



2008 COUNCIL MEMBER TRAINING

FEDERAL TRIBAL TRUST RESPONSIBILITIES IN THE CONTEXT OF THE MSA

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Purpose

- Give overview of federal – tribal relationship
 - Overview of obligations for fisheries management
 - Highlight some regional differences
 - Briefing book provides sources for additional information
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Federal-Tribal Relationship Overview

U.S. Constitution and U.S. Supreme Court

- **Unique federal-tribal relationship has genesis in Constitution.**
 - **Judicial decisions ... the *Marshall Trilogy***
 - ***Johnson v M'Intosh (1823)***
 - ***Cherokee Nation v Georgia (1831)***
 - ***Worcester v Georgia (1832)***
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Federal-Tribal Relationship Overview

- **Executive Order and Memorandum**
 - **Memorandum**
 - ***Government-to-Government Relations with Native American Tribal Governments (1994)***
 - **EO 13175**
 - ***Consultation and Coordination with Indian Tribal Governments (2000)***
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Federal-Tribal Relationship Overview

- **Department of Commerce American Indian and Alaska Native Policy**
 - **Outlines principles to be followed in all DoC interactions with federally recognized Native American and Alaska Native tribal governments.**
 - **Acknowledges the government-wide fiduciary obligations to American Indian and Alaska Native tribes.**
 - **Ten “Policy Principles”**
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Definitions

➤ Indian Tribe



Definitions

- Indian Tribe
 - **Tribal Government**
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Definitions

- Indian Tribe
 - Tribal Government
 - **Tribal Officials**
-



Definitions

- Indian Tribe
 - Tribal Government
 - Tribal Officials
 - **Agency**
-



Definitions

- Indian Tribe
 - Tribal Government
 - Tribal Officials
 - Agency
 - **Policies That Have Tribal Implications**
-



Definitions

- Indian Tribe
 - Tribal Government
 - Tribal Officials
 - Agency
 - Policies That Have Tribal Implications
 - **Trust resources**
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Conservation Necessity Principles



Five conservation standards:

- restriction is reasonable and necessary
 - cannot be achieved by reasonable regulation of non-Indian activities
 - least restrictive alternative
 - restriction does not discriminate
 - voluntary tribal measures are not adequate
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Federal Tribal Obligations

- ❑ General federal obligations to tribes
 - ❑ Specific obligations vary by region depending on tribal status
 - Federal-recognized treaty fishing rights
 - Federally recognized
 - Seeking Federal recognition
 - State recognition
 - ❑ Tribal and indigenous involvement most active in PFMC, WPFMC, NPFMC
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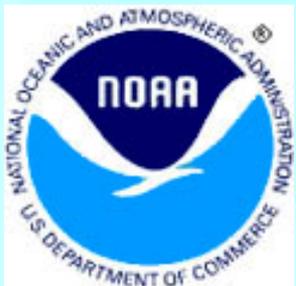
North Pacific



Fisheries

Management

Council





North Pacific FMC

Status

- 220+ federally-recognized Native villages
- Metlakatla fishing rights established by E.O. (pre-statehood)
- consultation obligations expanded with E.O. 13175

Primary Council-tribal issues

- Halibut Subsistence Program
- Salmon bycatch

Most issues indirectly Council related, e.g., MMPA, NEPA

No specific Council membership provisions



MSA Provisions (section 305(i))

- Alaskan Community Development Programs

 - WP and NP Regional Marine Education and Training
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WP and NP Regional Marine Education and Training (305(j))



- regionally-based **marine education and training programs** in the Western Pacific and the Northern Pacific
 - programs or projects that ... **improve communication, education, and training on marine resource issues** throughout the region
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U.S./Canada
Cape Alava
Queets River
Leadbetter Pt.

Cape Falcon

Florence S. Jetty

Humbug Mt.

OR/CA Border

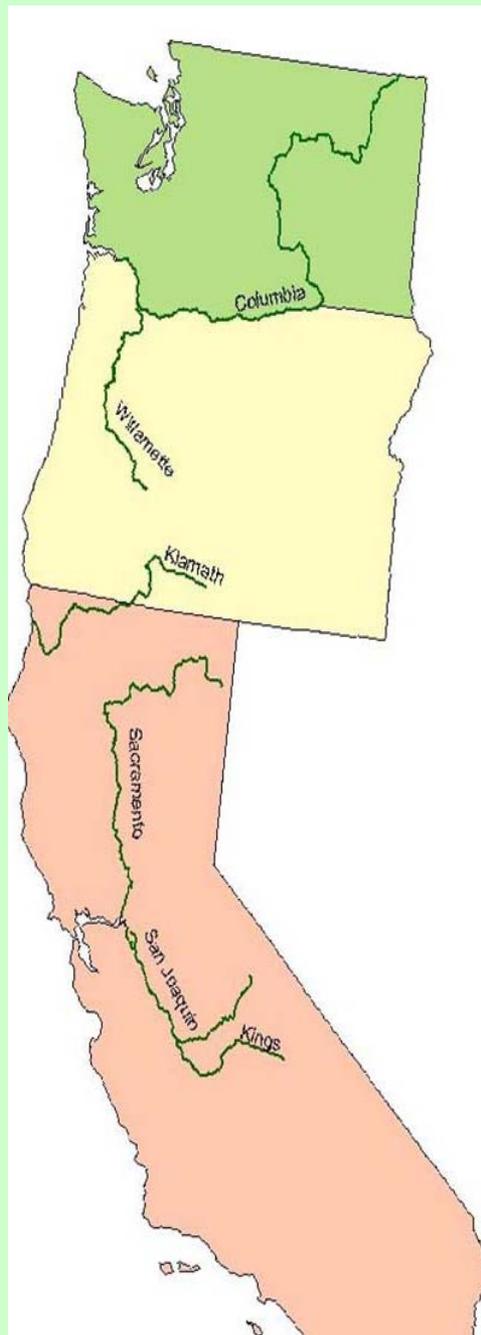
Humboldt S. Jetty
Horse Mt.

Pt. Arena

Pt. Reyes
Pt. San Pedro
Pigeon Pt.

Pt. Sur

U.S./Mexico



Pacific Fisheries Management Council



Pacific FMC

Status

- >25 tribes with Federally-recognized treaty tribal fishing rights (Puget Sound, WA Coast, Columbia River, Idaho, California)
- Many others federally-recognized

All FMPs involve tribal fishing rights

Council fisheries managed as part of larger group of fisheries

Council membership provision for treaty tribal member and alternate (302(b)(5)(D))



Council fisheries one of many....

- Federal court mandated tribal/non-tribal allocations
 - US v WA, US v OR
 - Hoh v Baldrige

 - Pacific Salmon Treaty

 - ESA standards and Secretarial Order
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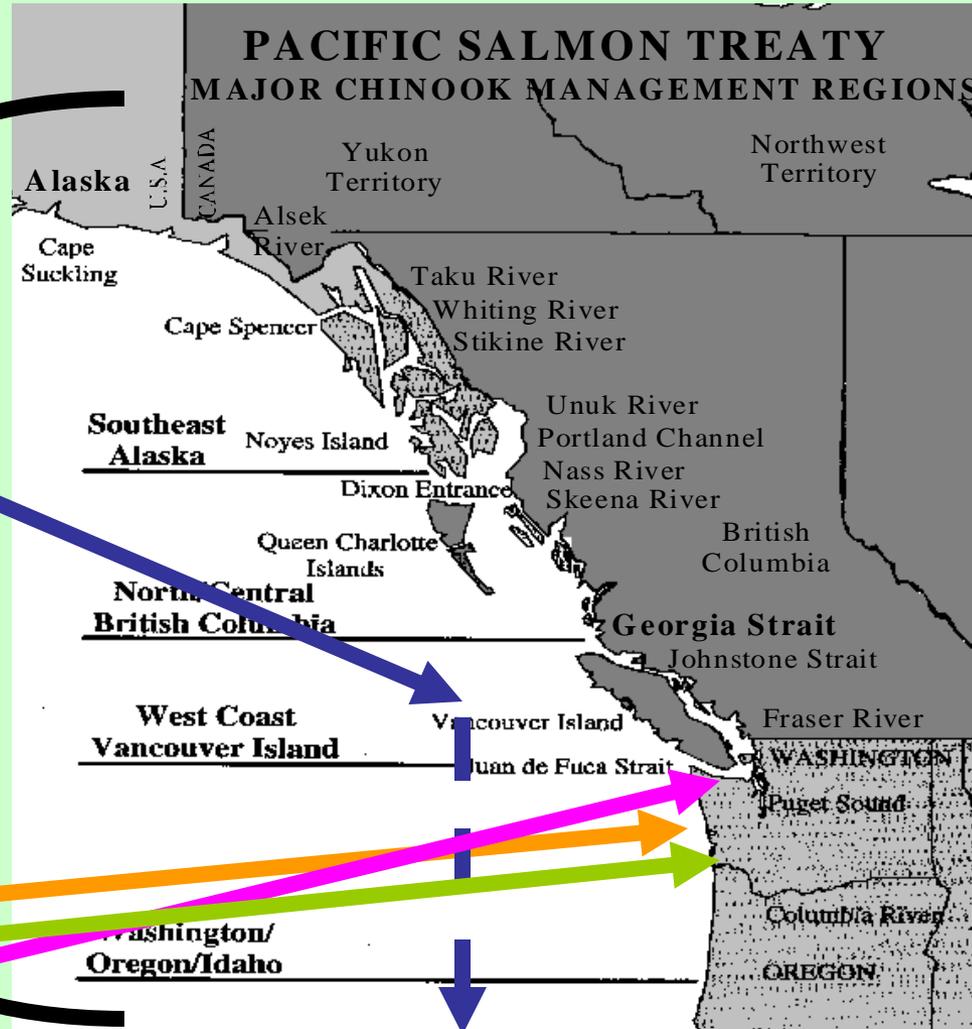
Coastwide management coordination



Coastwide: Pacific Salmon Treaty covers fisheries and protects stocks in Southeast Alaska, Canada, Wa., Or., & Idaho

Ocean: Pacific Fisheries Mgmt. Council schedules fisheries and protects stocks in Wa., Or. & Ca.

“Terminal” & “Extreme Terminal”: Wa. & tribes manage stocks and fisheries on the Washington Coast, Columbia River and in Puget Sound



Western Pacific Fisheries Management Council





Western Pacific FMC

- Hawaii, American Samoa, Guam, Northern Mariana Islands (NMI) and the uninhabited US islands of the Pacific
 - Indigenous people defined differently
 - 7 of 13 voting Council members are people of indigenous descent from communities of American Samoa, Guam and NMI
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MSRA provisions

- Indigenous Provisions
 - Pacific Insular Area Fishing Agreements
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Western Pacific Community Development Program (305 (i))

- Provide access ... to fisheries

 - Develop criteria ...

 - ... take into account traditional indigenous fishing practices ...
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Western Pacific Community Development Program Eligibility (305(i))



- Location and criteria
 - Aboriginal (fishing) people indigenous to the area ...
 - No previous harvesting or processing capability
 - Community Development Plan
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Western Pacific Community Demonstration Project Program

(305, note)



- Direct grants to eligible western Pacific communities
 - \$500,000/fiscal year
 - CDPP Advisory Panel
 - Appropriate Federal agencies may provide technical assistance
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In Summary

- ❑ Unique and distinctive relationship
 - ❑ Right of tribes to set own priorities and make decisions affecting their resources and distinctive ways of life
 - ❑ Circumstances differ widely
 - ❑ Effective working relationships and consultation processes are key
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