the farmers. Your editorial represents that the damage done by the Skagit river is limited to the loss of a few acres of farmland. This is such an understatement as to amount to a misrepresentation of the facts. You have lived by the Skagit river for over a quarter of a century and you are personally acquainted with the families of the farmers in that community who have lost their entire farms through riverbank erosion. While you have lived here, you have seen the river carry away the earnings and savings of a lifetime of hard work invested in river bank farms. You know that this erosion will continue until some means is found to regulate the spring and fall run off of water to a more steady stream. . . . Your editorial completely ignores the matter of flood damage by the river. You state that the only work required on the river is channel straightening and riverbank revetments. Just how will river straightening and riverbank revetments eliminate the periodic flood damage in this valley? The engineers state that straightening the river course will increase the speed of the current, increase the danger of flash floods, and will increase erosion. A flood which measures more than 120,000 second feet of water at Sedro-Woolley will break the dikes and flood the lower valley. . . . Certainly the matter of preservation of fisheries is a part of this problem to be solved and a most important part. In any river improvement work done, provision must be made for saving our fisheries. The army engineers are working on part of this problem right now in survey being made. Before you start taking pot shots at the army engineers, why not wait and see what solution their report contains with respect to the saving of the Skagit river fisheries? There are many other problems in connection with the development and control of the Skagit river system besides erosion, floods and fisheries. There are the problems of development of recreational facilities, irrigation, reforestation and hillside erosion, and domestic water supplies. Will it be to the best interests of this community if your paper succeeds in dividing up the people of the valley into hostile factions, each fighting the other for the benefit of its favorite project? We request the support of your paper for a program of control and development of the water resources in the county which will not favor one of the elements over the other but which will attempt to reconcile and harmonize any conflict of interest between these various projects. A. H. Ward, Chairman, Water Resources Com. (Source: [6/27/46 CT](#))

For months now the Puget Sound Mail has been trying to point out the danger of the dam building movement to the commercial fishing industry and trying to arouse LaConner fisherman to an organized effort to present the fishing industry's story. Now it appears that the men who make their living by catching and processing fish have still another fight on their hands, that of over-zealous and short-sighted sportsmen who desire to eliminate most types of commercial fishing. It would appear to the Puget Sound Mail that the sports fishermen should get together to fight for a greater fish propagation, to carry the battle to those who would place dams where spawning grounds are endangered, rather than squabble among themselves. (Source: [8/7/47 Argus](#))



Silvers and Sockeye At Baker Dam

Over 7,000 silver salmon and 4,900 sockeye salmon have been placed over Baker River dam so far this season, according to Milo Moore, Director of Fisheries. . . . The Dept. of Fisheries and the power company are now studying ways and means of improving the traps and hoisting cars to eliminate injuries and to permit the rehabilitation of **steelhead trout and Chinook salmon runs, now almost completely destroyed.** . . . Studies being conducted by Dept. of Fisheries to be completed during coming winter. (Source: [11/14/46 Argus](#))

Work Begins On State Fish Hatchery

Work on the new state fish hatchery at Marblemount was under way Tuesday of this week as Roy N. Gaasland of Bellingham, contractor who built the Marblemount school, began construction of the large project on the Cascade river. Construction plans call for a main fish hatchery building 46 feet by 172 feet of rustic stone and timber construction, 20 cement rearing ponds, a large home for the caretaker and other small buildings. The hatchery will be used to raise trout and salmon for a program of restocking the hundreds of lakes and streams in the upper valley in addition to trying to bring the fish population of the Skagit River back to normal. (Source: [7/18/46 C.H.](#))

Record Salmon Run On Baker River Dam

Over 7,000 silver salmon and 4,900 sockeye salmon have been taken over the Baker River dam so far this season, according to the state department of fisheries. The sockeye run is about normal, but the silver run is almost twice the size of any previous cyclic run since the construction of the dam. The department reports that fish trapping and handling facilities at the local dam are still far from perfect, but that the power company is cooperating in every way to aid the rehabilitation of salmon runs with existing traps. Both the company and the department are now studying ways and means of improving the traps and hoisting cars to eliminate injuries and to permit restoration of steelhead trout and Chinook salmon runs, now almost completely destroyed. Silver and sockeye salmon have reacted more favorably because they occur at the season of the year when they are more easily trapped. (Source: [11/14/46 C.H.](#))

Fish Hatchery At Birdsvew Will Be Closed

The government (federal) fish hatchery at Birdsvew will be abandoned this spring. This word was received recently from head officials of the federal fish and wildlife department under which the hatchery has been operating for the past few years after the reorganization of the old Bureau of Fisheries. The hatchery is one of the oldest in the state and had been the headquarters for fish propagation in this section for many years. The closing was made necessary by the condition of Grandy Creek. Erosion has been increasing on this stream for the past few years



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until so much silt and debris has been washed from its upper reaches that the water is no longer usable for the hatching troughs and rearing ponds. (Source: [1/23/47 C.H.](#))

Will Try To Keep Hatchery At Birdsvie

It took a little time for the news that the upper valley was about to lose the Birdsvie hatchery to sink in – but when it did people began to do a little thinking about the matter. The result was a resolution by the Birdsvie Grange that an effort be made to have the U. S. Fish and Wildlife Service continue the hatchery in operation. . . . It was pointed out that the only real reason for closing the hatchery is the silt in Grandy Creek from which the water supply is derived. This condition is caused by erosion on the upper reaches of the stream and in turn comes from logging operations which have cut the heavy cover from the watershed. . . . During its many years operation on Grandy Creek, the hatchery has paid big dividends to the upper valley, maintaining a continuous study of the sockeye run on the Baker River and the various salmon runs in the Skagit. In addition, trout from the hatchery have been placed in almost every lake in the district. The resulting fine fishing sport has brought hundreds of fishermen to the upper valley and continuation of the stocking program is necessary to hold and improve this growing recreation business. (Source: [2/13/47 C.H.](#))

Seattle City Light Contributes To Fish Project

Milo Moore, state director of fisheries, today received a \$54,950 check from Seattle City Comptroller W.C. Thomas to assist in financing construction of the state fish hatchery at Marblemount. The sum is in compensation for damage to eggs and small fish in the river above Marblemount due to the operation of the Seattle City Light department dams. **Spawning Unaffected** . . . It has been established however that operation of the dams caused damage to eggs and small fish in the river above Marblemount. This was verified for the city of Seattle by Trevor Kincaid, until recently a professor at the University of Washington. City Light's contribution will pay for the construction of seven rearing ponds and related water supply and provide operating funds for nine years. **Completed in Fall** Twenty ponds are under construction and will be completed this fall. Twenty more will be built as soon as additional funds are available, making a total of 40 ponds. **Approximately three million silver and Chinook Salmon and steelhead per year will be put into the Skagit River** watershed by the new hatchery, Moore said. The number of fish planted will **later be increased to six million per year. Clark Creek** . . . [Milo Moore said] "City Light by its spirit of cooperation has demonstrated fine leadership in community planning. Through their understanding of the problems of conservation an important step has been taken for protecting the Skagit fisheries for future generations." . . . **Eighteen ponds will be used for salmon and two ponds for steelheads.** . . . Results of the operation should be evident in from three to five years, Moore said. The run will continue to build up by increased natural spawning aided by continuous hatchery operation. (Source: [7/14/47 MVDH](#))



Many Fish To Be Planted In Upper Skagit District

More fish plantings for the upper Skagit district were in prospect as State Game Protector M. Splane began a plant of rainbow and cutthroat fry from the Lake Whatcom hatchery. The first are between three and four inches in length. Plantings will be made as follows: Day Creek, 15,000; Upper Skagit between Gorge Creek and Diablo, 20,000; 25,000 in creeks along the Baker river; 10,000 in Swift Creek. Big Watson lake will be planted with 20,000 cutthroats by plane and another 50,000 rainbow will be flown to Diablo Lake. Grandy Lake is slated for 30,000 cutthroat by truck. (Source: [8/14/47 C.H.](#))

Salmon On The Increase

Seattle – State Department fisheries surveys in the Skagit and Stillaguamish river systems revealed that pink salmon escapement in these streams was greatly improved over the last cycle year of 1945, State Director Milo Moore, announced today. . . . The Skagit River system showed 30 percent greater escapement than 1945. The survey party found 150,000 pink salmon and 11,000 king salmon spawning in the area between Newhalem dam and Faber ferry on the Skagit River. These figures are not estimates, but based on actual counts taken by the party which drifted down the rivers in a boat recording every fish sighted on a counter, Moore said. (Source: [10/3/47 MVDH](#))

The state department of fisheries recent survey of the Skagit and Stillaguamish rivers has revealed that pink salmon escapement has been greatly increased in both waters over the last cycle year of 1945. The survey party found 150,000 pink salmon and 11,000 king salmon spawning in the area between Newhalem dam and Faber ferry on the Skagit. These figures are based on actual counts taken as the survey party drifted down the river in a boat, recording the fish sighted. The Skagit river count shows a 30 per cent greater escapement than in 1945. The Stillaguamish, in a similar survey, showed a 50 per cent improvement. (Source: [10/9/47 C.H.](#))

Faber Dam In News Again As Possibility

Rumblings are again being heard from the federal government on more hydroelectric and flood control projects on the Skagit River. Army Engineers, who have been conducting surveys on the Skagit, Cascade, Sauk and Baker rivers for several years, are now nearing the final stages of their work and plan to have their report ready next year. Under consideration by the Army Engineers are four dams: One on the Baker River; one on the main channel of the Skagit at Faber; one on the lower Sauk River and another on the lower Cascade River. They are now seeking information from the state game department as to possible effect on the river's system of fish runs. . . . The Game Commission has issued a statement that "Part of the Skagit River already is blocked by power developments, so we must be on our guard to protect the great fish runs on this stream. The Skagit is famed the breadth of our land for its fine fishing, being worth a tremendous amount to us as a tourist and recreation asset for this reason." The proposed dam on the Baker River (above Lake Shannon) would back water into the canyon above Baker Lake, inundating much valuable recreational area around the present Baker Lake shoreline. (Source:



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[4/7/49 C.H.](#) (See also [2/25/49 USFW letter to Corps](#) (re dams at Faber & Sauk sites); [2/23/49 Letter to Corps from WDOG](#) (re impacts of dam construction); and [3/4/49 Letter to Corps from WDOG](#) (re impacts of dam construction)).

Steelhead Abundant – Fish Runs Increased

More than 2,500 steelhead probably were caught in the Skagit River during the recent season, reports from local fishing guides and Game Protector Vern Gee indicate. Five guides reported a total of 1,117 steelhead taken during the season. . . . Local fishermen who do not use guides would account for enough to push the total well over the 2,500 mark. . . . Howard Miller caught an eight-pound female steelhead near Day Creek. At least 13 fish were taken at Gillam Creek Thursday. (Source: [4/7/49 CT](#))

Salmon runs in Washington and British Columbia streams have been substantially increased after years of depletion, according to Robert J. Schoettler, director of the State Department of Fisheries. . . . Rehabilitation on the other hand, he said, was the restoration and bringing back of the resource. In the case of the salmon that has been the reclaiming of lost spawning areas for the migrating fish and establishing new runs with hatchery plants. Dams, pollution and the loss of the forest cover are some of the main reasons which have closed streams to the spawning salmon. . . . The Washington Fisheries Department embarked on a long range program of clearing streams, building fishladders, and restocking runs in the new spawning areas. (Source: [5/1/56 SVH](#))

Against More Skagit Dams

John M. Hurley, Jr. chief of the stream improvement division of the state fisheries department spoke at a Salmon bake at Hope Island on Sunday, opposing the full development of power in the state as the end of the fish runs of the state. He spoke against the CVA in that it would place jurisdiction of all state fisheries in hands of a federal board. He also spoke at length on the Skagit river's proposed Faber and Sauk dams, which he said "would reduce the Skagit to relative insignificance as a producer of migratory fish." He urged that the people go slowly in approving legislation that will destroy all fishing resources in favor of power development. (Source: [7/5/49 C.H.](#))

Finish Experiments At Baker River Power Dam

The international Salmon Commission, which is using the Baker River dam in this city for experimental purposes, completed a series of experiments here this week on the salmon run of the Baker River. . . . The principal problem to be solved was the question of whether or not the young fish, coming down the lake behind the dam, would swim deep enough to enter the turbine inlets 80 feet below the surface. This and other questions pertaining to the run kept a crew of four men busy for the past six weeks. . . . **It is definitely established that the Baker river runs are dropping each year.** Experiments here will be used in determining methods of building



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up the runs. Members of the crew were Roy Hamilton, Fred Andrews and Owen Hughes of British Columbia. (Source: [6/22/50 C.H.](#))

Birdsview Hatchery Started In 1900

About the year 1900 a small hatchery was established on Grandy Creek at Birdsview as an auxiliary to the Baker Lake hatchery. Salmon eggs for the hatchery were obtained from both Grandy Creek and Phinney Creek. In 1911 extensive improvements and construction of buildings were made, including a new hatchery building, barn, and several residences, and the old hatchery building was made into a workshop. The office of the Baker Lake hatchery superintendent was then moved to the Birdsview hatchery since the field operations became enlarged and Birdsview was more accessible for mail and transportation, as well as being more centrally located since the hatcheries on Hood's Canal were also added to the field. After 1911 from time to time further improvements and construction of buildings were carried out as became necessary. However, by 1947 the run of salmon into Grandy Creek had declined greatly and the water of the creek during winter and early spring was muddy for such long periods that fish cultural work could not be carried out with maximum efficiency. Logging off of the creek watershed caused the changed condition in the creek. The long periods of muddy water in the creek during the winter months especially, appeared to be a factor in the decline in the numbers of salmon entering. The creek and at times fingerling fish in the ponds could not be properly fed for several weeks at a time. (Source: [6/21/51 C.H.](#))

The Story Of The Baker Lake Fish Hatchery Is Historic Lore

Artificial propagation of sockeye salmon began in 1896 when in that year the State of Washington originally established the hatchery at Baker Lake where existed the only natural spawning grounds of sockeye salmon in United States waters on Puget Sound. By that time there were already pack horse trails on both the east and west sides of the Baker River and a number of pioneers had located homesteads on both sides of the Baker River and on the shore of Baker Lake. Mrs. Richard Thompson (Emma Ruth) I believe is the only one of such pioneers now remaining in this locality. At that time and for several years after there was considerable prospecting for gold several miles up Noisy Creek. A cylinder containing about 200 pounds of mercury was left by one of the miners at his claim when he was starved out and in 1916 he returned and packed the mercury out since by that time such metal had greatly increased in value. . . . Then in 1924 a total of 14,558 sockeye salmon were caught and from these a total of 22,000,000 eggs were obtained. However in 1924 the construction of the Baker River Dam at Concrete begun and in 1925 only 40 sockeyes got through to Baker Lake and only 51,490 eggs taken therefrom. However, there were thousands of sockeyes in the Baker River canyon that were unable to get beyond the dam site. In 1926 a total of 2,823 sockeyes arrived at Baker Lake and 3,921,000 eggs obtained therefrom. From then on the annual runs gradually decreased until by 1933 only 493 sockeyes got to Baker Lake and only 356,000 eggs were obtained. This did not warrant operation further on a year around basis for sockeyes and the hatchery was eventually discontinued entirely. (Source: [6/21/51 C.H.](#))



Fish Hatchery Is Attraction At Marblemount

The Skagit River hatchery was built by the State Department of Fisheries in 1946 and 1947 at a total cost of \$293,830. The purpose of the hatchery is to offset somewhat the inroad of the upper Skagit dams on the salmon run in the Skagit River. . . . Operations began at the hatchery in 1948 when 586,900 Chinook fingerlings and 220,900 silver fingerlings were planted. The plantings have increased year by year until the 1950 planting totaled 1,344,000 fingerlings and 400,000 yearlings. The returns so far have been gratifying in that a run of more than 3,000 silver salmon put in their appearance in Clark Creek as a result of the 1948-49 plant from the 1947 brood fish. This was the first time more than 400 silvers had appeared in the creek. (Source: [6/21/51 C.H.](#))

The Baker River Fishway

The ride of the salmon starts from the trap in groups of a few to fifty. From the trap they are hosted to a water-filled tank care on a narrow gauge track, hauled some 400 feet to aerated holding pools where they are alive and jumping. From there they are lowered into a water-filled “bucket” which is picked up by an aerial cable for another ride of 900 feet through the air to the dam to be held in a slatted and aerated scow. Whereupon, at the end of the day, they are turned free to nose their way under their own power upstream again. If, however, gates are kept open when the last haul to the dam is made, the above handling is modified in that the slatted scow is towed by motorboat a mile up the lake so they will not drift down and spill over the dam. . . . There are two traps at Baker – the river trap and the tailrace trap. The river trap makes use of the water spilled over the dam when the gates are open. It is a wooden structure secured to cement and steel piers which is salvaged in the fall of the year if the fishing season ends before floods wash it away. The lumber of the structure would build several houses. It is mostly of 2X6 fir in lengths from 14 to 22 feet. The barrier to the fish is made of these 2X6 boards with spaces through which water flows. These rackbars are slanted towards the middle of the stream and as water flows through the cracks small streams entice the fish along towards the middle of the stream where a wider slot and heavier stream attracts the salmon to enter. This is the trap. The tailrace trap is necessary at times when gates at the dam are closed. Here they are noticed to enter the trap by an artificial stream of water from a flume. . . . “There are three distinct runs of salmon that reach the Baker River. The Sockeye come first attaining a peak in July. They have a life cycle of four years. Then come the Silversides to reach a peak in September. Their life cycle is three years. The Humpy salmon makes their appearance late in fall and have a two year cycle. Last year the total run for sockeye salmon was 2,416 and for Silversides 11,209. At their peak the Silvers are a wonderful sight – 2,000 a day!” (Source: [8/30/51 C.H.](#))

Baker River Dam To Be Scene Of Important Fish Studies Again Next Year

Arrangements for rearing 200,000 salmonoid “guinea pigs” have been made by the Dept. of Fisheries and the International Pacific Salmon Commission. Fifty thousand Skagit river salmon and 150,000 Cultus Lake, B.C. sockeyes will be reared at the state hatchery at



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Marblemount and the fish will be used next spring in testing the mortality of small down-stream migrants resulting from passage over high dams and through power turbines. Similar tests were conducted in 1950 and 1951 at the Baker River dam of Puget Sound Power & Light Co. here in Concrete. The 1952 tests will also be held here. (Source: [11/15/51 C.H.](#))

Figures Released On Fish Handled At Baker Dam

A total of 17,642 salmon were trapped this season and hauled above the Baker River dam here, says a report from the state department of fisheries. Included in the total were 13,529 silver salmon, the third highest number handled on his particular run since 1927. The parent year 1948 yielded 9,778 fish. Other fish included 3,705 sockeye, 26 Chinook and 272 pink salmon, and 112 steelhead trout. The trap has been operated at the power house, below the high dam, since 1926. The fish are then carried by tram car and cable in tanks of water and released above the dam in Lake Shannon. (Source: [12/20/51 C.H.](#))

Argue For Open River

A large delegation from Concrete, Rockport and Marblemount joined with the members of the Wildcat Steelhead of Sedro-Woolley Monday evening in an effort to have the upper Skagit River once again opened for salmon fishing. The target of their pleas was Mr. Schottler, director of the state department of fisheries, under whose orders the river was closed to such sports fishing about Gilligan Creek. . . . Mr. Schottler made it clear that the closure of the river was a move to aid in the reestablishment of the Chinook salmon run, as other salmon runs seemed to be holding up or improving during the past few years. He stated that the diminishing return of salmon was due to changes in the river from cutting of forests, dams, and pollution over the past 62 years. His department has been working on the problem for some years and it was in 1951 that the first closure to sports fishing was put into effect on the entire river. . . . Dr. Hunter pointed out that no effort had ever been made to determine how much effect sports fishing in the river had on the salmon runs and questioned that the few taken by hook and line in a year could approach the take of a gill-netter in a week. (Source: [7/16/53 C.H.](#))

Large Fish Plant Set For Skagit Area This Year

Upper Puget Sound hatcheries provided more than a million young salmon for streams in Skagit, Snohomish and Whatcom counties for the first quarter plantings in 1954, the Department of Fisheries announced today. . . . Skagit County streams were given a transfusion of 435,300 yearling silvers and 285,600 pink salmon fingerlings with 1954 plantings from the Samish hatchery north of Burlington and the Skagit hatchery near Marblemount. Skagit hatchery crews under the direction of Superintendent E. G. Fieher, planted 270,900 yearling silvers and 285,600 pinks from the 1953 brood in the Stillaguamish river and Bacon, Goodell, Illabot, Grandy, Squire, Boulder, French, Day, Jones, Finney and Diobsud creeks. In the rearing ponds awaiting planting are 266,300 yearling silvers with 485,400 spring chinook scheduled for additional



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rearing while 667,100 1953 silver fry remaining in the hatchery will be transferred soon to the ponds. (Source: [4/1/54 C.H.](#))

Fine Steelhead Plant For Skagit River This Year

The state game department has been busy the past week loading the Skagit River with young steelhead. Hank Moore, local game protector, stopped at the Herald office last Thursday with a load of the beautiful little fish, each husky and about six to 7 inches long. Many thousand will go in the river this season to help reestablish the Skagit steelhead run. (Source: [5/27/54 C.H.](#))

The Open Forum

Some years ago, the Skagit River was closed to salmon fishing by the Dept. of Fisheries. Why this was done remains a mystery to hundreds of sportsmen up and down the Skagit Valley. At that time the Dept. of Fisheries claimed the salmon that came above the mouth of the Baker River were unfit to eat – which is about the most ignorant statement the Dept. has made to the public. . . . “Mr. Schoettler, who is the head of the Dept. of Fisheries and has the say of the river being open or closed, was called in to several sportsmen meetings in the past few years with the sole intent of asking him to open the river up to salmon fishing. Nothing was ever gained by any of the meetings. Mr. Schoettler has made it very clear to all that were present that he was working for the commercial fishermen’s benefit and not the sportsmen. Mr. Schoettler also admitted there had not been any research done before closing the river as to what harm the sportsmen had done to the salmon run. He was told of the gill netters and purse-seiners who were fishing far up in the mouth of the river (which is illegal). He made the statement that he had not known this was going on, but it seems very strange that even the people of Marblemount have known of this condition for years. (Source: [8/26/54 C.H.](#))

Baker Dam Provides Site For Study Of Migrating Salmon In Building Runs

A combined experimental project in which the State Fisheries Dept., the International Salmon-Sockeye Commission and Puget Sound Power & Light Co. delved into the long standing problem of getting a fish run over a high dam was closed last week end at the Baker dam here. While results of some of the experiments were disappointing due to unusual water conditions, the general program produced a number of definite conclusions that will be of great value in planning future dams, and in altering present dams so that both water power and fish runs can be maintained without conflict. Of particular interest on the Baker river is the sockeye run, which is deemed of great value. The run taken over the dam by the trap method has been about 3,000 a year. The silver run is about 12,000 a year. In the past year some 61,000 Chinook were planted in the lake in hopes of getting this species started. . . . It was found that the fish are attracted to the positive pole of the electric current and effected according to the size of the fish. Some of the larger fish were killed by the 48 volt current, but the majority were guided into the trap without injury. While the experiments proved the theory workable, high water and technical problems



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made the results disappointing in that the system was inoperable at the time when the most fish were present in the forebay of the dam. Further laboratory experiments are expected to take out the “bugs” brought to attention in the actual field work here. . . . On the Baker dam it was found that a great mortality occurred due to the fish hitting the surface of the dam on the way down. Those who had a free-fall lived through seemingly without damage. . . . Also under way at present are plans for immediate building of an artificial spawning grounds on the upper Baker, above Baker lake, at which area the fish from the Baker dam will be propagated and allowed to return downstream. This experiment has also proved successful on smaller streams and if it can be carried on in the upper Baker it will be invaluable when the new Baker dam is built and the level of Baker Lake (the present spawning area) is raised 50 to 60 feet. (Source: [6/30/55 C.H.](#))

Skagit Tops In Steelhead Runs

Final compilation of steelhead catches for the 1955-56 winter season show that the planting of migratory sized young steelhead in the Skagit River has produced a marked increase in the return of adult fish. The catch for the season, as indicated on the punch cards, was 161,624 steelhead, which was topped only slightly by the record catch thus far of 162,663 in the 1953-54 winter season. . . . The whopping last seasons' catch of 21,792 steelhead in the Skagit topped by a large margin all previous records and appears to be a direct result of the first migratory-sized release of steelhead in this stream. From a catch of 16,170 fish in 1953-54, the Skagit dropped to 10,284 in 1954-55 as a result of the low water periods of 1952-53. The 1955-56 catch of 21,792 fish was the first returning cycle of the migratory-sized fish, and lead all other streams in the state by a wide margin. The Skagit is one of the perfect migratory streams, having extensive feeding areas in the many sloughs which make up its outlet to Puget Sound. The limitation to the steelhead runs in the river has been the loss of valuable spawning and rearing areas in its feeder streams. (Source: [8/30/56 C.H.](#))

Baker Fish Dam Works Well On Sockeye Run

A good run of Sockeye salmon is giving the new fish trap installation on the Baker river here a through testing as to efficiency. The trap was put into use a few weeks ago and since that time has done very well in providing a method of getting the salmon to the spawning grounds on the upper Baker. To date the number of Sockeye taken in the trap and transported by truck to Baker Lake has been more than double the entire run of last year. The low dam, which is located just below the highway bridge on the Baker at Concrete, seems to be low enough for the salmon to jump but the construction has been such that the overflow strikes an obstruction of large rocks on the lower side that produce such a turbulence that the fish can not get a chance to jump. For further protection against the fish getting above the dam in periods of high water in the Skagit, the low dam can be raised about two feet mechanically to provide the extra height. (Source: [7/31/58 C.H.](#))



Skagit Drops From Top Rank In Steelhead Catch

The Skagit River, due to weather conditions and the presence of above normal silt in the water from the Sauk River, dropped from first place as a steelhead stream for the state of Washington this year. For the past two seasons the Skagit has topped all other streams in the number of fish produced, the 1955-1956 season producing 21,942 fish for the highest peak. This past season the Skagit only produced 10,764 steelhead. Tops for the state was the Humptulips river which found 11,404 as the total catch. In second place was the Green river with 11,381. The Humptulips came up this year from fifth place due to a big hatchery plant made in the spring of 1956. (Source: [9/4/58 C.H.](#))

Baker Hatchery Building To Go On Auction Block

The old bunkhouse of the Baker Lake Fish Hatchery will be up for sale next week when the forest service puts the building on the auction block to remove it from the site to make way for waters of the new Baker Lake. The sale of the building will just about mark the end of the pioneer hatchery site. The building is the last of several that served the crew that operated the hatchery that was first started in 1896 and reached its heyday in 1924. Then the construction of the lower Baker dam so diminished the salmon run that by 1933 the hatchery was out of business. Most of its time in operation the hatchery could only be reached by trail and the buildings were constructed from timber on the site, sawed in a saw mill that had been packed over the trail from Concrete. (Source: [11/13/58 C.H.](#))

Skagit Slated To Be Best Steelhead Stream In U.S.

Prospects for steelheading on the Skagit River in future years were looking up considerably last week as a big truck from Tukul Creek hatchery, near Snoqualmie, made several trips here to plant 65,000 young steelhead. First plants were made on the upper part of the Skagit, with two made in the vicinity of Concrete. In the picture above, Don Gibson is holding the nose as the tank sprays out 12,000 of the lively fish at the bar on the upper side of the mouth of the Baker. Another 12,000 were planted on Friday at the big eddy just above the Ovenell place on the South Skagit road. (Source: [5/14/59 C.H.](#))

Steelheading On Skagit Best In State Last Season

Steelhead fishing is definitely on the upturn last season and figures to date from the punch cards show that 148,281 fish were caught in the winter season. This is 21,751 more steelhead taken than in the previous season. This was tempered a bit by the fact that 3,417 more punchcards were issued last year but still shows an increase in the steelhead runs. The Skagit River again topped all rivers in the state with 18,568 fish counted. The Green river was next with 11,774 and the Cowlitzs third with 11,075. The previous winter season on the Skagit netted



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fishermen 14,803 fish. The Green was listed with 9,914 and the Humptulips third with 8,601. (Source: [8/18/60 C.H.](#))

Tribes Fight To Fish Off Their Reservations

Trial of a minor criminal case – of major importance to Northwest Washington Indians – started in Skagit County Superior Court at 9:30 a.m. today. More than 100 persons, a majority Indians, were present in Judge Charles F. Stafford’s courtroom. Only one Swinomish Indian, Joe McCoy, is on trial, but the outcome of the case will affect fishing rights of all Washington Indians west of the Cascades and north of the Duwamish River. McCoy is charged by State with catching salmon during a closed season near the mouth of the Skagit River. **THE STATE** alleges Indians have unrestricted fishing rights on, but not off, their reservations. . . . The State, represented by County Prosecutor Walter J. Deierlein Jr., says the 1855 treaty, and another augmenting it in 1873, does not put the boundary out into the Skagit River channel. **DEFENSE COUNSEL**, Harwood Bannister, however, said he would show that the reservation reaches out into the channel. . . . The State is pressing this case because the rights of all fishermen, whites or Indians, sports or commercial, are involved, the prosecutor said. (**MILO MOORE**, State Fisheries director, has said the State must be able to regulate the taking of salmon headed into rivers in order to halt the decrease in salmon runs.) (Source: [12/13/60 SVH](#))

Fishing Closures A Necessity Of Conservation

Fishing closures are a necessity to the conservation of salmon in Washington, top officials of the State Fisheries Department testified in the Indian fishing rights test case yesterday afternoon. Testifying, for the State, were Milo Moore, director, and Edward Mains, research division supervisor. On trial in Skagit County Superior Court is Joe McCoy, Swinomish Indian. Arrested near the mouth of the Skagit River’s North Fork, he is charged with salmon fishing in a closed season. Moore, who said he previously lived along the Skagit about 40 years, said he feels the only way salmon fishing could be effectively “rehabilitated” would be a **halt to all salmon fishing for two full salmon life cycles**. In lieu of such a drastic measure, he pointed out, temporary fishing closures at certain times are a must. **REGULATION OF** fishing at certain places, particularly near river mouths and immediately below falls and dams – places fish congregate – is a necessary tool in the conservation of salmon runs, Mains said. . . . **“A few individual fishermen unregulated on the Skagit could definitely destroy its salmon runs,”** he emphasized. **“By gill net they could take up to 98 per cent of a run.”** (Source: [12/14/60 SVH](#))

Skagit River Still Tops For Steelhead Fishing

The Skagit River still fed all streams in the state for steelhead last season. Although the catch for the entire state showed a decrease of 21 per cent from the 1959-60 season, a total of 117,750 fish were reported through the punch card returns. The Skagit River produced 12,566 steelhead, according to the figures reported back by the sportsmen. Next highest stream was the



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Green River, which had a total of 8,448. Last season the Skagit showed a total of 18,568 fish caught. (Source: [8/31/61 C.H.](#))

The State of Washington, Appellant vs. Joe McCoy, Respondent

The case of Indian fisherman Joe McCoy will come before the State Supreme Court Nov. 19. The nine man court announced yesterday that the decision of Skagit Superior Court Judge Charles F. Stafford will be given a hearing in the state high court on that date. . . . The unrestricted right to fish is in the nature of a contractual right, reserved by treaty between the Indians and the United States government”, says Bannister. (Source: [7/31/62 SVH](#))

What follows are excerpts from the Supreme Court decision which is properly cited as **State v. McCoy, 63 Wn.2d 421, (Wash., 1963)**. Due to the historic nature of not only the ruling itself but the dictum contained therein, a majority of the decision is presented in this paper.

This case involves the question of whether the state can enforce reasonably necessary regulations for the conservation of Chinook salmon fisheries against an Indian whose tribe was a party to the Treaty of Point Elliott, 12 Stat. 927 (January 22, 1855).

Defendant, an American Indian of Swinomish descent, was charged with fishing in closed waters. The trial court acquitted him, holding that the Treaty of Point Elliott granted him immunity from state regulatory powers. The state appeals.

In the early morning hours of July 28, 1960, defendant was fishing from his boat in what is called the "jetty drift" located near the mouth of the north fork of the Skagit River. He was operating an 18-foot, 25-hp-outboard-motor boat, and was using a 600-foot modern nylon gill net. One end of the net was attached to his boat; the other end extended horizontally 600 feet. The top of the net was equipped with floats and the bottom with a lead line. The net, thus, was held perpendicular in the water and the mesh was deep enough to drag the bottom of the river. The defendant would commence in the upper reaches, and drift with the tide to the end of the jetty. This procedure would be repeated. The effect was to sweep the jetty clean of fish. The defendant's catch of salmon was for sale to commercial buyers.

The jetty drift is a commercial fishery which has been enjoyed in common by the Indians and non-Indians for a period of many years. About 1959, the Swinomish Indians asserted that they could fish unregulated at the jetty drift.

The regulation in effect at the time of the defendant's arrest was not a permanent prohibition of fishing. It was a 10-day closure designed to protect the peak of the salmon runs passing through the Skagit River to the spawning grounds.

Salmon migrate through many fisheries. Time closures, therefore, are staggered to protect the fish as they make their way through each fishery situated on the path of migration. This 10-day closure on the Skagit River was closed to all fishing. Defendant asserts his immunity to the closure regulation because of Art. 5 of the Treaty of Point Elliott:

"The right of taking fish at usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the Territory, and of erecting temporary



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houses for the purpose of curing, together with the privilege of hunting and gathering roots and berries on open and unclaimed lands. Provided, however, that they shall not take shell-fish from any beds staked or cultivated by citizens." (Treaty with the Dwamish, Suquamish, etc., 1855, 12 Stat. 927).

The court found that the respondent was not fishing within the boundaries of the reservation, but was fishing at the usual and accustomed fishing grounds.

The 24 assignments of error raise two issues (1) whether the state can show that regulation is reasonably necessary to conserve a fishery resource, and (2) whether it has been preempted by the Treaty of Point Elliott from any state action in regard to Indian fishing rights.

...

Of interest is the Indian Claims Commission decision which is not published, but is on microfilm at the University of Washington Library, and has been transcribed and made available to this court. That is the case of *Makah Indian Tribe v. United States*, 7 Ind. Cl. Comm. 477 (1959) affirmed 151 Ct. Cl., docket No. 559, unpublished, cert. den. 365 U.S. 879, 6 L. Ed. (2d) 191, 81 S. Ct. 1028 (1961). There compensation was sought for the alleged impairment of the treaty-fishing right by regulation. The treaty provision was similar to that in the instant case. The commission ruled, p. 507:

"By entering into international agreements with Canada to conserve, protect and restore the depleted Pacific halibut ocean fishing, the United States did not deprive, abrogate, or deny to the Makah Tribe of Indians any right which they may have reserved under Article IV of the 1855 Makah Treaty to fish in common with all citizens of the United States at usual and accustomed grounds and stations because:

"(1) Such fishing rights as guaranteed under Art. IV of the 1855 Makah Treaty are not so absolute, unlimited, and exclusive in that they cannot be accommodated and adjusted to meet changing circumstances where the Government must impose reasonable regulations designed to conserve and protect our natural resources for the benefit of all. *Tulee v. State of Washington*, 315 U.S. 1081 (1942), *Makah Indian Tribe v. Schoettler*, 192 F. 2d 244 (1951); and

"(2) The defendant has shown by overwhelming evidence (for the most part undisputed) that the seasonal restrictions, imposed upon the Pacific coast halibut fishery by regulations promulgated and adopted by the International Fisheries Commission, pursuant to the Convention between Canada and the United States, are fair, reasonable, and absolutely necessary to conserve, protect, and rehabilitate the halibut species. . . .

"(3) The reserving of Makah fishing rights at usual and accustomed places under the 1855 Treaty was founded upon the need of the petitioner tribe to maintain its then subsistence economy which was based primarily upon the immediate products of the sea, and in no sense was this treaty provision a guarantee of future commercial fishing rights.

"(4) Petitioner has failed to prove that in complying with the regulations of the halibut Commission, or by their enforcement, the individual members of petitioner tribe suffered a deprivation to the extent that they are unable to sustain their immediate wants or that of their families consistent with a subsistence economy."

To ascertain whether regulation is reasonably necessary for conservation of Pacific salmon, one must understand the life cycle of these fish.

Pacific salmon are anadromous fish; that is, they are hatched in fresh water, descend to salt water, attain most of their growth there, and then return to the stream of their origin to spawn and perpetuate their kind.



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After spawning, they die. They have a well-developed homing instinct that enables them to return to spawn in the stream of their origin. Spawning occurs in the fall and winter in well-percolated gravel beds, where the fish bury their eggs to protect them from predators and the elements. The eggs hatch in the gravel and the fish live there for a time, subsisting on the yoke material from the egg. After emerging from the gravel, the young fish begin to swim actively. Depending on the species, some salmon spend a year or more in fresh water before migrating to sea, while others leave for ocean environment within a few weeks or months after emerging from the gravel of the nest. Three to five years later, the Chinook salmon return from the sea to the river of their birth to spawn.

After the various species of salmon near maturity and are in prime condition, they leave the extensive pastures of the sea to begin the long journey to the home stream of their origin. It is during this period of the salmon's life that the main effort toward harvest is concentrated. While still at sea the Chinook, silver, and pink salmon are caught by the commercial and sports trollers off the coasts of Alaska, British Columbia, Washington, Oregon, and California. After these species enter the inside waters off the mouths of their spawning streams, their numbers are further reduced by net fisheries.

When the survivors escape the last net fishery in the rivers of their birth, they deposit their eggs in the gravel to perpetuate their kind, complete the life cycle and die.

The appellant proffered testimony to show the number of other Indians fishing, their manner of fishing, and the effect of such fishing. It offered proof of the effect on salmon runs of unrestricted fishing. It offered charts and testimony with regard to catch versus escapement of Chinook and silver salmon in the Puyallup River, showing how an unregulated Indian fishery affects conservation, and the necessity for regulation to conserve salmon runs. This evidence disclosed that prior to 1953, there did not exist any Indian fishery on the Puyallup River. During the year 1953 there were three Indian nets, and by 1960, there were some 30 gill nets and numerous set nets on the Puyallup. Exhibit No. 14 illustrates graphically what occurs when unrestricted fishing is permitted. It shows the catch record of only a few fish in 1953 and more than 14,000 fish in 1960. While, the escapement record shows approximately 13,000 fish in 1953 and less than 1,800 fish in 1960. As the catch increased, the escapements decreased so that a point of extinction will be reached should the cycles of salmon all be subject to unrestricted fisheries.

The offered evidence was rejected. This was error.

One essential of a conservation program is the regulation of the harvest of salmon in salt- and fresh-water areas. It is regulation that provides the escapement necessary to maintain a perpetual supply of salmon for the harvest by all people. If a fishery, within a river or off its mouth, harvests too many of the adult salmon because of the shallow confined nature of the fishing area and the habits of the salmon which cause them to school up and delay in these areas prior to ascending the river, there will be little escapement to perpetuate the runs. An uncontrolled fishery in such areas may harvest almost the entire run of a fishery resource. Salmon are not inexhaustible and without their proper escapement for reproduction from year-to-year through controls in the harvest, the stocks will be reduced to a point where only a remnant run will exist.

Experience has shown that for runs of Chinook salmon returning to a river, there are limits within which the harvest must be kept if sufficient seed stock is to reach the spawning grounds to maintain the runs. For Chinook, a catch of 40 to 50 per cent of the total run is estimated to be within the necessary limits.

The Skagit River is capable of handling approximately 60,000 to 75,000 Chinook spawners. Surveys in 1952 showed escapement of only 20,000 adult fish, and these continued to drop until, in 1957, the escapement of Chinook in the Skagit River was down to 10,000. To stop the decline, regulations were imposed restricting fishing time, until in 1960, approximately 30,000 escaped and spawned in the Skagit. It has been demonstrated that unrestricted gill net fishing on the Fraser River could take 98 per cent of the runs. Similar results have been obtained on the Columbia River.

The state had a right to show that the number of fishermen fishing the jetty drift could take a major portion of the returning salmon. It is suggested that if greater regulation had been imposed upon the harvest of



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salmon in the ocean and in waters other than the Skagit River, that Indians could fish unmolested. This is contrary to the scientific proof. It has been demonstrated in places both on the Columbia and Fraser rivers that the regulation of one form of gear has not in reality saved any fish for spawning purposes, but instead has provided additional catch to the last fishery on the road of migration.

Edward M. Mains, supervisor of the Research Division of the state Department of Fisheries, established the relation between regulation and conservation, as follows:

"Q. You mentioned previously time, manner and place so far as the regulation of fishing was concerned. Would you tell us the importance of regulating the time of fishing so far as the conservation of salmon as a resource is concerned?

"A. Yes. The control over time of fishing is one of the best tools we have in conservation work. During the time the salmon are migrating from the sea to their -- this applies especially, I should say, to migrating fish, because over the years we have collected information and we have quite complete information on when these runs pass through certain areas and we know the time that they are in this area. So that by restricting the number of days of fishing it is fairly easy to actually conserve fish to spawn. We can actually do this by areas. We know the fish come through the outer straits areas at a certain time and in approximately a week later they are in another area, and a week further they are closer to the spawning grounds. We can stagger the closed seasons in this area to protect this entire group of fish. For instance, if you effect a ten-day closure out in the straits somewhere you would have to consider travel time --

"Q. -- Excuse me one moment. What is the travel time of the average fish?

"A. It varies. From the time they cease feeding and start moving toward their home stream it varies from ten to twenty miles a day. This has been borne out by tagging studies. From the actual time when the tag was placed on the fish and released and time it was recovered we know the actual number of miles it covered in certain days.

"Q. Thank you. I did not mean to interrupt.

"A. Anyway, by following these certain groups of fish, by taking care of the fish in the peak of the run, by staggering the closures as it goes in you can protect this group of fish. This is the real prime principle you try to do. In other words, there is no use in trying to curtail fishing for ten days out in the Sound some place if you are going to let this same fishery catch these same fish you saved out there. In other words, you haven't accomplished your intention of getting this same fish up to the spawning grounds. You have saved this group of fish from this one fishery and you let them be caught by another. This has been demonstrated time and time again in the Columbia River fisheries and Fraser River fisheries where unlimited and unrestricted gill net fishery can take ninety-five to ninety-eight percent of the fish. Unless you effectuate staggered closures up the river you can't really save the salmon from one year to another year.

"Q. In other words, this time closure on fishing is necessary for the conservation of salmon throughout the State of Washington.

A. Very definitely. If you don't actually design the closures correctly so that they are compatible with the time movement of the fish, and if you don't have everybody observing the closures that you set, why, then you effectively have no regulation or only partial regulation."

This same witness concluded that a few individual fishermen, unregulated by the department, could destroy the run:

"Q. What would your opinion be, sir, as the effect of conservation, if you have one or a few individuals unregulated so far as the Skagit River is concerned?



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"A. Well, you could definitely destroy the run by the same illustration which I mentioned here. It has been demonstrated, for instance, that unrestricted fishing on the Fraser River by their gill net fishery could take ninety eight percent of the run. It has been demonstrated by studies on the Columbia River that unregulated fishery there has the ability to take ninety-five percent of the run, and we also have the rather recent illustration in the case of the Puyallup River Indian fishery where they have virtually destroyed that run and are in the process of doing so with unregulated fishery."

This evidence if considered by the court would have proved that regulation was reasonably necessary to conserve Chinook salmon runs in the Skagit River.

The reason for the great increase in the Indian fishery and its attendant conservation problems is because of the skyrocket values of salmon. An adult Chinook salmon will weigh from 15 to 45 pounds, and some have weighed as much as 82 pounds. The average weight in a catch is anywhere between 18 to 22 pounds. The average wholesale price for Chinook salmon is \$ 10 per fish. With such an economic bonanza, just for the taking, individual self-restraint is a poor substitute for proper state regulation. Without state action to permit enough seed stock to escape to spawn, salmon will face extinction.

The trial court held that the Treaty of Point Elliott granted the Indians an unrestricted right to fish. This decision was based upon the reasoning of Indian "water rights" cases.

...

To say that, by analogy, the Indians have a right to go outside their reservation to their "usual and accustomed grounds" to fish free of any regulation, amounts to an unwarranted extension of the rationale of the "water rights" cases. *United States v. Fallbrook Public Util. Dist.*, 165 F. Supp. 806, 838 (1958), forcibly demonstrates that the "water rights" theory is not to be extended by analogy.

An examination of the Point Elliott treaty discloses that the Indians ceded the lands to the United States. They reserved lands for Indian reservation purposes, and reserved 36 sections of land for the purpose of establishing an agricultural and industrial school for the Indians. In consideration for the land, the United States was to pay \$ 150,000; and an additional \$ 15,000 was granted for expenses of removal and settlement of the Indians on the reservation, and to provide for the breaking and clearing of land for cultivation, and for fencing the same.

The United States was also to establish schools and to provide instructors, and to furnish mechanical shops.

By Art. 9 of the treaty, the tribes and bands acknowledge their dependence on the government of the United States, and promise to preserve friendly relationships with all citizens and with other Indian tribes.

The Indians of Puget Sound, unlike those of the upper Columbia (Yakima and Nez Perce) were remnants of former large tribes; their numbers were depleted by smallpox and other diseases. These tribes were docile and were subjected to raids by the Haida and Tlingit of British Columbia and Alaska and by the Yakima from Eastern Washington. In addition to these difficulties, the settlers were fencing the gathering places, and, when objection was made by the Indians, they were told that the Great Father would pay for the lands. Existing under these conditions, the Indians appeared to welcome the messages from Governor Stevens which promised them protection and a way of bettering their lot by providing reservations for their use and even a means of imitating the white settlers. *The Life of Isaac Ingalls Stevens*, by his son, Hazard Stevens (1901) Vol. 1, 451-459. Under such circumstances, Art. 9 of the treaty of Point Elliott, by which the Indians acknowledge dependence upon the government, becomes more meaningful.

In the light of the governmental policy to set aside farming areas for the Indians and the condition of these tribes at the time of the treaty, the reason for Art. 5 is clarified. Governor Stevens was commissioned to carry out a governmental policy intended to protect and provide for their ultimate civilization and a place in



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the community. The Indians' condition was such that they welcomed the opportunity to have a place set aside for themselves.

But the project of instructing the Indians so that they would be self-sustaining would take years. The treaty itself had to be ratified. Unless the Indians were permitted to leave the reservation to pursue their gathering culture, they would starve.

In *The Life of Isaac Ingalls Stevens, supra*, p. 454, the author states that while in Olympia, the Governor outlined the provisions to be included in the Puget Sound treaties. With reference to the reason for the fishing provision, he says:

"7. As the change from savage to civilized habits must necessarily be gradual, they were to retain the right of fishing at their accustomed fishing-places, and of hunting, gathering berries and roots, and pasturing stock on unoccupied land as long as it remained vacant."

A similar account is given in *The Northwest Coast; or, Three Years' Residence in Washington Territory* (1857), by James G. Swan, p. 344:

". . . The Indians, however, were not to be restricted to the reservation, but were to be allowed to procure their food as they had always done, and were at liberty at any time to leave the reservation to trade with or work for the whites."

Article 5 does not relate to fishing alone. It obviously relates to the Indians' gathering culture at the time of the treaty; the right to gather roots and berries, pasture their horses, and to fish.

Article 5 is limited: The right to fish was limited to a right "in common" with other citizens and to the usual and accustomed places. Only temporary houses for curing were to be constructed at such places; the gathering of roots and berries, and hunting could be conducted only on open and unclaimed lands, and shellfish could not be taken from beds staked or cultivated by citizens.

Governor Stevens' representation was that a means would be afforded for the Indians to obtain food during the transition period to a civilized life as farmers. There was no intention to limit governmental powers and there was no need to discuss governmental powers. The United States had purchased the Indian lands but secured to them the limited right to go on those lands to obtain food consistent with their needs at that particular time.

The decisional law arising from Indian claims leads to the conclusion that the treaty secured to the Indians a servitude, or easement, upon the land at their usual and accustomed places. This right in the soil protects the Indians from exclusion from such places by non-Indians. *United States v. Taylor*, 3 Wash. Terr. 88, 13 Pac. 333 (1887); *United States v. Winans*, 198 U.S. 371, 49 L. Ed. 1089, 25 S. Ct. 662 (1905); *Seufert Bros. Co. v. United States*, 249 U.S. 194, 63 L. Ed. 555, 39 S. Ct. 203 (1919). But the treaties do not impair the police power of the state. *Ward v. Race Horse*, 163 U.S. 504, 41 L. Ed. 244, 16 S. Ct. 1076 (1896); *New York ex rel. Kennedy v. Becker*, 241 U.S. 556, 60 L. Ed. 1166, 36 S. Ct. 705 (1916); *Tulee v. Washington*, 315 U.S. 681, 86 L. Ed. 1115, 62 S. Ct. 862 (1942); *Makah Indian Tribe v. United States*, 7 Ind. Cl. Comm. 477 (1959).

...

The United States has consistently pursued the policy of acquiring the Indians' rights of use and occupancy by purchase rather than conquest, engaging in what was termed by President Truman as "the largest real estate transaction in history," involving more than 90 per cent of the public domain. While the United States paid 50 million dollars to Britain, Spain, France, Mexico, and Russia for claims of sovereignty based on discovery, 800 million dollars has already been paid to the Indians for their rights of use and occupancy. 32 Minn. L. Rev. 28, 34, 43, 58. Additional claims are now pending before the Indian Claims Commission.



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The Treaty of Point Elliott was a part of this real estate transaction -- a treaty for the purchase of real estate.

Spain had released its claim to lands north of the 42nd parallel by treaty in 1819. Russia relinquished its claims south of 54 degrees 40' by treaty with the United States in 1824, and Great Britain in 1825. The United States and Great Britain settled their differences in 1846, thereby leaving what is now the state of Washington open for settlement. 5 Treaties and Other International Acts of the United States of America, 1846-1852, Miller, pp. 3-5 and 11.

It is difficult to conceive that, after treating with these European nations for the governmental power and rights to the soil arising from discovery, the United States authorized Governor Stevens to bargain away its governmental powers to the Swinomish Indian tribe and a multitude of other small tribes and bands of Indians.

By Act of March 2, 1853 (10 Stat. 172), the Washington Territory was organized out of the Oregon Territory and, by Act of July 17, 1854 (10 Stat. 305), the Oregon Donation Act (9 Stat. 496) was extended to the Territory of Washington. Thus, the Territory was opened for settlement prior to any of the Indian treaties. The United States was buying and the Indians were selling the aboriginal right of use and occupancy to the Washington Territory.

...

The State of Washington was admitted into the Union upon equal footing with the original states. Enabling Act, § 8, chapter 180, 25 Stat. 676, 678. By such admission, it became entitled to exercise all of the powers of government enjoyed by the original states of the Union. *Coyle v. Smith*, 221 U.S. 559, 55 L. Ed. 853, 31 S. Ct. 688 (1911); Constitution of the United States of America, Sen. Doc. [***31] No. 170, 82nd Cong. 2d Sess., 1952, Corwin. The power to protect fish and game is an inherent attribute of the sovereign power of a state. *Geer v. Connecticut*, 161 U.S. 519, 40 L. Ed. 793, 16 S. Ct. 600 (1896); *Ward v. Race Horse*, *supra*.

While the United States had the power to impair a state's police power by treaty, *Missouri v. Holland*, 252 U.S. 416, 64 L. Ed. 641, 40 S. Ct. 382 (1920), the language of a treaty wherever reasonably possible will be construed so as not to override state laws or impair rights arising under them. *Guaranty Trust Co. v. United States*, 304 U.S. 126, 143, 82 L. Ed. 1224, 58 S. Ct. 785 (1938).

There must be a clear and unequivocal expression of congressional will by Congress if state powers are to be preempted. *Cohens v. Virginia*, 19 U.S. 264, 443, 5 L. Ed. 257 (1821); *Reid v. Colorado*, 187 U.S. 137, 47 L. Ed. 108, 23 S. Ct. 92 (1902). Here, there is no express limitation of governmental powers in the treaty and no expression of congressional will which in any way conflicts with state law. In the absence of a clear conflict, state law must prevail.

...

The intention and understanding of the Indians must be established by clear and satisfactory proof sufficient to warrant the application of this rule. *Choctaw Nation v. United States*, 121 F. Supp. 206, 211 (Ct. Cl. 1954).

The treaty secured to the Indians an interest in land, consisting of an easement, which secured to them the right *not* to be excluded from their usual and accustomed fishing grounds by non-Indians. Those cases which recognize this right and protect the Indian from such exclusion do not hold that a state may not subject the Indians to reasonable and necessary regulations in the exercise of these rights, for the protection of the fishery resource.



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Upon admission to the Union upon equal footing, this state acquired all of the sovereign powers of the original states, including the power to preserve its natural resources, and it cannot be stripped of this power by implication and deduction.

For the reasons herein stated, the judgment of the trial court is reversed and the state is granted a new trial.

Concurring Opinion By Justice Hill

I concur in the result of the majority opinion.

I agree with the dissent in principle, but with an exception, on which I will hereafter enlarge which, for me, takes the present case without the protection of the treaty.

I disagree with the majority's position that for certain specified periods of time the right of the treaty beneficiaries can be suspended under the state's regulatory powers.

The rights of the Indians to fish by the methods and with the gear in use at the time of the treaty cannot be suspended or abridged. Had the defendant, **Joe McCoy**, been so fishing the state would have had no right to interfere with his activities.

However, none of the signatories to the treaty contemplated fishing with a 600-foot nylon gill net, which could prevent the escapement of any fish up the river for spawning purposes. (See discussion in Judge Finley's concurring opinion in *State v. Satiacum* (1957), 50 Wn. (2d) 513, 535 *et seq.*, 314 P. (2d) 400, 412 *et seq.*)

I would not limit the type of gear used by an Indian when he is exercising the right to fish that anyone else is entitled to exercise; but where his right to fish "at all accustomed grounds and stations" *rests solely on his treaty rights*, then he should be limited to the gear and implements with which the treaty signatories were accustomed.

I would grant the state a new trial.

Disenting Opinion By Justice Donworth

The scholarly discussion by the majority concerning the very important issue presented by this case makes no mention of our most recent decision dealing with the subject of the impact of the Indian treaties on the police power of the state to regulate fishing by tribal Indians "at all usual and accustomed grounds and stations."

In *State v. Satiacum*, 50 Wn. (2d) 513, 314 P. (2d) 400 (1957), there were two opinions, each of which had the concurrence of four judges. In the first opinion, many of the decisions of the United States Supreme Court (some of which are cited in the majority opinion in this case) were discussed at length. The result of the first opinion (which was concurred in only as to the result by the four judges who signed the second opinion) was to affirm the trial court's dismissal of certain charges against two Puyallup Indians based on alleged violations of the provisions of RCW 75.12 (and regulations promulgated pursuant thereto). The defendants in that case had been fishing with nets on the Puyallup River within the city limits of Tacoma. It was stipulated that one net was within the limits of the Puyallup Indian Reservation and that the other was at a usual and accustomed fishing ground of the Puyallup tribe as provided in the 1855 treaty of Medicine Creek.

The first opinion held that the statutes involved violated the treaty. The basis for this holding was the result of an extensive review of many decisions of the Supreme Court of the United States (including



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Tulee v. Washington, 315 U.S. 681, 86 L. Ed. 1115, 62 S. Ct. 862) and of other appellate courts construing Indian treaties and treaties with foreign nations, which have been held to be the supreme law of the land under Art. 6 of the United States Constitution. In the first opinion it was stated:

"The courts have generally recognized that the treaty right of fishing at 'usual and accustomed places' was given to the Indians to provide for their subsistence and as a means for them to earn a livelihood. *United States v. Winans*, *supra* [198 U.S. 371]; *Makah Indian Tribe v. Schoettler*, *supra* [192 F. (2d) 224]; *State v. McClure*, *supra* [127 Mont. 534]. Applying a liberal -- and not a strained -- construction to the treaty of Medicine Creek as a whole, it is our opinion that the Puyallup Indians so understood Article III of the treaty, and that neither the Indians nor the United States intended that the states would or could enforce general regulations against the Indians 'equally with others' or 'in common with all citizens of the Territory' and thereby deprive them of their right to hunt and fish in accordance with the immemorial customs of their tribes. As we interpret the treaty, we believe that the phrase 'in common with all citizens of the Territory' merely granted the white settlers and their heirs and/or grantees a right to fish at these places with the Indians, but that the Indians thereby reserved their right to fish at these places irrespective of state regulation, so long as the right shall not have been abrogated by the United States.

"No other conclusion would give effect to the treaty, since to hold that their right was *equal* to that of the citizens of the territory would be to say that they were given no right at all, except that which any citizen subject to state statutes and regulations may enjoy to fish at the 'usual and accustomed grounds and stations.' This interpretation would permit the state to abrogate their treaty rights at will.

"We are convinced that, under the applicable decisions of the supreme court of the United States referred to herein, the statutes and regulations in the case at bar are in conflict with the treaty provisions, constitute an interference with matters that are within the exclusive scope of Federal power and, therefore, cannot be held valid as to the Puyallup Indians, in relation to their right to fish 'at all usual and accustomed fishing grounds and stations.'

". . .

"To summarize, the treaty of Medicine Creek of 1855 is the supreme law of the land and, as such, is binding upon this court, notwithstanding any statute of this state to the contrary, and its provisions will continue to be superior to the exercise of the state's police power respecting the regulating of fishing at the places where the treaty is applicable until:

"(1) the treaty is modified or abrogated by act of Congress, or

"(2) the treaty is voluntarily abandoned by the Puyallup tribe, or

"(3) the supreme court of the United States reverses or modifies our decision in this case."

I still adhere to the views expressed in the first opinion for the reasons hereinafter stated.

. . .

Thus, this court, in 1957, upon the concurrence of eight judges, upheld the dismissal by the trial court of similar charges against treaty Indians. I think that our two opinions in the *Satiacum* case should not be ignored in deciding the present case. At least, if the first opinion is to be wiped off the books, it should be made a matter of record and not done *sub silentio*.

. . .

"The relation between the Indians and the States has by no means remained constant since the days of John Marshall. In the early years, as the white man pressed against Indians in the eastern part of the continent, it was the policy of the United States to isolate the tribes on territories of their own beyond the Mississippi, where they were quite free to govern themselves. The 1828 treaty with the Cherokee Nation,



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7 Stat. 311, guaranteed the Indians their lands would never be subjected to the jurisdiction of any State or Territory. Even the Federal Government itself asserted its power over these reservations only to punish crimes committed by or against non-Indians. 1 Stat. 469, 470; 2 Stat. 139. See 18 U.S.C. § 1152.

"As the United States spread westward, it became evident that there was no place where the Indians could be forever isolated. In recognition of this fact the United States began to consider the Indians less as foreign nations and more as a part of our country. In 1871 the power to make treaties with Indian tribes was abolished, 16 Stat. 544, 566, 25 U.S.C. § 71. In 1887 Congress passed the General Allotment Act, 24 Stat. 388, as amended, 25 U.S.C. §§ 331-358, authorizing the division of reservation land among individual Indians with a view toward their eventual assimilation into our society. In 1885, departing from the decision in *Ex parte Crow Dog*, 109 U.S. 556, Congress intruded upon reservation self-government to extend federal criminal law over several specified crimes committed by one Indian against another on Indian land, 23 Stat. 362, 385, as amended, 18 U.S.C. § 1153; *United States v. Kagama*, 118 U.S. 375. Other offenses remained matters for the tribe, *United States v. Quiver*, 241 U.S. 602.

...

"The policy of assimilation was reversed abruptly in 1934. A great many allottees of reservation lands had sold them and disposed of the proceeds. Further allotments were prohibited in order to safeguard remaining Indian properties. The Secretary of the Interior was authorized to create new reservations and to add lands to existing ones. Tribes were permitted to become chartered federal corporations with powers to manage their affairs, and to organize and adopt constitutions for their own self-government. 48 Stat. 984, 986, 987, 988. These provisions were soon extended to Alaska, 49 Stat. 1250.

"Concurrently the influence of state law increased rather than decreased. As the result of a report making unfavorable comparisons between Indian Service activities and those of the States, Congress in 1929 authorized the States to enforce sanitation and quarantine laws on Indian reservations, to make inspections for health and educational purposes, and to enforce compulsory school attendance. 45 Stat. 1185, as amended, 25 U.S.C. § 231. See Meriam, *Problem of Indian Administration* (1928); H. R. Rep. No. 2135, 70th Cong., 2d Sess. (1929); Cohen, *Handbook of Federal Indian Law* (1945), p. 83; United States Department of the Interior, *Federal Indian Law* (1958), pp. 126-127. In 1934 Congress authorized the Secretary of the Interior to enter into contracts with States for the extension of educational, medical, agricultural, and welfare assistance to reservations, 48 Stat. 596, 25 U.S.C. § 452. During the 1940's several States were permitted to assert criminal jurisdiction, and sometimes civil jurisdiction as well, over certain Indian reservations. *E.g.*, 62 Stat. 1161; 62 Stat. 1224; 64 Stat. 845; 63 Stat. 705. A new shift in policy toward termination of federal responsibility and assimilation of reservation Indians resulted in the abolition of several reservations during the 1950's. *E.g.*, 68 Stat. 250 (Menominees); 68 Stat. 718 (Klamaths).

...

Later, in the Supreme Court's decision in the *Kake* case, the court reviews a number of decisions and federal statutes and concludes:

". . . Even where reserved by federal treaties, off reservation hunting and fishing rights have been held subject to state regulation, *Ward v. Race Horse*, 163 U.S. 504; *Tulee v. Washington*, 315 U.S. 681, in contrast to holdings by state and federal courts that Washington could not apply the laws enforced in *Tulee* to fishing within a reservation, *Pioneer Packing Co. v. Winslow*, 159 Wash. 655, 294 P. 557; *Moore v. United States*, 157 F. 2d 760, 765 (C.A. 9th Cir.). See *State v. Cooney*, 77 Minn. 518, 80 N. W. 696.

"True, in *Tulee* the right conferred was to fish in common with others, while appellants here claim exclusive rights. But state regulation of off-reservation fishing certainly does not impinge on treaty-protected reservation self-government, the factor found decisive in *Williams v. Lee*. Nor have appellants any fishing rights derived from federal laws. This Court has never held that States lack power to regulate the exercise of aboriginal Indian rights, such as claimed here, or of those based on occupancy. Because of the migratory habits of salmon, fish traps at Kake and Angoon are no merely local matter."



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I think it appropriate at this point to consider the holding in the *Tulee* case (7 Wn. (2d) 124, 109 P. (2d) 280 (1941)), which is cited in the foregoing quotation.

In that case, a member of the Yakima tribe of Indians was charged with having caught salmon with a dip bag net and with selling such fish commercially without having obtained a fishing license (costing \$ 5) as required by statute. The place where the offense was alleged to have been committed was at one of the usual and accustomed ancient fishing places of the tribe referred to in the treaty of June 9, 1855 (12 U.S. Stat. 951). The defendant was convicted and appealed to this court, which held (by a vote of 5 to 3) that the treaty right to fish at such places was subject to the statutes of the state governing the taking of fish. In effect, the majority of this court held that the police power of the state was supreme and that the treaty-making power of the Federal Government was subordinate thereto in respect to fishing regulations.

The Indian whose conviction was thus affirmed appealed to the United States Supreme Court, where the decision of this court was reversed. *Tulee v. Washington*, 315 U.S. 681, 86 L. Ed. 1115, 62 S. Ct. 862 (1942). The supremacy of the treaty right of Yakima Indians to fish at their usual and accustomed places over the power of the state to exact a \$ 5 fishing license was recognized by the Supreme Court in the following quotation from its opinion, at page 684:

"In determining the scope of the reserved rights of hunting and fishing, we must not give the treaty the narrowest construction it will bear. In *United States v. Winans*, 198 U.S. 371, this Court held that, despite the phrase 'in common with citizens of the Territory,' Article III conferred upon the Yakimas continuing rights, beyond those which other citizens may enjoy, to fish at their 'usual and accustomed places' in the ceded area; and in *Seufert Bros. Co. v. United States*, 249 U.S. 194, a similar conclusion was reached even with respect to places outside the ceded area. From the report set out in the record before us, of the proceedings in the long council at which the treaty agreement was reached, we are impressed by the strong desire the Indians had to retain the right to hunt and fish in accordance with the immemorial customs of their tribes. It is our responsibility to see that the terms of the treaty are carried out, so far as possible, in accordance with the meaning they were understood to have by the tribal representatives at the council, and in a spirit which generously recognizes the full obligation of this nation to protect the interests of a dependent people. *United States v. Kagama*, 118 U.S. 375, 384; *Seufert Bros. Co. v. United States*, *supra*, 198-199.

"Viewing the treaty in this light, we are of the opinion that the state is without power to charge the Yakimas a fee for fishing. A stated purpose of the licensing act was to provide for 'the support of the state government and its existing public institutions.' Laws of Washington (1937) 529, 534. The license fees prescribed are regulatory as well as revenue producing. But it is clear that their regulatory purpose could be accomplished otherwise, that the imposition of license fees is not indispensable to the effectiveness of a state conservation program. Even though this method may be both convenient and, in its general impact, fair, it acts upon the Indians as a charge for exercising the very right their ancestors intended to reserve. We believe that such exaction of fees as a prerequisite to the enjoyment of fishing in the 'usual and accustomed places' cannot be reconciled with a fair construction of the treaty. We therefore hold the state statute invalid as applied in this case."

At this point, reference should be made to the thorough and exhaustive memorandum of the learned trial judge in which he discusses both the testimony and numerous exhibits admitted at the trial, and also many court decisions bearing on the questions involved. His summation is 48 pages in length and unfortunately cannot be quoted in full in this opinion.

In the memorandum opinion, the trial court described in detail the background and circumstances surrounding the making of the Treaty of Point Elliott in 1855 between the Swinomish Tribe and Governor Isaac I. Stevens of the Territory of Washington, who represented the United States. Concerning the dependence of the Swinomish Tribe on fishing as their principal means of livelihood at the time the treaty was negotiated in 1855, the trial court said:



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"To say merely that these Indians were 'fish eating' would be to convey a wrong impression. The testimony clearly indicates that these people caught fish in order to exist. Fish was the main part of their diet not only in the spring and summer but it was dried and saved for winter. Their reliance upon fish is substantiated by Governor Stevens' statement at the Walla Walla Council May 29, 1855, following the *Point Elliott Treaty*. . . . The *Point Elliott Treaty* itself supports the contention by providing in *Article V* for the right of 'erecting temporary houses for the purpose of curing . . .' fish. There is also an interesting comment about the Lummi tribe located immediately to the north in *United States v. Stotts, supra* [49 F. (2d) 619]:

"I think the court may judicially know that the Indians subsisted during this time by hunting and fishing, and the tide lands were a necessary perquisite to the enjoyment of fishing . . ."

"As a result of the Treaty and the Executive Order, the Swinomish Indians moved to the small peninsular reservation on the south tip of Perry's Island (Fidalgo Island). It was obviously a rocky, hilly bit of land covered by forest in most places except for portions that were tidal marsh. . . . Very little of it was then or is today conducive to profitable or successful farming. Even wild game was apparently not too plentiful on the peninsula because, according to Alex Edge, fish was all they used to live on.

"It was obvious from the nature of the peninsula and the background of the Indians who were to occupy it that their major means of subsistence on the peninsula would be to catch, eat and sell fish or to cut and sell timber. . . ."

Later, in its written opinion, the trial court again referred to respondent's treaty rights as follows:

"As previously indicated, Governor Stevens' *Point Elliott Treaty* negotiations never hinted at or made mention of a limitation upon the Indians' right to fish at their usual and accustomed grounds. As he discussed the purposes of the Treaty and desires of the Great White Father, he left the distinct impression that the Indians could fish as necessary, as they have since time immemorial. . . . It will be remembered that these negotiations took place through interpreters.

"The Governor's statements were made at a time when the northwest was a wilderness. They were made at a time when Indians and white men alike hunted and fished as they desired without let or hindrance from the Federal or Territorial Governments. Regulations of fish and game were neither known nor dreamed of. The Indians had fished for salmon in the Skagit Bay area since time immemorial. The catching of salmon was necessary for the sustenance of themselves and their families. Neither the Governor nor the Indian chiefs could possibly have visualized present day restrictions. They entered into the treaty agreement under conditions as they existed at that time. Thus, we must interpret the Treaty and the rights of the Swinomish Indians in light of what they then knew about need for regulation, keeping in mind that both parties knew the needs and abilities of the Indians would obviously grow in the future.

"Without any doubt the Governor and the Indians signed the Treaty fully intending that the Indians should be forever allowed to catch salmon 'at their usual and accustomed grounds' without restriction. We must follow that intent. As stated in *State v. Edwards, supra* [188 Wash. 467, 62 P. (2d) 1094],

". . . they had a right to assume that, though the treaty limited them to a certain peninsula, their rights on that peninsula were as broad and unrestricted as they had been before. . . ."

". . . we are bound to construe the grant contained in the treaty, as fixed by the executive order, as it would naturally be understood by the Indians."

In arriving at the foregoing conclusion our Supreme Court quoted at length from *Jones v. Meehan, supra* [175 U.S. 1, 44 L. Ed. 49, 20 S. Ct. 1], as follows:

"In construing any treaty between the United States and an Indian tribe, it must always . . . be borne in mind that the negotiations for the treaty are conducted, on the part of the United States, an enlightened and powerful nation, by representatives skilled in diplomacy, masters of a written language,



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understanding the modes and forms of creating the various technical estates known to their law, and assisted by an interpreter employed by themselves; that the treaty is drawn up by them and in their own language; that the Indians, on the other hand, are a weak dependent people, who have no written language and are wholly unfamiliar with all the forms of legal expression, and whose only knowledge of the terms in which the treaty is framed is that imparted to them by the interpreter employed by the United States; and that the treaty must therefore be construed, not according to the technical meaning of its words to learned lawyers, but in the sense in which they would naturally be understood by the Indians. . . .

"It may be conceded that there is an ambiguity contained in the Treaty; however, that ambiguity, if there is one, should be resolved in favor of the Indians, *Winters v. United States*, *supra* [207 U.S. 564, 52 L. Ed. 340, 28 S. Ct. 207].

"Inasmuch as the defendant was fishing in a usual and accustomed fishing ground of the Swinomish tribe, he had a right to fish in the area where he was arrested. The treaty right provided for in *Article V of the Treaty of Point Elliott* is not subject to control by the State of Washington. . . ."

The portions of the findings of fact and conclusions of law quoted below are essential to an understanding of the basis for the trial court's judgment.

After finding that respondent was a member of the Swinomish Indian Tribe, which was a party to the Treaty of Point [***59] Elliott (12 Stat. 927), and was entitled to the protection of the treaty, the court found:

"C. *Was the defendant fishing at a location protected by his rights under the Treaty of Point Elliott?*

"Findings of Fact

"I. The area reserved for the Swinomish Indian Reservation was then and is a rocky, hilly bit of land covered by forest in most places except for portions that were tidal marsh. Very little of it was then or is today conducive to profitable or successful farming, and it was not then and is not now abounding in wild game. Without a salmon fishery, the reservation was incapable of producing adequate food. Fish from the immediately surrounding waters and the bounding river had always been their major, if not sole, diet.

"II. At the time of negotiation of the Treaty of Point Elliott the Swinomish Indians, and thereafter the Indians living on the Swinomish Indian Reservation, fished for a livelihood, taking fish from the surrounding waters including the Skagit River as it flowed past the south end of the peninsula upon which the reservation was located. The Indians used the caught fish for their own purposes and for sale and trade to white men. The catching of salmon was necessary for the sustenance of the Indians and their families.

"III. At the time of negotiating the Treaty of Point Elliott, Governor Stevens, who represented the United States Government, made no mention of any restriction on the Indians' right to fish, and represented that the Indians could fish as they needed, as they had since the time of their forefathers. The Indians intended that insofar as the Skagit River bounded the south end of the reservation its use was to be reserved to them for fishing as they needed for their livelihood. It was the intent of the parties to the Treaty of Point Elliott that the Indians have reserved to them the right to fish in and use the Skagit River and take such fish as were necessary for their personal and commercial use.

". . .

"VIII. The defendant was fishing in the area of the Skagit River as it was relocated by the Federal Government.

"D. *Was the defendant fishing at a 'usual and accustomed fishing ground' as that phrase is used in the Treaty of Point Elliott?*



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"Findings of Fact

"I. The Indians originally fished with Indian traps in and near the area which is presently called the 'jetty drift.'

"II. The Indians speared fish in the shallow gutters made by the Skagit River on the tide flats all the way from Bald Island westerly to deep water, which would cover the area of the jetty drift.

"III. The Indians fished with bait from canoes near the Hole-in-the-Wall.

"IV. Article V of the Treaty of Point Elliott reserved to the Indians the right of taking fish at 'usual and accustomed grounds and stations.'"

I would affirm the trial court's judgment in this case because, while the Indians' methods of fishing have changed since 1855 when the Treaty of Point Elliott was made, the supremacy clause of the United States Constitution has not been changed. It still provides:

"This Constitution, and the laws of the United States which shall be made in pursuance thereof; and *all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby*, anything in the Constitution or laws of any state to the contrary notwithstanding." (Italics mine.)

...

If this court is to follow *Tulee*, it seems to me that the judgment of the trial court must be affirmed. If the state has no power to charge a treaty Indian \$ 5 to exercise his treaty right to fish at the usual and accustomed places, then it follows that the state may not absolutely prohibit him from exercising such right for 10 days or any other period of time. Such action could result in his being deprived of his normal supply of food for an entire year. The Treaty of Point Elliott was intended to insure respondent's unrestricted right to fish to sustain himself and his family unless and until it shall be abrogated or modified by Congress.

...

The solution of the problem lies with the Congress. Certainly this court should not disregard the Treaty of Point Elliott as the supreme law of the land in the absence of controlling precedent from the Supreme Court.

As stated above, I would affirm the trial court's judgment.

Record Year For Silver Salmon

A record breaking silver salmon run is in the making on the Skagit River with 11,434 silvers counted at the Lower Baker Dam to date this year. In the record year of 1935, only 4,307 silvers had been counted on this same date, and a total of 19,000 were counted for the entire season. . . . Sockeyes, 450 slightly below average. Puget Sound Power has maintained fish count records since 1929.⁴ (Source: [9/20/61 SVH](#).)

⁴ Compare these figures to the 7,000 Silvers and 4,900 Sockeye in [11/14/46 Argus](#).



Another Tribal Fisherman Trial

Testimony this morning in the trial of Indian fishermen Lawrence Joe and Raymond Boome was confined to the opinions of Edwards Maines, assistant director of Fisheries in the State of Washington. . . . He spent part of the morning giving a detailed accounting of the life cycle of the five types of salmon. Indians claim that there are six types of salmon—classifying the steelhead as the sixth type rather than as a game fish. . . . **Interrupts** . . . When Deputy Prosecutor Paul N. Luvera Jr. asked Maines if he felt set nets should be prohibited in order to conserve salmon. After lengthy arguments Maine was allowed to answer and said “Yes”. He said that set nets lend themselves to such a variety of construction that **it is conceivable that one could be built that would imperil the whole salmon run.** (Source: [7/26/62 SVH](#))

The trial of Lawrence Joe and Raymond Boome, who have been charged with violating state fishing regulations by fishing with a set net in the Skagit River, is being heard in Skagit Superior Court. . . . Defense attorney Malcolm McLeod, Seattle, called just four witnesses in the Indians’ defense. He had indicated earlier that approximately 35 would be placed on the stand. **Request Denied** McLeod, known for his dogged determination that the Point Elliott Treaty of 1855 be interpreted in favor of Indians, asked the court to dismiss the charges against his clients on the basis of fishing rights granted them by the Treaty, but it was denied. . . . McLeod had Carl Boome, chief of the Upper Skagit Tribe, take the stand and testify that **tribal members had always fished the Skagit from the Conway Bridge to the Diablo Dam.**⁵ . . . **Final Witness** Raymond Boome, the other defendant, said that the Gilligan Creek location where he was fishing with a set net when game protectors arrested him, is an usual and accustomed fishing place for Indians. Taken in its broadest interpretation the Treaty states that Indians may fish in their usual and accustomed fishing grounds. . . . **Second Surprise** This morning the second surprise came. The state waived its right to rebuttal after the defense had finished presenting its witnesses, so steps were begun to instruct the jury on what it must consider in considering the evidence. . . . Each side had prepared instructions and Judge A. H. Ward had selected from each set [of] those instructions that he thought best fitted the circumstances. (Source: [7/27/62 SVH](#))

Two members of the Upper Skagit Indian Tribe were found guilty by a superior court jury Friday night of violating state game laws by net fishing for steelhead on the Skagit River. The two, Lawrence Joe and Raymond Boome, both of Sedro-Woolley, contended they held the right by treaty to fish in the river. . . . The Chinook gillnet catch in the Skagit through July 20 was 4,500 fish, said Starlund, about the same as in the record low years of 1956 and 1957. He noted, however, that in those years there was no fishing during closed periods, permitting some fish to escape upstream to spawning grounds. (Source: [7/28/62 SVH](#))

A plea to Indian fisherman to observe state laws, made Friday by the director of the State Department of Fisheries, has brought immediate response from the Swinomish Tribe. Speaking for the tribe, Tandy Wilbur replied to Director George Starlund’s plea today, and announced that the Indian fisherman have agreed to comply with the state request. Starlund had asked in a telegram made public, that Indian fishermen comply with closed periods and help “provide seed

⁵ Either the Chief was not telling the truth or Seattle City Light is grossly misleading the public by stating that the salmon never ventured above Newhalem Dam.



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for future runs”. He said Indian gear has placed the 1962 run in great jeopardy. **Asks Meeting** Wilbur’s reply said that the Indians would like to meet with Starlund and his staff and work out a better understanding of their mutual problems. “Indian fishermen are greatly outnumbered and so compelled to exercise their treaty fishing rights to gain a livelihood”, he said. “They should be given exclusive fishing times and grounds.” . . . **“Hungry People”** Commenting on the contents of the telegram the Swinomish are sending to Starlund, Wilbur said that tribal fishing grounds have been taken away by one means and another during the past 50 years. “You are dealing with hungry people,” he said. “Fishing is the Swinomish peoples’ only means of making a living. They have no year around employment. They were granted fishing rights and it would seem to me these concessions made in the Treaty should be honored by the white man.” “The Swinomish are not fishing for selfish reasons. They have gone into court and claimed fishing rights on the Skagit River because their old fishing grounds on the Swinomish Channel have been destroyed through the years,” Wilbur said. (Source: [7/30/62 SVH](#))

Swinomish Tribe Indians announced yesterday that the tribe will begin policing its own fishermen and hand out stiff fines to any who fail to observe salmon conservation closures. . . . A spokesman for the tribe said, “The Swinomish Indians have agreed to voluntarily close all fisheries for a period of 48 hours during August 3rd and 4th. However, we have mavericks among us the same as any other group. We will operate our own patrols and catch the violators.” (Source: [8/1/62 SVH](#))

Avon By-Pass Could Produce New Fish Runs

Development of new fish runs and of a several-mile length of excellent boating-swimming water are important by-products of the revived “Avon By-Pass” flood control plan for the Skagit valley that are being seriously studied. . . . “The experts say near-ideal conditions could be provided for natural fish propagation and it is possible completely new runs of fish could be produced.” . . . Johnson said it was possible the engineers could proceed with final design and construction as early as 1964. (Source: [8/23/62 Argus](#))

The Avon By-Pass has again been proposed to Skagit County by the Corps of Army Engineers as the most practical means of additional flood control. Many miscellaneous other uses of this by-pass other than flood control are under study, such as fish farming, recreation, drainage, irrigation and water transportation. The U.S. Fish and Wildlife consider fish farming conditions in the upper part of the by-pass as very good and they are reporting as being enthusiastic about the prospects. The Skagit River water temperatures are near ideal for fish farming. Plans for swimming, boating and other recreation will be utilized to everyone’s advantage. (Source: [8/23/62 B.J.](#))

The proposed Avon Bypass for Skagit River waters may well prove to be a trout fisherman’s paradise when it becomes a reality. Recent discussions over recreational users of the proposed bypass have been focused on its development as a virtual eight mile lake containing an endless supply of trout....(Source: [7/11/63 SVH](#))



Dredging A Channel To Concrete

Editorial: A new campaign in the continuing war between conservationists and proponents of industrial development is threatening to break out on the Skagit River. The focus of developing controversy is the proposed dredging of a 100-foot wide channel, six feet deep, to Concrete. The channel would open the river to tug and barge traffic and connect valley towns to salt water. With a stagnant economy, Skagit County sorely needs to strengthen existing payrolls and to develop new employment opportunities. Initially the navigable channel would create new activity at Lone Star Cement Company's upriver limestone quarry. . . . Alarmed that fish spawning grounds will be disturbed, the state Game and Fisheries Department has made an official protest, pointing out that roughly a third of Skagit River's Chinook Salmon are spawned in the area of the proposed dredged channel. . . . We don't pretend that a dredged channel will not have some small effect on fish spawning despite adequate safeguards. There has to be a reasonable amount of compromise on the part of fish conservationists in order for Skagit County to enjoy vitally necessary economic growth. The conflicts that may seem to exist can most certainly be resolved by calm and constructive approach to the problem by all concerned interests. (Source: [7/23/63 SVH](#))

New Fish Study Proposed

As to flood control, Col. Garbacz pointed out that while the proposed Avon By-Pass would provide "partial protection," the US Engineers felt this and existing levees would not give all the flood protection needed in the lower areas of the Skagit. The "ultimate solution" he said, "is to provide some type of reservoir upstream from the lower valley areas. **Sauk Site Considered**—Later in the interview the engineers spokesman said superficial examinations had been made on the Sauk river about seven miles upstream from the Skagit as a possible dam site. He called it "premature to say that site is a good site." **Dredging**—The engineer did not duck the issue of potential damage to fish life from the proposed dredging of the Skagit channel between Mt. Vernon and Concrete for barge navigation. Sports groups have voiced great concern that such channel work would ruin spawning grounds and wipe out steelhead and salmon runs in the river. **Fish Studies Promised**--..."we are very much aware of the problem that dredging in that stretch of the river might cause to fishing" and promised that "we will have the fisheries experts of the state and federal agencies go into it a little bit later on. . . . Present thinking of the engineers is to have a river channel four to six feet deep and about 100 feet wide. "Dredging alone doesn't bother the run so much as it does the spawning of the sea-run fish. This is the particular concern I think that the sportsmen out there have and so does the Corps." (Source: [8/1/63 Argus](#))

Fish Trap Closed

As soon as Starlund's request was received Monday, Wilbur called a meeting of all Tribal Community officers to discuss it. They immediately halted operation of the trial trap from Monday through Thursday this week and next. In addition, individual gillnet fishermen who are



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tribal members agreed to halt fishing from Friday morning to Sunday night during the next two weeks. (Source: [10/16/63 SVH](#).)

Avon By-Pass – Boon or Boondoggle

Editorial: From what we have seen and read, to date, we are unable to determine whether the misnamed Avon By-Pass would be a bonafide boon to our area or just another bureaucratic boondoggle. According to a recent release by Congressman Jack Westland the Corps is considering construction of the by-pass, strengthening of levees and building of a water storage facility as parts of a long-range flood control plan for the Skagit. The informational bulletin makes it plain that the bypass project itself is not intended to be up for discussion at the Nov. 22 hearing. A plan of “uniforming” the Skagit river levee system from Mount Vernon in combination with minor channel widening, and the addition of recreations and fisheries as added purposes to the Avon By-Pass will be the subjects that will be discussed, We do not know if this means the Corps has already been “sold” on the by-pass or not.

At any rate, we did not know the Corps was in the business of “selling” anything. We always thought their function was to take over when a need was expressed, justification determined, and funds provided. Maybe it wasn’t intended that way, but the informational bulletin mentioned above strikes us as a first class promotional piece as far as the recreation and fisheries aspects of the by-pass are concerned. We are presented with sketches of ducklings in the rushes, fishermen netting fish out of a boat, canoeing, bird and duck hunters prowling in the banks, beach balls and beach scenes, picnickers and even overnight campers in tents. . . . With the levee improvements cited, and the addition of the by-pass, the engineers say we would be able to control flows of up to 180,000 c.f.s. from Burlington downstream, and would increase the level of flood protection in presently diked areas to 30-year frequency. Under this plan, the river would carry 120,000 c.f.s. and the by-pass 60,000. . . . The fact remains, however, that the river has exceeded 180,000 c.f.s. five times in its recorded history – 185,000 in Nov. 1896, 190,000 in November 1897, 220,000 in November 1906, 195,000 in December 1917, and 210,000 in December 1921⁶. We’re certainly no experts on rivers but it’s reasonable to presume these excessive flows could occur again under the right circumstances. If they did, we would all get our feet wet, by-pass or no by-pass.

On the other hand there have been no disastrous floods in the lower Skagit Valley since the completion of the Ross Dam in 1949. During flood periods, the Ross Plant has been shut down, sometimes entirely, to hold back the greatest possible amount of water. In 1949, from Thursday midnight until Sunday midnight, enough water was held behind the dam to cover 116,000 acres of land to a depth of one foot. At the crest of the flood approximately 50,000 cubic feet of water was impounded every second. Although the dam was built primarily for power production, it had appreciably reduced the flood threat in the lower Skagit. . . . We are not convinced either that the by-pass would tend to impair the free flow of people and traffic across the valley. This barrier could work a hardship on business, industry and agriculture. From a strictly selfish viewpoint we can see the City of Burlington and surrounding area locked in by the

⁶ The quoting of these figures clearly show the impacts Stewart’s work has on any proposed flood project.



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river on one side and the artificial moat on the other. It would appear that the Burlington Cut-Off would be a more appropriate name for the project than the Avon By-Pass. Before this thing blossoms into reality sufficient thought should be given to the possible consequences. (Source: [11/14/63 B.J.](#))

...Primary subjects of Friday's hearing are the Engineers plan to bolster dikes and widen channel of the river below Mt Vernon and their addition of recreational features to the revised Avon Bypass plan originally authorized by Congress in the 1930's. "We would not recommend the lower river work without the by-pass," Robert Gedney, chief of basin planning branch, Seattle engineer district, told the special meeting group. He explained that as now diked lands along the lower river have from two to seven year flood protection. . . . Also brought out at the meeting was that the State fisheries department within the last two months had asked the Engineers to consider use of part of the Avon bypass channel for migratory fish propagation. (Source: [11/21/63 Argus](#))

A July 30 deadline for further comment on the U.S. Army Corps of Engineers' recommendations for Skagit river flood control was set in an announcement from their Seattle office Wednesday. . . . The 124-page report re-outlines the Engineers' plans for the Skagit and reproduces the testimony given by public officials and interested citizens at the public hearing held in Mount Vernon Jan. 10, 1964. The Engineers are recommending levee and channel improvements along the river from Sedro-Woolley down and modification of the Avon Bypass flood control channel plan to include fisheries and recreation facilities. (Source: [7/1/65 Argus](#))

Skagit And Tributaries In Spawning Program

The State Fisheries is now conducting a study in which they hope to build the sockeye run in the Skagit River and tributaries by establishing a controlled salmon run incubation channel which would allow them to have a maximum take of eggs from the state fish hatcheries. The proposed planning would include another artificial spawning beach at upper Baker Lake, to be built this summer. The department has negotiated with Puget Power for the building of this third spawning beach, which will be the same size as No. 2 now being used and will handle another 1,000 sockeye adults. (Source: [5/6/65 C.H.](#))

Humpy Salmon Demise

In 1969 the Humpy salmon run was one of the poorest ever. It was so poor that the Washington State Dept. of Fisheries ran large ads in the local papers asking anglers to release all fish caught. (Source: [8/14/69 SVH](#))

First Batches Of Sockeye Salmon Of Season Start Migration To Deep Water

Over 9,000 small fingerlings slipped into the creek at the north end of Baker Lake last Saturday as Vern Daves, superintendent of the Game Department's fish hatchery, released the



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first batch of sockeye for the season. The tiny silver streaks were about an inch and a half in length and weighed out at 5 fish to 1 gram. Daves dips the fish in sieves from the trough and weighs them to judge how many he is releasing at a time. He said that 6¼ million were released last year. Mortality rate is extremely high with thousands lost over the dam and to birds and other predators in the lake. **Only about one in a thousand survives to hit open water.** (Source: [4/8/70 C.H.](#))

Personal Opinion

Based solely on the content of this paper I feel very strongly that the demise of the Salmon in the Skagit River system can be traced to three main causes. Those reasons are:

1. The blocking off of the subsidiary channels into the estuaries by the U. S. Army Corps of Engineers (Source: [2/15/09 TSN-H](#)), which proceeded the diking off and draining of the estuaries by the farmers;
2. The building of the dams; and
3. The netting of Salmon in the Skagit by local Tribes.

The earliest of settlers realized that nets and “fish traps” should not be allowed in free flowing rivers. (Source: [1/4/1897 TSN](#)) In 1924 the State had the foresight to not allow nets within 3 miles of the mouth of a river. (Source: [10/2/24 Argus](#)) However, at some time subsequent to that the regulation was changed. (Source: [3/23/44 CT](#))

People used to come from all over the nation to fish the mighty Skagit. (Source: [1/15/31 CT](#)) The Baker River sockeye salmon had a reputation far and wide as among the most toothsome of the salmon tribe. (Source: [5/5/27 CT](#)) The Skagit used to be the second most valuable stream in Washington State from a fisheries standpoint. (Source: [8/19/43 CT](#))

As the articles as well as the McCoy lawsuit contained herein clearly show, salmon runs have been on the demise since the early 1940's with Chinook, Steelhead and cutthroat trout the first to be almost completely destroyed. (Sources: [3/30/44 Argus](#), [3/30/44 CT](#), [11/14/46 Argus](#))

The State Fisheries Department realized that the dams had a terrific impact on the fish runs on the Skagit, so much so that they threatened the very existence of the salmon. (Source: [12/15/45 MVDH](#)) Fortunately, at the urging of sports and commercial fishermen, and the Department of Fisheries the dam building proposals were curtailed. (Sources: [5/9/46 CT](#), [6/20/46 CT](#), [8/7/47 Argus](#), [8/7/47 Argus](#))

It appeared for a short period of time that with the advent of hatchery fish to the tune of three million per year was going to save the salmon runs as the fish returned in greater numbers. (Sources: [7/14/47 MVDH](#), [10/3/47 MVDH](#), [4/7/49 CT](#), [5/1/56 SVH](#))



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However, by 1960 it was clear that hatchery fish alone were not going to cure the problem, for once again the salmon runs were on the demise. At the trial of Joe McCoy it was testified that **the only thing that might save the salmon would be the total closure of the Skagit to all fishing for a period of two salmon life cycles.** (Sources: [12/13/60 SVH](#), [12/14/60 SVH](#))

A reading of the Supreme Court case **State v. McCoy, 63 Wn.2d 421, (Wash., 1963)** contained in part in this paper is a fascinating glimpse of the history of not only the Skagit fish issue but of the very beginnings of our State. The dictum contained in this case not only describes the life cycle of the salmon but just how easily it can be destroyed. As the case states, *“the Skagit River is capable of handling approximately 60,000 to 75,000 Chinook spawners. Surveys in 1952 showed escapement of only 20,000 adult fish, and these continued to drop until, in 1957, the escapement of Chinook in the Skagit River was down to 10,000.”*

After reading that case, how anyone, including Tribal members, can support the placing of nets in the Skagit is beyond belief to me. I personally have witnessed the dragging of nets across gravel spawning beds in the Lyman area that clearly not only caught the fish but destroyed the redds⁷ that had already been deposited. To add insult to injury the fish that were caught were not taken for subsistence but rather cut open, the eggs removed, and the fish thrown back into the river. I have also witnessed a Tribal member taking a 40 pound plus Chinook which clearly had drowned due to the net catching of its gills, and thrown back into the river. Thus, one more Chinook that was not allowed to spawn and replenish its species.

I am fully aware of the dissenting opinion in State v. McCoy as I am fully aware of the infamous Boldt decision, and for what it is worth I am sympathetic and truly believe that Tribal members have the Treaty right to fish in their ordinary and accustomed waters. However, when that Treaty right allows the massacre of a national resource, then the Treaty right and the cultural heritage issues must be curtailed in the interest of preserving and rehabilitating the Skagit salmon runs to their historic levels. Nets in the Skagit River are an abomination to conservation of the National treasure, the Skagit Salmon.

If the Salmon is to ever reach their historic levels in the Skagit River we must employ better logging and agricultural practices, curtail urban drainage and pollution, re-create the natural estuaries, increase spawning habitat areas, do a better job of regulating the flows from the dams and severely curtail the placing of nets in the river. I absolutely believe that unless these practices are instituted the Skagit Salmons demise is not only apparent but guaranteed. We will have no one to blame but ourselves.

⁷ a hollow that is scooped out in the sand or gravel of a river bed for spawning by fish such as trout and salmon