



SQUAXIN ISLAND TRIBE

RESOLUTION NO. 14- 103

of the

SQUAXIN ISLAND TRIBAL COUNCIL

WHEREAS, the Squaxin Island Tribal Council is the Governing Body of the Squaxin Island Tribe, its members, its lands, its enterprises and its agencies by the authority of the Constitution and Bylaws of the Squaxin Island Tribe, as approved and adopted by the General Body and the Secretary of the Interior on July 8, 1965; and

WHEREAS, under the Constitution, Bylaws and inherent sovereignty of the Tribe, the Squaxin Island Tribal Council is charged with the duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources and rights of the Tribe; and

WHEREAS, the Tribe is a federally-recognized Indian Tribe possessing reserved powers, including the powers of self-government; and

WHEREAS, the Squaxin Island Tribal Council has been entrusted with the creation of ordinances and resolutions in order to fulfill their duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources of the Tribe; and

WHEREAS, the Squaxin Island Tribe has treaty-reserved rights to fish in common with other Tribes party to United States v. Washington, 70-9213; and

WHEREAS, the sharing of a common property resource creates a co-management system and obligation among the Treaty Tribes to coordinate their activities and to resolve disputes as necessary; and

WHEREAS, the Final Report of the Tribal Leaders Dispute Resolution Work Group, January 2013, that contains the (1) Treaty Among the Sovereign Indian Nations of the Pacific Northwest and (2) the Intertribal Statute creating an Intertribal Justice System for Treaty Fisheries (Attachment A), has been fully and accurately stated and explained to the Squaxin Island Tribal Council; and

NOW THEREFORE BE IT RESOLVED, that the Squaxin Island Tribe does hereby ratify and affirm the enclosed Treaty Among the Sovereign Indian Nations of the Pacific Northwest and the Intertribal Statute creating an Intertribal Justice System for Treaty Fisheries; and

BE IT FURTHER RESOLVED, that this ratification shall be contingent upon (1) a finding by the ratifying Tribes that a sufficient number of Tribes have ratified the Treaty and Intertribal Statute and (2) a certification by the Tribal Leaders Dispute Resolution Work Group that startup funding for the Intertribal Justice System has been secured; and

BE IT FURTHER RESOLVED, that this resolution shall not constitute a waiver of any rights, claims, or arguments relating to the Squaxin Island Tribe's Treaty fishing rights in any matter, past, present, or future.

CERTIFICATION

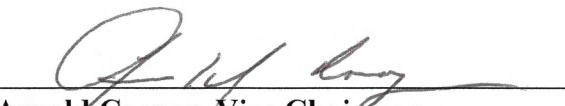
The Squaxin Island Tribal Council hereby certifies that the foregoing Resolution was adopted at the regular meeting of the Squaxin Island Tribal Council, held on this 28th day of August, 2014, at which time a quorum was present and was passed by a vote of 6 for and 0 against, with 0 abstentions.



David Lopeman, Chairman

Attested by: 

Peter Kruger Sr., Secretary



Arnold Cooper, Vice Chairman

GENERAL PROVISIONS

SECTION 1. DECLARATIONS OF POLICY. The Signatory Tribes declare that their policy is as follows:

- a. This Intertribal Justice System is created to implement the provisions of the Treaty Among the Sovereign Indian Nations of the Pacific Northwest on _____, 20__.
- b. The federal courts have adjudicated controversies between the Tribes of the Pacific Northwest and the State of Washington in *United States v. Washington*. In particular, Judge George Hugo Boldt's decision of February 12, 1974, recognizing the Tribes' expansive sovereignty and treaty rights, is a landmark in the law and history of the Pacific Northwest and the nation.
- c. Many intertribal disputes are and have been litigated under the continuing jurisdiction of the United States District Court in *United States v. Washington*, but such critical internal tribal matters should be resolved by a system established and supported by tribal sovereigns instead of relying upon non-Indian judges in non-Indian courts.
- d. Henceforth, the scope of intertribal disputes defined in Part C, Section 18(a) of this Statute shall be resolved under this Intertribal Justice System, which is established by the authority of our own sovereignty. This Justice System shall be composed of a robust and culturally distinctive and appropriate dispute resolution process initially through Staff-to-Staff Negotiations, then through Peacemaking at the Tribal Council level and, finally when necessary, by recourse to an Intertribal Treaty Fisheries Court with outstanding judges well versed in Indian law and sensitive to Indian cultures and traditions.
- e. Only by taking control of our own destiny in this way can we resolve our disagreements in

- accordance with our own cultural values and the respect, strength, and honor that come from our traditional teachings. We exercise our powers as sovereign governments in this fashion in order to build a rich legacy that will serve this generation and all the generations to come.
- f. In accordance with our high and proud standards, proceedings under this Justice System shall be conducted respectfully and honorably, consistent with the knowledge that we are One People and share objectives of achieving true justice and fairness and furthering excellent natural resources management practices.

SECTION 2. DEFINITIONS. The following terms, as used in this Statute, shall be defined as follows:

- a. *Affected Tribes* means the treaty tribal governments that are involved in an intertribal dispute.
- b. *Consensus* means without affirmative objection by a Signatory Tribe. Consensus is a process for making group decisions without voting. Agreement is reached through a process of gathering information and viewpoints, discussion, persuasion, and the synthesis of proposals, or the development of entirely new ones.
- c. *Court of Appeals* means the appellate level of the Treaty Court.
- d. *Interested Tribes* means tribal governments that believe their interests will be harmed by the outcome of a proceeding and provide notice to all Signatory Tribes that they will participate in the dispute resolution process as an Affected Tribe for any particular issue.
- e. *Signatory Tribes* means tribal governments that are signatories to the Intertribal Justice System.
- f. *Staff* means fisheries staff, fisheries managers, or elected or appointed individuals (e.g., commission or committee members) who are duly authorized to represent their Tribes.

- g. *Treaty Court* means the Intertribal Treaty Fisheries Court, including both the Trial Court and Court of Appeals.
- h. *Trial Court* means the trial level of the Treaty Court.

PART A: STAFF-TO-STAFF NEGOTIATIONS

SECTION 3. PRIMARY ROLE OF STAFF-TO-STAFF NEGOTIATIONS.

The primary and preferred means of addressing intertribal fishing issues shall be through interaction and negotiations among tribal fisheries managers and staffs. Pre-season and in-season intertribal agreements among Tribes that harvest shared resources provide a means for resolving differences, ensuring orderly conduct of fisheries and clarifying responsibilities and obligations. The Signatory Tribes recognize and acknowledge the critical importance of making every effort to develop such agreements to ensure proper management of the resource while increasing common understanding and minimizing intertribal disputes.

SECTION 4. COMMUNICATIONS AND MANAGEMENT AGREEMENTS.

Fisheries managers and staff for each Signatory Tribe shall:

- a. Promote and enhance intertribal communication at the staff level to improve cooperative fish and shellfish resource management.
- b. For fisheries affecting shared resources, develop an agreed schedule containing specific dates for pre-season and in-season agreements, and if possible, long-term agreements that set forth goals, requirements, expectations, obligations, and responsibilities. The Signatory Tribes that participate in a shared fishery may establish procedures, schedules, principles, and incentives, such as no fishing during negotiation or other measures to

encourage agreement, which they deem appropriate for a given fishery.

- c. Use best efforts to develop on a timely basis harvest management plans that include pre-season (e.g., the North of Falcon process, procedures being incorporated into the Shellfish Implementation Plan) and in-season agreements, and when appropriate, long-term agreements with other Signatory Tribes.
 - i) In the event that agreement on a particular harvest management plan (pre-season/in-season) is not being reached, each Tribe intending to participate in the fishery will provide other Affected Tribes with a written description of issues remaining in dispute and a proposal for resolving differences sufficiently in advance of the anticipated commencement of the fishery to provide a fair opportunity for Affected Tribes to resolve concerns.
 - ii) Upon reaching agreements on intertribal harvest management plans or implementing long-term agreements, the Affected Tribes will (A) file agreements with the Intertribal Treaty Fisheries Court; and (B) prepare and share with other Affected Tribes its plan to implement the intertribal agreement for its own fisheries prior to commencement of a fishery.
 - iii) If the Affected Tribes are unable to conclude a Management Agreement according to the established schedule, an Affected Tribe may propose to unilaterally open its fishery by providing the other Affected Tribes with its proposed management plan setting forth the management basis for regulation, goals, requirements, expectations, obligations, anticipated fishing schedules, and responsibilities for its own fisheries. The proposed plan shall be provided sufficiently in advance of the proposed

commencement of the fishery to provide a reasonable opportunity for other Affected Tribes to raise and resolve objections (generally at least thirty days).

SECTION 5. NOTICE OF DISPUTES AND STAFF-TO-STAFF MEETINGS.

When disputes arise, over pre-season agreements, in-season agreements, individual tribal management plan, in-season management actions, or otherwise, among any of the Signatory Tribes, the Affected Tribes shall provide written notice of the dispute to all the Chairpersons of all Signatory Tribes and to the Treaty Court. The Signatory Tribes shall have the opportunity to indicate by providing written notice to the Signatory Tribes within five (5) business days, unless specified otherwise in applicable management agreements or court orders, that it will participate in dispute resolution proceedings as an Affected Tribe. Staff of the Affected Tribes shall meet and hold Staff-to-Staff meetings, in person to the extent practicable.

- a. Each Affected Tribe shall review proposed plans and identify issues and exchange proposals for their resolution.
- b. Affected Tribes shall use their best efforts to resolve issues in a respectful, collaborative manner.
- c. Staff shall consult their respective fisheries policy representatives for direction and guidance as needed.
- d. Tribal attorneys will not participate directly in the Staff-to-Staff meetings, unless otherwise agreed by the Affected Tribes.
- e. A Tribe may withdraw from a dispute by providing written notice to all other Affected Tribes and the Treaty Court that it no longer wishes to participate in the dispute resolution proceeding.

SECTION 6. FISHERIES POLICY REPRESENTATIVES, TECHNICAL ADVISORS, AND SCIENCE PANELS.

In the event of a Staff-to-Staff impasse, the Affected Tribes shall refer the dispute to their respective fisheries policy representatives, who may:

- a. Provide guidance or direction to staff to try to resolve the dispute.
- b. Resolve the dispute among themselves and provide direction to staff for implementation of agreements.
- c. Determine by consensus that assistance of a Technical Advisor is needed.
 - i) The Signatory Tribes shall maintain a list of scientific and technical experts, comprised of qualified, respected scientists developed by consensus of the Signatory Tribes. The list of experts will be reviewed annually to add or remove scientists by consensus. An up-to-date list of experts shall be maintained by the Northwest Indian Fisheries Commission and a copy shall be provided to the Treaty Court.
 - ii) The Affected Tribes may select one or more Technical Advisor(s) from the list to assist them in resolving the dispute. Technical Advisors shall not in any way be involved in the dispute or have any conflict of interest in its resolution. Affected Tribes shall use their best efforts to agree on selection of Technical Advisor(s). If they cannot agree, Affected Tribes will identify three or more scientists from the list and make a selection by consensus.
 - iii) The role of the Technical Advisor shall be to provide support and advice to Affected Tribes at any stage of the process in the Intertribal Justice System. Generally, Technical Advisors shall assist the Affected Tribes in establishing a common foundation for the scientific facts involved in a dispute and help the Affected Tribes identify potential technical approaches for resolution. Advice

received from a Technical Advisor shall be shared with all Affected Tribes. Costs of utilizing Technical Advisors shall be borne equally by the Affected Tribes, unless agreed otherwise by the Affected Tribes.

- d. Determine by consensus to utilize a Science Panel to resolve technical and scientific issues. When the parties voluntarily choose to use a Science Panel, absent agreement otherwise by the Affected Tribes, no disputed fishery shall open until an agreement is reached, or a decision is rendered by the Science Panel as provided below.
 - i) A Science Panel shall consist of three members, who shall be selected by the Affected Tribes from the consensus list of qualified, respected scientists referred to in Section 6c(i) above.
 - ii) Each Affected Tribe shall be represented by a policy representative with supporting technical personnel as necessary. The procedures to be used by the Science Panel in hearing disputes will be informal, but shall include the following, except where otherwise agreed:
 - (a) An opportunity for all Affected Tribes to present their scientific evidence and arguments in writing and orally;
 - (b) An opportunity for all Affected Tribes to respond to or challenge the scientific evidence and arguments presented by other Affected Tribes; and
 - (c) The opportunity for all Affected Tribes to compel the production of persons or documents from other Affected Tribes necessary for full consideration of the scientific matter in dispute.

- (d) The Science Panel will consult with the Affected Tribes to establish a timeframe of the process for each dispute that will be appropriately scheduled as required by the timing of the fishery or dispute at issue.
- iii) If agreement is reached among the Affected Tribes as a result of this process, the Science Panel shall prepare a report documenting the agreement. If no agreement is reached, the Science Panel shall render a decision in writing no more than ten (10) business days after the conclusion of the hearing, unless the Affected Tribes agree to extend the date for a decision. The decision of the Science Panel shall be binding on the Affected Tribes, shall remain in place for one year, unless otherwise agreed by the parties, and shall not prejudice any future proceedings, including referral to Council-to-Council Peacemaking (Part B). The costs of a Science Panel proceeding shall be shared equally by the Affected Tribes, unless otherwise agreed.

SECTION 7. CALLS FOR COUNCIL-TO-COUNCIL PEACEMAKING.

If Staff-to-Staff efforts have been taken and an impasse has been reached, any Affected Tribe may call for Council-to-Council Peacemaking (see Part B).

PART B: COUNCIL-TO-COUNCIL PEACEMAKING

SECTION 8. COMMITMENT TO REDUCING DISPUTES.

The Signatory Tribes are committed to reducing intertribal fisheries disputes through intertribal processes that respect tribal sovereignty, enhance intertribal government-to-government relations, and promote traditional values of consensus building.

SECTION 9. REASONS FOR ENGAGING IN PEACEMAKING.

This Part B applies to those circumstances in which intertribal interaction at the staff level has resulted in impasse despite repeated efforts to resolve differences, or tribal elected representatives determine that engaging in direct Council-to-Council discussions to develop long-term solutions to the dispute(s) at issue is in the best interest of their membership. When long-term solutions cannot be reached prior to a season opening, the Affected Tribes may develop an interim solution under Section 12.

SECTION 10. LETTER TO BEGIN PEACEMAKING.

To begin Council-to-Council Peacemaking, an Affected Tribe shall send a letter signed by its elected Chair or Vice-Chair (sending Tribe) to the Chair of other Affected Tribes (receiving Tribes), with copies to their respective fisheries managers.

- a. The letter shall be sent sufficiently in advance of commencement of the fishery at issue to give the Council-to-Council process a reasonable chance for success, and by means, including electronic means, that confirm notice of receipt to the sending Tribe.
- b. The letter shall briefly describe the disputed issue, include a statement of how the sending Tribe suggests the matter should be resolved, and invite tribal elected representatives of the receiving Tribe(s) to a Council-to-Council meeting, pursuant to Section 4 below, to discuss and resolve the issue(s).
- c. The letter shall propose at least two meeting dates and two meeting sites, preferably Longhouses or other traditional facilities, and may include a neutral site or sites. Except in situations where an anticipated fishery opening requires an earlier response, each receiving Tribe shall respond in writing no later than five (5) business days after

receiving the letter, indicating its preferred meeting time and place, and responding, at least preliminarily, to any substantive matter set forth in the letter from the sending Tribe.

- d. The Affected Tribes shall convene a Council-to-Council meeting within two weeks of receipt of the sending Tribe's letter unless otherwise agreed.
- e. A courtesy letter shall be sent to the elected Chairs of other Signatory Tribes to notify them of the dispute and the call for Council-to-Council Peacemaking. A copy of the letter will also be sent to the Treaty Court.

SECTION 11. PROCESS OF PEACEMAKING.

Council-to-Council Peacemaking meetings, which can take place over more than one day if appropriate, shall proceed as follows.

- a. The Affected Tribes will use their best efforts to hold meetings in a Longhouse or other traditional facility. The meeting may be held at a neutral location agreed to by the Affected Tribes.
- b. The meeting shall be attended by at least two, and preferably three or more Council members, from each Affected Tribe, including elected representative(s) most knowledgeable about the matter at issue. Unless there are exceptional circumstances, at least one Council member shall be the Chair or Vice-Chair of the Affected Tribe. The individuals selected to participate in Council-to-Council deliberations must be authorized to negotiate on behalf of their respective governments. Participants may also include fisheries managers, other individuals duly authorized by the respective Tribe to enter into Peacemaking on its behalf, and, if so desired by the respective Tribe, tribal

elders. Unless the Tribes agree otherwise, no attorneys and no more than two staff representatives or elders from each Affected Tribe shall be present in the meeting room.

- c. Each Affected Tribe shall designate a spokesperson, who shall be the sole spokesperson for the Tribe unless a second is designated by the chief spokesperson for a particular issue or point. During any session, an Affected Tribe may request recesses as necessary to consult with its attorneys and/or technical staff. Any elected representative may request an executive session of elected representatives only, once such representatives deem themselves adequately advised regarding legal and/or technical issues. Council-to-Council Peacemaking will generally be conducted in-person. If necessary, a tribal representative may participate via audio or video conferencing. The Affected Tribes may select one or more tribal elders from the Affected Tribes or from other Tribes to act as neutral facilitators to guide the discussions. Meetings shall generally be closed, although the Affected Tribes may jointly determine through consensus with explicit acknowledgement the extent to which others will be permitted to attend or observe. All meeting costs and logistics shall be shared equally by the Affected Tribes unless otherwise agreed.
- d. Interaction at Council-to-Council Peacemaking meetings shall be respectful. Each Affected Tribe shall be allowed ample opportunity to present its views and concerns. The Affected Tribes shall make a good faith effort to achieve a solution, at least in concept, at the meeting, and shall be prepared to stay in negotiations for as long as necessary to try to achieve such a result. If full agreement cannot be reached, effort should be made to achieve at least a partial or temporary solution.

- e. Consensus agreements reached through Council-to-Council Peacemaking may be memorialized in writing in such manner as the Affected Tribes determine to be appropriate, but shall be filed with the Treaty Court.
- f. The Council-to-Council Peacemaking should establish a timeframe and schedule for each negotiation appropriate for the particular issue.

SECTION 12. SOLUTION FOR UPCOMING SEASON.

If, despite reasonable efforts, the Affected Tribes are unable to negotiate a long-term solution at any point in the process, the Affected Tribes should focus upon a solution for the upcoming fishing season, or for the fishery or fisheries in dispute. Acceptance of a one-season harvest management plan, however, shall not be deemed an admission by any Affected Tribe that such plan represents a fair or even lawful long-term solution, and shall not be deemed a waiver of any rights in subsequent proceedings relating to future years.

SECTION 13. TRIBES TO REMAIN IN SESSION.

If the Affected Tribes cannot reach agreement, they shall nonetheless remain engaged in Council-to-Council Peacemaking until one or more of the following has been agreed to: another scheduled policy-level meeting; further meetings among fisheries staff; Peacemaking mediation by tribal elders; other forms of neutral mediation or facilitation; non-binding arbitration; binding arbitration; or other agreed-upon dispute resolution procedures.

SECTION 14. FINAL SETTLEMENT PROPOSAL.

- a. If the above procedures fail to yield an agreement, each Affected Tribe shall send a final written settlement proposal for resolving the issue to all other Affected Tribes. This

written settlement proposal shall include more than one option for resolving the matter at issue, at least one of which shall be a one-year harvest management plan.

- b. Settlement agreements will not be binding on any Tribe except the parties to the settlement.

SECTION 15. CONFIDENTIALITY OF PROCEEDINGS.

All discussions or actions taken in any proceedings described in Sections 3 through 14 shall be deemed confidential settlement negotiations or offers of compromise for purposes of Federal Rule of Evidence 408. An Affected Tribe may present its own settlement proposal and supporting evidence in such litigation, however, and argue that it represents a fair and reasonable resolution to the dispute. Evidence that is otherwise admissible, disclosable, discoverable, known, or available to the Tribes shall not be rendered confidential, inadmissible, or non-discoverable simply because of its use in the negotiation process.

SECTION 16. SEEKING RELIEF IN INTERTRIBAL TREATY FISHERIES COURT.

When Staff-to-Staff Negotiations under Part A and Council-to-Council Peacemaking under Part B both fail to resolve issues despite repeated efforts to resolve differences, an Affected Tribe may seek relief under Part C, Intertribal Treaty Fisheries Court.

PART C: INTERTRIBAL TREATY FISHERIES COURT

SECTION 17. TREATY COURT PURPOSE AND OBJECTIVES.

The Treaty Court, constituted as an exercise of the inherent sovereignty of the Signatory Tribes, serves the Tribes' mission of achieving just, final, and expeditious resolution of

intertribal disputes over fishing rights, conservation, and preservation of natural resources for present and future generations of the Pacific Northwest Indian Nations. The Treaty Court also stands as a monument to keeping intertribal disputes within the collective sovereign authority, culture and traditions, and wisdom of the Tribes, not federal courts. The Tribes, therefore, have agreed to final, binding resolution of intertribal fishing controversies by the Treaty Court, staffed with superbly-qualified judges knowledgeable in both Indian law and culture, where such controversies cannot be resolved through Staff-to-Staff Negotiations or Peacemaking at the Tribal Council level.

SECTION 18. JURISDICTION.

- a. The Treaty Court shall have jurisdiction over the kinds of intertribal disputes among Signatory Tribes involving tribal treaty fisheries rights that have previously been litigated under the continuing jurisdiction of the United States District Court in *United States v. Washington*. Such disputes shall include, but not be limited to, subject matter such as allocation, opening and closing dates, gear restrictions, conservation, management plans, the Section 4.6 gear restriction, and usual and accustomed grounds.
- b. Such Treaty Court jurisdiction shall be exclusive of the jurisdiction of any other court, including the United States District Court, but shall not apply to (1) matters in which the State of Washington or the United States asserts a legal protectable interest or (2) suits between Signatory Tribes and the State of Washington.
- c. Such Treaty Court jurisdiction shall apply to cases filed on or after the effective date. Cases filed in federal district court before that date shall continue to remain under federal court jurisdiction unless the parties in particular cases agree to transfer such cases to the Treaty Court.

- d. All Signatory Tribes hereby grant limited waivers of their tribal sovereign immunity with respect to proceedings, including enforcement proceedings, against other Signatory Tribes within the jurisdiction of the Treaty Court. This limited waiver of sovereign immunity shall not apply for any other purpose.

SECTION 19. SOURCES OF LAW.

- a. The ultimate sources of law for the Intertribal Treaty Fisheries Court shall be the sovereignty of the Signatory Tribes; the Treaty of Medicine Creek, December 26, 1854 (10 Stat. 1132); the Treaty of Point Elliott, January 22, 1855 (12 Stat. 927); the Treaty of Point No Point, January 26, 1855 (12 Stat. 933); the Treaty of Neah Bay, January 31, 1855 (12 Stat. 939); and the Treaty of Olympia, July 1, 1855 and January 25, 1856 (12 Stat. 971); the United States Constitution; and the Treaty Among the Sovereign Indian Nations of the Pacific Northwest.
- b. All decisions, orders, and rulings in *United States v. Washington* and other relevant federal court decisions shall continue to be controlling law. All settlements, agreements, and stipulations, jointly reached by attorneys and other representatives of the Signatory Tribes, shall remain in force. All enforcement issues in cases litigated before the effective date of this Statute shall be heard in the courts where those cases were litigated. Previously admitted evidence shall be accepted in the Treaty Court. The overall objective shall be to preserve intact the rulings in *United States v. Washington*, and related agreements pertaining to tribal fishing rights, so as to assure an orderly and smooth transition from federal court to the Treaty Court.
- c. Existing co-management plans involving federal or state entities are not subject to the Intertribal Justice System. Existing intertribal management plans, or other allocation,

management, or sharing agreements that are issued under an existing court order will continue and are not subject to the Intertribal Justice System unless agreed upon by the parties to those plans or agreements.

- d. Judges of the Treaty Court may, under appropriate circumstances, develop common law principles of the Signatory Tribes by giving deference to clearly-established traditions and customs.

SECTION 20. JUDGES, JUDICIAL COMMISSION, AND CHIEF JUDGE.

- a. Intertribal Judicial Commission. A five-member Judicial Commission shall be appointed by consensus of the Signatory Tribes. The Commission shall consist of three tribal members of the Signatory Tribes and two attorneys familiar with the treaty fishing rights of the Signatory Tribes. Commission members shall serve until replaced by the Signatory Tribes, or until resignation. Tribal members must be from different Tribes, attorney members must be from different Tribes, or have represented different Tribes.
- b. Appointment of Judges. The Judicial Commission shall solicit applications from outstanding individuals to sit as Trial Court and Court of Appeals judges on the Treaty Court. The Commission shall develop a confirmation process for those applicants that the Commission preliminarily decides should be appointed; such a confirmation process should include soliciting comments from the Signatory Tribes before making any appointments. A roster of at least eleven judges should be established to hear cases at either the trial or appellate level. One of the judges shall be selected by the Intertribal Judicial Commission to serve as the Chief Judge, who will be responsible, in cooperation with the Commission, for carrying out administrative duties under this Statute.

- c. **Qualifications of Judges.** Judges must have excellent legal skills, expertise in federal Indian law, and a demonstrated record of sensitivity to tribal sovereignty and to Indian culture and traditions. In addition, candidates should have experience with complex civil or administrative litigation. Knowledge of and experience with Pacific Northwest Indian treaty rights places candidates in the top tier for selection, although candidates with general experience related to Indian treaty rights would also be qualified. Similarly, retired state, federal or tribal judges as well as those experienced with alternative dispute resolution would be qualified for consideration. Preference will be given to members of federally-recognized Tribes.

- d. **Assignment of Judges and Recusal.** The Chief Judge will appoint judges to sit on cases in the Trial Court and Court of Appeals. Matters before the Trial Court shall be heard by a single judge, and Court of Appeals shall be made up of three judges. No case may be heard by a judge who is a member of one of the Tribes before the Court; who has a financial interest, however minor or indirect, in the case; or who otherwise has some interest that might create a bias, or appearance of bias, for or against one of the Tribes. Any party to a case may file a motion to recuse the judge assigned to a case. If a judge denies a motion to recuse, the party denied may request review by the Chief Judge, who has the authority to order the recusal of the challenged judge. In the event the Chief Judge is the individual challenged, a replacement to review the request shall be appointed by lottery.

SECTION 21. PROCEDURE.

- a. **Purpose of Rules.** The purpose of this section is to establish the procedures by which actions are commenced and resolved in the Treaty Court. These Rules shall be

construed and administered to secure the just and speedy determination of intertribal fishery disputes unable to be resolved through Staff-to-Staff Negotiations or Council-to-Council Peacemaking.

- b. Exhaustion of Remedies. Prior to commencing a Treaty Court action, Tribes shall exhaust the remedies available to them in the Staff-to-Staff Negotiations process outlined in Part A of this Statute, and in the Council-to-Council Peacemaking process outlined in Part B of this Statute.
- c. Scope of Authority.
 - i) The Treaty Court shall have the authority to rule on issues of its own jurisdiction, including any objections as to the exhaustion of remedies.
 - ii) Upon application of a party, the Treaty Court may take whatever interim measures it deems necessary, including injunctive relief and measures for the protection or conservation of property. In cases where expeditious emergency relief is appropriate, Treaty Court judges may issue stays, temporary restraining orders, preliminary injunctions, or other appropriate orders.
 - iii) Treaty Court judges are authorized to subpoena witnesses or documents, and may do so upon the request of any party or independently. Judges may, in their discretion, appoint Technical Advisors from the list maintained pursuant to Section 6 above, to advise the Court on scientific matters and may convene Elder Panels to advise the Court on cultural and traditional matters. Notice of such action shall be provided to the parties.

- iv) In rendering a decision, the Treaty Court may grant an award for any type of relief available in law and equity, including temporary relief, it deems appropriate to resolve the dispute.
 - v) Treaty Court judges are authorized to issue such other orders as are thought necessary to fairly decide any dispute and ensure that the interests of justice are served.
- d. Application of Federal Rules of Civil Procedure. Where matters not addressed by this Statute are at issue, the Treaty Court judge may apply the Federal Rules of Civil Procedure, in whole or in part, to accomplish the purposes of this Statute.
- e. Commencement of Action. A civil action is commenced by filing a complaint with the Treaty Court. The complaint must contain:
- i) a statement of the facts providing the basis for the claim;
 - ii) a short and plain statement of the grounds establishing the Court's jurisdiction and establishing that all avenues for relief have been exhausted as provided by Parts A and B of this Statute; and
 - iii) a short and plain statement of the claim showing that the party is entitled to relief and a demand for relief sought, which may include relief in the alternative.
 - iv) The complaint shall be accompanied by a certification that the complaint was served either personally, or by first class mail, on the party or parties against whom relief is sought.

- f. Answer. In response to a claim, a party must file an Answer within 30 days of service on that party that includes:
- i) a short and plain statement of its defenses to each claim asserted; and
 - ii) an admission or denial of the allegations asserted. A denial must respond to the substance of each allegation.
 - iii) A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must state so, and the statement has the effect of a denial.
- g. Counterclaims, Cross-claims, and Third Party Claims.
- i) A defendant may file a counterclaim against the plaintiff if the claim arises out of the same transaction or occurrence that is the subject matter of the plaintiff's claim.
 - ii) In a proceeding with more than one defendant, a cross-complaint may be filed against a co-party if it meets jurisdictional requirements and the claim arises out of the same transaction or occurrence that is the subject matter of the plaintiff's claim.
 - iii) A party against whom a claim is made may complain against a third party who is or may be liable for payment or performance of the claim of the opposing party if the third party meets jurisdictional requirements and the claim arises out of the transaction or occurrence that is the subject matter of the opposing party's claim.
 - iv) A counterclaim, cross-claim, or motion for a third party claim shall be filed on or before the time that a party is to answer the original complaint unless otherwise directed by the Treaty Court.

- v) A counter-claim, cross-claim, or third party claim must contain: a short and plain statement of the grounds establishing the Court's jurisdiction; a short and plain statement of the claim showing that the party is entitled to relief; and a demand for relief sought, which may include relief in the alternative or different types of relief.
- vi) An answer to a counter-claim, cross-claim, or third party claim shall be made as provided in Section f.
- h. Pretrial Conference. In the interest of saving time, simplifying issues, and promoting amicable resolution to disputes, a pretrial conference will be scheduled by the Trial Court, and a scheduling order entered. The Court and the parties may consider any matters that may promote a fair and prompt disposition of issues or the action. The Court, at the pretrial conference or at such other time the Court believes would be appropriate, shall set a schedule when:
 - i) the parties must file and exchange witness lists;
 - ii) the parties must exchange evidence;
 - iii) discovery, if any, shall commence and close;
 - iv) a trial shall commence; and
 - v) any other matters to facilitate the determination of the issues must be completed.
- i. Trial. Trial shall be before the Trial Court without a jury.

- j. Evidence. The Federal Rules of Evidence shall serve as a guide to the Court and the parties, but the Rules shall be applied by the Court so that the interests of justice are served.
- k. Judgment. The Court shall enter a final judgment with a written opinion explaining the decision in plain terms. It shall be served upon the parties to the dispute in a manner set out in the scheduling order. Upon the service of a final judgment, the time for appeal begins to run.

SECTION 22. APPEALS.

- a. Method of Appeal.
 - i) A party may initiate an appeal by filing a written Notice of Appeal with the Court of Appeals Clerk within thirty (30) calendar days of the Trial Court ruling being appealed.
 - ii) The Notice must be a written notice that states the name of the case and indicates the Tribe's intention to appeal and the specific ruling being appealed.
 - iii) Specify those parts of the decision that the appellant wants reviewed; and
 - iv) List each error of law or procedure that the appellant claims the Trial Court committed and its effect on the outcome of the case.
- b. Filing and Service.
 - i) Filing. All papers required or permitted to be filed in the Court of Appeals shall be filed with the Clerk of the Treaty Court. Filing may be accomplished by mail,

addressed to the Clerk, but filing shall not be timely unless the papers are received by the Clerk within the time fixed for filing.

- ii) Service. Copies of all papers filed by any party shall, at or before the time of filing, be served by the party or person acting for the party on all other parties to the appeal or their counselor-named representative. Service may be personal or by mail. Personal service includes delivery of the copy to the Clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.
 - iii) Proof of Service. Papers presented for filing shall contain an acknowledgement of service by the person served or by proof of service in the form of a statement of the date and manner of service and the name of the person served, signed by the person who made service. The Clerk may permit papers to be filed without acknowledgement or proof of service, but shall require the acknowledgement or proof of service to be filed within five (5) days thereafter.
 - iv) Filing Fee. The filing fee for appeals of Trial Court decisions shall be determined by the Judicial Commission upon recommendation by the Chief Judge.
- c. Record on Appeal.
- i) Record of Proceedings. The record on appeal is the record of proceedings in the lower Trial Court decision. Unless otherwise stipulated, the record on appeal shall include transcripts, all materials, and exhibits on file of the Trial Court. Within five (5) days of filing the notice of appeal, the appellant shall request from the Treaty Court Clerk a transcription of the record of proceedings. Fees for preparing the

record shall be set by the Administrator for the Office of the Treaty Court Clerk.

Fees for preparing the record shall be paid by the appellant.

- ii) Designations, Stipulations. In lieu of using the record of proceedings in the Trial Court decision, the parties may agree to a signed statement or designation as to the record on appeal. Parties must submit all stipulations and designations to the Trial Court for approval within twenty (20) days of filing the notice of appeal and the Trial Court may make such additions as it considers necessary to present the appeal fully and accurately.
 - iii) Notice of Record Filed. Upon filing the record, the Court of Appeals shall notify the Affected Tribes in writing of the date of filing and the schedule for filing appellate briefs.
- d. Standard of Review. On factual matters, the Court of Appeals shall defer to the Trial Court unless the Trial Court's finding was clearly erroneous. The Court of Appeals shall rule on legal questions de novo.
- e. Appellate Briefs.
- i) Time. The appellant's brief shall be filed within thirty (30) days after the service on the parties by the Court of Appeals of notice of the filing of the record of proceedings. The respondent's brief shall be filed within thirty (30) days after service of the appellant's brief on respondent. Reply briefs shall be filed by the appellant within thirty (30) days of service of the brief of respondent on the appellant. No further briefing shall be allowed, unless so provided by leave of the Court of Appeals.

- ii) Length. Briefs shall not exceed thirty (30) pages in length exclusive of any appendix, except by order of the Court for good cause shown.
- iii) Contents. The appellant's brief shall include:
 - (a) A short statement of the case, including such facts as are material to the issues presented on appeal, with appropriate references to the record;
 - (b) A concise argument containing the contentions of the Affected Tribe, the reasons therefor, and necessary supporting citations; and
 - (c) A short conclusion stating the precise relief sought.
- iv) Appendices. The appellate brief for any Tribe may include an appendix which may contain pertinent laws, treatises, regulations, rules, instructions, or extended quotations from cases and authorities where such quotations are required for proper presentation of the issues.
- v) *Amici Curiae*. The Court of Appeals may allow *Amici Curiae* briefing by Signatory Tribes.
- f. Oral Argument. All appeals to the Court of Appeals shall provide the opportunity for oral argument set at a time and place appropriate to the Appellate panel and the Tribes. The Tribes may agree to waive oral argument and proceed on briefing alone.
- g. Written Opinions. The Court of Appeals shall issue a written opinion for all matters before it. The opinion shall set out the issue presented, address relevant law, and announce a final disposition.

SECTION 23. ENFORCEMENT.

The Signatory Tribes have agreed to submit intertribal treaty fisheries disputes to the exclusive jurisdiction of the Treaty Court, whose decisions are final and binding. In the unlikely event that a Signatory Tribe refuses to comply with an order of the Treaty Court, the prevailing Tribe may seek enforcement of the order in federal district court under the provisions of the Federal Arbitration Act of 1925, 9 U.S.C. Sections 1-16. Under the Act and this Statute, relief in such a suit is limited to enforcement of a Treaty Court ruling by the federal district court. The substantive ruling of the Treaty Court remains final and cannot be appealed or otherwise reviewed.

SECTION 24. ADMINISTRATION.

- a. The Chief Judge, with the concurrence of the Judicial Commission, shall appoint a Clerk of the Treaty Court. The Clerk shall attend and keep a record of all hearings and other proceedings of the Court and the Judicial Commission, administer oaths to witnesses, keep current the roster of Treaty Court judges, and perform such other duties as the Chief Judge shall designate.
- b. The Chief Judge shall designate the official station of the Clerk and advise the Signatory Tribes of that location. If the location is changed, the Chief Judge shall advise the Signatory Tribes of the new location.
- c. The Treaty Court, through the Clerk, shall keep a filing system of all documents and other submissions to the Court including, but not limited to, pleadings, depositions, exhibits, court orders, judgments, and opinions. Such documents and submissions, unless sealed by order of the Court, shall be open to public review subject to the

payment of reasonable fees if deemed appropriate by the Chief Judge. The Clerk, in cooperation with the Chief Judge, shall establish a system for electronic case filing.

d. Adoption of Administrative Rules.

- i) The Treaty Court is granted authority to develop administrative rules to implement matters set out in the above Sections 17-23, and such other matters as may be appropriate for the efficient operation of the Court. Such matters shall include, and are not limited to, rules pertaining to litigation costs, the location of hearings, filing fees, the maintenance of the judges roster for the Treaty Court, standard forms, and any and all other administrative matters pertaining to the Court.
- ii) Any administrative rules shall be developed by the Judicial Commission and circulated to each of the Treaty Tribes for a thirty-day comment period, and may become effective twenty-one days after the close of the comment period.
- iii) Where this section or rules adopted do not expressly address a question, the Court may issue any order to accomplish substantial justice in the matter before it.

PART D: AMENDMENTS AND REVIEWS

SECTION 25. AMENDMENTS.

Tribes may amend, by adding or removing provisions, the “Treaty Among Sovereign Indian Nations of the Pacific Northwest” by the consensus with explicit acknowledgement of the

Signatory Tribes. Amendments to the Statute establishing the Intertribal Justice System for Treaty Fisheries may be adopted by affirmative resolutions of all Signatory Tribes.

SECTION 26. REPORTS AND REVIEWS.

- a. The Judicial Commission will conduct an annual review, including seeking input from the Signatory Tribes, of the Justice System and issue a report to the Signatory Tribes on the effectiveness of the system.
- b. Every five years the Judicial Commission will conduct a comprehensive review of the Justice System and recommend amendments as appropriate.
- c. Every ten years, in conjunction with the Judicial Commission's comprehensive review, the Signatory Tribes will determine if there is a consensus to discontinue any components of the Justice System or the entire Justice System, as appropriate.

SECTION 27. EFFECTIVE DATE.

The effective date of this Statute shall be _____, 20__.

_____, 20____
Date

Hoh Indian Tribe

Jamestown S'Klallam Tribe

Lower Elwha Klallam Tribe

Lummi Nation

Makah Nation

Muckleshoot Indian Tribe

Nisqually Indian Tribe

Nooksack Indian Tribe

Port Gamble S'Klallam Tribe

Puyallup Tribe of Indians

Quileute Nation

Quinault Indian Nation

Sauk-Suiattle Indian Tribe

Skokomish Tribal Nation

Squaxin Island Tribe

Stillaguamish Tribe of Indians

Suquamish Tribe

Swinomish Indian Tribal Community

Tulalip Tribes

Upper Skagit Indian Tribe

V. SECTION-BY-SECTION ANALYSIS

SECTION-BY-SECTION ANALYSIS

GENERAL PROVISIONS

Section 1. Declaration of Policy. The Intertribal Justice System, established by ratification of an Intertribal Treaty by Sovereign Tribal Nations, would be founded on the belief that intertribal disputes should be resolved through a culturally-appropriate justice system established by authority of tribal sovereigns to promote, peace, justice, fairness, and exemplary resource stewardship.

Section 2. Definitions. Contains key definitions used throughout the Statute.

PART A: STAFF-TO-STAFF NEGOTIATIONS

Part A memorializes and formalizes the first step the Intertribal Justice System: the identification of disputes and their attempted resolution through interaction and dialogue between fisheries managers, staff, and policy-level representatives.

Section 3. Primary Role of Staff-to-Staff Negotiations. Dialogue and agreements between fishery managers and staff is the preferred way to resolve intertribal disputes.

Section 4. Communications and Management Agreements. This section addresses commitments to maintain open, respectful communication, and to make every effort to develop pre- and in-season agreements according to an agreed schedule. The schedule requires Affected Tribes to identify and share management plans, issues in dispute, and proposals for resolution if it appears that agreement may be difficult to reach. If pre-season or in-season agreements are not agreed upon, each Tribe would be required to share its own plan for its participation in the fishery with other Affected Tribes, providing an opportunity for initiation of the Council-to-Council Peacemaking dispute resolution processes. To encourage development of management plans, the Affected Tribes agree that there will be either no-fishing, or they will adopt other agreed upon incentives, until each of the Affected Tribes shares with the other Tribes its proposed harvest management plan.

If agreements are reached, they would be filed with the Treaty Court and each Tribe participating in a fishery would share its own plan for implementing the agreement for its own fishery, as needed.

Section 5. Notice of Disputes and Staff-to-Staff Meetings. When Tribes in dispute reach an impasse, notice is to be provided to other Signatory Tribes to provide an opportunity to request that they be involved in dispute resolution proceedings as an Affected Tribe. Staff of each Affected Tribe (fisheries staff, fisheries managers, or elected or appointed individuals, such as tribal commission or committee members who are authorized to act on behalf of their respective Tribes) are to review proposed plans, make proposals for addressing issues in dispute, and engage in dialogue to try to resolve such issues.