

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In The Matter of Puget Sound)	
Power and Light, et al.)	Docket Nos.
Amended Application for Construction)	
Permits and Facility Licenses,)	STN 50-522, 50-523
SKAGIT/HANFORD NUCLEAR PROJECT)	

MEMORANDUM IN SUPPORT OF APPEAL OF THE
COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION

On September 8, 1982, the Atomic Safety and Licensing Board (Board) issued its memorandum and order regarding the acceptability of the Petition to Intervene by the Columbia River Inter-Tribal Fish Commission (CRITFC) and the Yakima Indian Nation. The Board denied the Petition to Intervene of CRITFC, finding that CRITFC had not shown sufficient justification to demonstrate standing to intervene and concluding that CRITFC simply has an academic interest in protecting tribal treaty rights. From that decision the CRITFC has appealed.

I. History of Proceedings

On May 5, 1982, the Columbia River Inter-Tribal Fish Commission (CRITFC) filed an untimely Petition to Intervene along with a Supplement to Petition to Intervene listing the contentions it wished to litigate. On May 19, 1982, and May 25, 1982, the Applicant and the NRC Staff, respectively, submitted their responses to the untimely petition and contentions. (Applicant's First Response) Both Applicant and Staff acknowledged that CRITFC met the "interest" and "specific aspect" requirements of 10 C.F.R. § 2.714(a). However, Applicant

objected to the CRITFC petition on grounds of untimeliness, whereas the Staff concluded that the balance of the five factors set forth in 10 C.F.R. § 2.714(a)(1) weighed in favor of CRITFC being permitted to intervene in this proceeding. Both Applicant and Staff, however, objected to certain specific contentions submitted by CRITFC in its Supplement to Petition to Intervene.

On July 2, 1982, the Licensing Board issued a Memorandum and Order concerning CRITFC's late-filed petition to intervene. The Board concluded that CRITFC's petition was technically deficient in that the requisite authorization from CRITFC's members was lacking and that the petition was not properly signed. The Board further noted that it would rule on the admissibility of CRITFC's contentions after the deficiencies were corrected and the late filing question resolved.

On July 16, 1982, CRITFC submitted its response to the Board's July 2, 1982, Memorandum and Order. The response included a clarification that CRITFC does not speak for the Columbia River treaty tribes, and an affidavit of Levi George, Sr., Vice-Chairman of the Commission, authorizing petitioning to intervene.

In addition, CRITFC submitted a "Motion for Admission of Second Supplement to Petition to Intervene" on July 16, 1982, (Motion). In this Motion, CRITFC listed and renumbered the contentions it wished to litigate, along with specific and additional bases for the contentions. Particularly, CRITFC submitted additional bases to support its initial contention (Contention No. 4 in the May 5, 1982, Supplement) concerning the impact of the Skagit/Hanford Nuclear Project (S/HNP) on Columbia River fish resources and the potential infringement on Indian treaty rights.

On July 30, the Applicant filed its Response in Opposition to the CRITFC's Motion for Admission of Second Supplement to Petition to Intervene. (Applicant's Second Response) In addition to raising objections to the untimely nature of

the petitions based on the considerations of 10 C.F.R. 2.714(a)(1), the Applicant objected to certain contentions raised by CRITFC, and for the first time objected to the standing of CRITFC.

On August 19, CRITFC moved for leave to reply to Applicant's response of July 30. In the accompanying reply CRITFC elaborated upon its interest in the proceeding alleging a definite stake, stating that the inference that the tribe alone sustains injury due to loss of the treaty right is erroneous. On September 8, the Board served its Memorandum and Order.

II. The Board Erred In Denying the CRITFC Petition to Intervene Based Upon Its Conclusion that CRITFC Has Not Shown Sufficient Justification To Demonstrate Standing.

In its Memorandum and Order, the Board concluded that judicial concepts of standing govern the determination of whether an alleged interest is sufficient to grant intervention as a matter of right. Memorandum and Order at 2-3. The Board went on to state that two tests must be satisfied to acquire standing. First, the petitioner must allege "injury in fact" and second the petitioner must allege an interest "arguably within the zone of interest" protected by the statute. Id., Citing Sierra Club v. Morton, 405 U.S. 727, 739-740 (1971) The Board goes on to conclude that the allegation of a "special interest" is insufficient to establish standing without a showing of particular harm.

Evidently surmising that the Columbia River treaty tribes do not constitute members of the CRITFC, the Board concluded that CRITFC may not derive its standing to intervene from the interest of the Columbia River treaty tribes. This conclusion fundamentally misperceives basic governmental tenets of the Indians of the Columbia River Inter-Tribal Fish Commission. Furthermore, the Boards restrictive application of standing requirements for national environmental groups misapplies the case and controversy requirement which exists to ensure concrete adversity within the judicial system.

a. Nature of Petitioner's Organization

The CRITFC members are the four Columbia River Treaty tribes, the Confederated Tribes of the Umatilla Reservation, the Nez Perce Tribe, the Confederated Tribes and Bands of the Yakima Indian Nation, and the Confederated Tribes of the Warm Springs Reservation. Constitution and Bylaws of the Columbia River Inter-Tribal Fish Commission at page 1. The governing body of CRITFC is the commission, composed of the Fish and Wildlife Committees of each tribe as designated by tribal resolution. Id. Among the powers of the commission is the power to "[f]ormulate, in consultation and consent with local tribal councils, a broad general fisheries program designed to promote and coordinate the conservation practices of the members." Id. at 3. Thus it is the general practice of the commission, acting as CRITFC to participate in a variety of administrative proceedings and consultations pertinent to the Columbia River Indian fisheries. In this regard, CRITFC's activities include administrative appeal of U.S. Forest Service decisions, formal representation on the Salmon Plan Development Team of the North Pacific Fisheries Management Council, formal representation in the Columbia River Water Management Group, formal representation on the U.S.-Canada Salmon Interception Treaty delegation, formal representation on the fish and wildlife subcommittee of the Northwest Power Planning Council, and CRITFC is the Columbia River Tribal Coordinating Body and thus one voting member of the Salmon and Steelhead Advisory commission for the purposes of the Salmon and Steelhead Conservation Act of 1980, P.L. 96-561, (Dec. 22, 1980).

Evidently the Board has characterized the July 16, 1982, Response of CRITFC to conclude that CRITFC may not derive its standing to intervene from the interests of the Columbia River treaty tribes. Memorandum and Order at 4-5. While it is true that CRITFC does not represent the individual discrete

positions of the tribes on all treaty matters, CRITFC does represent certain tribal interests insofar as the CRITFC, at the direction of the Fish and Wildlife committees as the commission in consultation, and consent with local tribal councils has been delegated responsibility to programmatically promote and coordinate the conservation practices of the tribes. Perhaps more telling of CRITFC's role is an excerpt from the July 20, 1982, Statement of the Columbia River Inter-Tribal Fish Commission in Support of Intervention by the Yakima Indian Nation:

With regard to fishery issues, the Inter-Tribal Fish Commission has always enjoyed a close working relationship with the Yakima Indian Nation. In this aspect, the commission would be willing to coordinate with the Yakima Nation where interests overlap. Yet the commission does not represent the discrete interests of the Yakima Nation even with respect to fishery matters. The commission acts only according to the consensus position of the fish and wildlife committees of the four Columbia River treaty tribes so as to promote and coordinate their conservation practices. An essential aspect of promoting these conservation practices is to ensure that particular similarly held treaty rights are not rendered nugatory. Thus the commission has determined to intervene in the Skagit/Hanford proceedings.

Each of the Columbia River treaty tribes has discrete interests in fishery matters. For instance, each tribe acting through its fish and wildlife committee may establish and allocate fishing sites for individual tribal members, establish resident trout fishing regulations within respective reservation boundaries and take action upon fishery conservation matters reflective of the individual tribe's assertion of its treaty right. The four Columbia River treaty tribes could individually intervene in the instant proceedings undoubtedly increasing the workload of all parties. Yet the CRITFC exists to provide a coordinated voice on conservation activities to which there exists a commonly held shared interest, hence the involvement of CRITFC in activities such as negotiation of a salmon interception treaty with the Canadians. In joining together to form the CRITFC, a basic recognition made by these tribes was "by unity of action we can best accomplish these things (inter alia, conservation of the resource is dependent upon effective and progressive management) not only for the benefit of our own people but for all people of the Pacific Northwest".

The CRITFC has a definite stake in the outcome of the Skagit/Hanford proceeding. The individual members of each Fish and Wildlife Committee are members of the respective Columbia River treaty tribes. These committees individually and as CRITFC exercise treaty guaranteed sovereign rights to manage the fishery resource. The inference that the tribe alone sustains injury due to loss of the treaty right is erroneous. While the treaty fishing right is a property right of the tribe, Whitefoot v. United States, 293 F. 2d 658, 663 (Ct. Cl. 1961), nevertheless individual tribal members do have standing to assert the treaty right. F. Cohen, Handbook of Federal Indian Law, 451 (1982 ed.); Sohappy v. Smith, 302 F. Supp. 899, 912 (D. Or. 1969), aff'd and remanded, 529 F. 2d 570 (9th Cir. 1976). The right to fish is "not much less necessary to the existence of the Indians than the air they breathed." United States v. Winans, 198 U.S. 371, 381 (1905) (emphasis added).

The ruling in Sohappy is clearly consistent with the Supreme Court's holding in Sierra Club v. Morton and Data Processing v. Camp, that the interest requirement may be satisfied by injury to any of a broad range of values including, aesthetic, conservational, recreational or spiritual. See Data Processing Service v. Camp, 405 U.S. 150, 154 (1969); Sierra Club v. Morton, 405 U.S. 727, 738 (1971). However it is characterized, the interest which individual Indians have in the preservation of their treaty rights is certainly sufficient to grant standing. See Sohappy v. Smith 302 F. Supp. 899, 912 (D. Or. 1969). The question of whether an individual tribal member actually has authority to represent a treaty right need not be reached, although such authority appears to exist. Id. The reason this question need not be reached is moreover that CRITFC by its intervention would seek to assure that treaty imposed duties are carried out and concomitantly that treaty rights are not rendered nugatory. It can certainly be the case that a treaty violation has occurred even if treaty rights are not represented. The Board and all agencies of the Nuclear Regulatory Commission are bound by treaty imposed duties.

The parties to a treaty bear a duty to refrain from actions interfering with either the Indians' access to fishing grounds or the amount of fish present there. Id. (citing, United States v. State of Washington, 506 F. Supp. 187, 203 (W.D. Wash. 1980)). The government constructed the irrigation project subject to that duty. When its operation of the project threatened to further deplete an already low chinook salmon run, see United States v. State of Oregon, 657 F. 2d 1009 (9th Cir. 1981), it violated its duties under Treaty.

Kittitas Reclamation District v. Sunnyside Valley District, No. 80-3505, at 5 (9th Cir. September 16, 1982). The four Columbia River treaty tribes were party to United States v. State of Oregon, which inter alia concerned stocks utilizing the Hanford Reach of the Columbia River. United States v. State of Oregon, 657 F. 2d 1009. (9th Cir. 1981). Thus CRITFC need not represent the treaty rights of the tribes, insofar as the NRC as an agency of the federal government, is bound in any event by a treaty imposed duty.

CRITFC does assert in this proceeding an infringement of conservation and other fishery values. The indices of these values are the adjudicated rights and duties flowing from the 1855 treaties of the Columbia River treaty tribes. At the heart of CRITFC's interest is the programmatic protection, conservation, promotion and enhancement of the Columbia River anadromous fishery. Indeed such interests are reflected in the Constitution and Bylaws of CRITFC. By the 1855 Stevens treaties the Columbia River treaty tribes reserved the right to manage the fish resource to this end. See Settler v. Lameer, 507 F. 2d 231, 237 (9th Cir. 1974). Such interest has existed with the Columbia River Indians since time immemorial. It should be of little surprise that the values and interests of the CRITFC are reflective of adjudicated treaty law. Indeed this law provides the direction and basis for all the activities of CRITFC.

[Thus] the sovereignty to protect the fishery resource is exercised in substantial part by the Fish and Wildlife Committees of each tribe individually and as CRITFC. Typically each Fish and Wildlife Committee is empowered to engage in programs or actions that will protect, promote,

or enhance wildlife resources on the reservation or that wildlife off the reservation in which the Indian tribe has an interest by virtue of treaty reserved rights. Wildlife Code of the Confederated Tribes of the Umatilla Indian Reservation, Ch. 2, § 6. Additionally each Fish and Wildlife Committee is typically authorized to enact rules and regulations. Id. at § 7. By their actions as CRITFC, the Fish and Wildlife Committees exercise in a coordinated manner their sovereignty on matters affecting their collective interest in the Columbia River fishery.

CRITFC Motion for Leave to Reply at 7 (August 19, 1982). In light of the nature of the CRITFC, it is readily apparent that not only does CRITFC have authority to represent certain affected interests of the Columbia River treaty tribes, and standing may be derived in this manner but also that CRITFC has interests of its own which may be affected.

In summary the interests of CRITFC include: (1) The interests of its member tribes, as limited by the scope of delegated authority in the Constitution and Bylaws of the Columbia River Inter-Tribal Fish Commission; (2) The interests of the individual Fish and Wildlife Committees in protecting, promoting, and enhancing treaty reserved fisheries consistent with the treaty rights of the Columbia River treaty tribes; (3) The interests of the Indians of the Columbia River Inter-Tribal Fish Commission in conservation of the anadromous fish of the Columbia River consistent with Indian treaty rights; and (4) The interests of the individual Commissioners of CRITFC as their interest in treaty secured rights may be affected.

b. CRITFC Interests Are Sufficient For Standing As A Matter of Right

The Board's decision in its September 8 Memorandum and Order turned on its determinations of the nature of CRITFC's interest in the proceeding and that CRITFC's interest did not fall within judicial concepts of standing, namely Sierra Club v. Morton and Warth v. Seldon.

It is relatively clear that no constitutional restrictions affect intervention in administrative proceedings. 3 Davis, Administrative Law Treatise 241 (1958); Koniag, Inc. v. Andrus, 580 F. 2d 601 (D.C. Cir. 1978). Indeed judicial precedent suggests that administrative agencies are encouraged to adopt creative approaches to maximize productive public participation in their proceedings. Portland General Electric Co. et. al. (Pebble Springs Nuclear Plant, Units 1 & 2), CLI-76-2T, 4 NRC 610, 615 (1976), (citing) Office of Communication of United Church of Christ v. F.C.C., 359 F. 2d 994, 1005-1006 (D.C. Cir. 1966). In this regard the NRC has determined that there is no legal impediment preventing administrative agencies from allowing wider participation in their proceedings than is required by statute. Id., at 614. In part, the NRC has concluded that contemporary judicial concepts of standing are generally accepted as useful guides in determining the kinds of interests a petitioner must establish, In the Matter of Edlow International, 3 NRC 563 (1976) (emphasis added), and should be applied in determining whether a petitioner is entitled to intervene as of right. Portland General Electric, at 614. Accordingly the Nuclear Regulatory Commission has "always followed a liberal construction of judicial standing tests in determining whether a petitioner is entitled to intervene as a matter of right in domestic licensing proceedings." Portland General Electric, at 616.

However, the question arises whether indeed the Board has followed a liberal or even appropriate construction of judicial tests in determining the standing of CRITFC. The Board concluded that CRITFC simply has an academic interest, not sufficient justification to demonstrate standing to intervene. It is quite clear that with respect to national environmental groups standing is derived from injury in fact to individual members. Sierra Club v. Morton, 405 U.S. 727 (1972). In construing Sierra Club, the following excerpts from the final paragraphs of that decision are illuminating of the scope of the Court's holding.

The Sierra Club is a large and long-established organization, with a historic commitment to the cause of protecting our Nation's natural heritage from man's depredations. But if a "special interest" in this subject were enough to entitle the Sierra Club to commence this litigation, there would appear to be no objective basis upon which to disallow a suit by any other bona fide "special interest" organization, however small or short-lived. And if any group with a bona fide "special interest" could initiate such litigation, it is difficult to perceive why any individual citizen with the same bona fide special interest would not also be entitled to do so.

The requirement that a party seeking review must allege facts showing that he is himself adversely affected does not insulate executive action from judicial review, nor does it prevent any public interests from being protected through the judicial process. It does serve as at least a rough attempt to put the decision as to whether review will be sought in the hands of those who have a direct stake in the outcome.

Here the court expresses particular concern that some interest, more than a "special interest," must be alleged by the party seeking review at least as a rough attempt to put the decision as to whether review will be sought in the hands of those who have a direct stake in the outcome. The facts of Sierra Club cast the holding in a particular light.

Seeking review of inter alia a Forest Service decision, the Sierra Club specifically declined to rely upon individualized interest as a basis for standing. Sierra Club, at 735-736, 8. The Court characterized the Sierra Club position as follows:

The Club apparently regarded any allegations of individualized injury as superfluous, on the theory that this was a "public" action involving questions as to the use of natural resources, and that the Club's longstanding concern with and expertise in such matters were sufficient to give it standing as a "representative of the public."

Id., at 736.

The facts of CRITFC's petition of the Board for intervention differ markedly from the position asserted by the Sierra Club. If anything CRITFC exists to narrow

the field of questions to those administrative settings necessary to programmatically conserve the anadromous fishery resource, consistent with beliefs and rights of its member tribes, primarily as these beliefs and rights are reflected in federal judicial decisions. CRITFC does not purport to represent the public at large, the gamut of fishery interests in the Pacific Northwest, the Indian tribes of the Pacific Northwest, or even the discrete individual interests of each Columbia River treaty tribe. However, CRITFC does represent a certain interest flowing from the Columbia River treaty tribes through the Fish and Wildlife Committees and the consensus requirements of the CRITFC constitution, in addition to other interests described heretofore. As such, the narrow interests asserted by CRITFC differ markedly from the broad "public interest" asserted by the Sierra Club. In any event the Court's concern of limiting standing in Sierra Club is more appropriately characterized as a test of injury not interest.

Subsequent to the Sierra Club decision, the Supreme Court described the fundamental concepts of standing in Warth v. Seldon. Warth v. Seldon, 422 U.S. 490, 498-499 (1974). Here the court explained standing as follows:

In its constitutional dimension, standing imports justiciability: whether the plaintiff has made out a "case or controversy" between himself and the defendant within the meaning of Art. III. This is the threshold question in every federal case, determining the power of the court to entertain the suit. As an aspect of justiciability, the standing question is whether the plaintiff has "alleged such a personal stake in the outcome of the controversy" as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf. Baker v. Carr, 369 U.S. 186, 204 (1962). The Art. III judicial power exists only to redress or otherwise to protect against injury to the complaining party, even though the court's judgment may benefit others collaterally. A federal court's jurisdiction therefore can be invoked only when the plaintiff himself has suffered "some threatened or actual injury resulting from the putatively illegal action..." Linda R.S. v. Richard D., 410 U.S. 614, 617 (1973). See Data Processing Service v. Camp, 397 U.S. 150, 151-154 (1970).

Thus the proper question in the instant setting resolves to whether the plaintiff itself has suffered some actual or threatened injury, not the obfuscated interpretation of "special interest." As stated in Sierra Club:

[B]roadening the categories of injury that may be alleged in support of standing is a different matter from abandoning the requirement that the party seeking review must have suffered an injury.

Sierra Club, at 738. (The court previously cited with approval its position in Data Processing, 397 U.S. at 154 "in saying that the interest alleged to have been injured 'may reflect' aesthetic, conservational, and recreational as well 'as economic values'." (Sierra Club, at 738.)

With regard to injury, it is clear beyond doubt that CRITFC and its members may be injured in fact. By its constitution and bylaws CRITFC has the right to act to protect and conserve the treaty secured fishery resource of the Columbia River. See Settler v. Lameer, 507 F. 2d 231, 236 (1978). The injury to CRITFC flows from the injury to the Columbia River treaty tribes, the Fish and Wildlife Committees, the Indians of the Columbia River Inter-Tribal Fish Commission, and the individual commissioners of CRITFC, members of each Fish and Wildlife Committee and the respective Columbia River treaty tribes. The original petition filed by CRITFC made clear that the Columbia River treaty tribes are represented on the CRITFC. Petition to Intervene at 1-2. Furthermore the petition makes clear that CRITFC is composed of the four Fish and Wildlife Committees of the Columbia River treaty tribes. Id. Considering the close nexus between CRITFC and the tribes, it is almost incomprehensible that the Board concluded CRITFC may not derive its interest from the Columbia River treaty tribes or that CRITFC had not otherwise established standing. Evidently this conclusion was made by precipitately reacting to the statement that CRITFC does not represent the Columbia River treaty tribes, appearing in the July 16, 1982, Response of CRITFC. Though the nature of CRITFC was clarified further in

the August 19, CRITFC reply, the Board nevertheless adhered to its unwarranted conclusion derived from the July 16 Response. It must be questioned whether the Board has, in accord with its duty, construed the pleadings in favor of the petitioner. See Warth v. Seldon, 422 U.S. 490, 501 (1974), citing, Jenkins v. McKeithen, 395 U.S. 411, 421-422 (1969). CRITFC avers that the Board did not comply with this duty.

Conclusion

Any injury to the anadromous fish of the Columbia River, particularly the salmon and steelhead is an injury to the Columbia River treaty tribes, the Fish and Wildlife Committees of each tribe, the Indians of the Columbia River Inter-Tribal Fish Commission and the individual commissioners of CRITFC. To each of these entities the Columbia River salmon are tantamount to life itself. The right to fish is "not much less necessary to the existence of the Indians than the atmosphere they breathed." United States v. Winans, 198 U.S. 371, 381 (1905). Any injury to these entities is injury to CRITFC. Whether this injury is characterized as inuring to CRITFC in a representational capacity or to CRITFC itself, CRITFC possesses the requisite standing to intervene. Furthermore standing in a representational capacity follows from the Constitution and Bylaws of the Columbia River Inter-Tribal Fish Commission, and the consensus vote of the commission authorizing the petition by CRITFC.

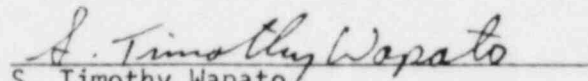
Therefore CRITFC request the following relief:

1. The Appeals Board Rule that CRITFC has the requisite standing to intervene in the above captioned proceedings and remand the CRITFC petition to the Board for further action; or

Alternatively

2. The Appeals Board remand the CRITFC petition to the Board for further clarification on the question of CRITFC's standing.

Respectfully Submitted,



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Dated This 23rd day of September, 1982.

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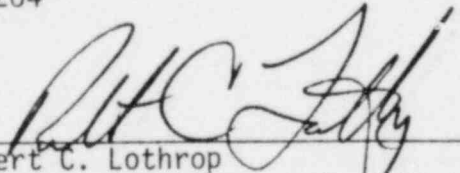

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EXHIBIT (A)

COLUMBIA RIVER INTER-TRIBAL
FISH COMMISSION
CONSTITUTION & BY LAWS

CONSTITUTION AND BYLAWS
OF THE
COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION

PREAMBLE

WE, THE INDIANS OF THE COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION, RECOGNIZE THAT OUR FISHERIES ARE A BASIC AND IMPORTANT NATURAL RESOURCE AND OF VITAL CONCERN TO THE INDIANS OF THESE STATES AND THAT THE CONSERVATION OF THIS RESOURCE IS DEPENDENT UPON EFFECTIVE AND PROGRESSIVE MANAGEMENT. AND THAT IT IS FURTHER RECOGNIZED THAT FEDERAL COURT DECISIONS HAVE SPECIFICALLY ESTABLISHED THAT THE TRIBES HAVE TREATY RIGHTS TO AN EQUITABLE SHARE OF THE COLUMBIA BASIN FISHERY RESOURCE. WE FURTHER BELIEVE THAT BY UNITY OF ACTION WE CAN BEST ACCOMPLISH THESE THINGS, NOT ONLY FOR THE BENEFIT OF OUR OWN PEOPLE BUT FOR ALL OF THE PEOPLE OF THE PACIFIC NORTHWEST.

ARTICLE I - NAME

THE NAME OF THIS ORGANIZATION SHALL BE THE COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION.

ARTICLE II - MEMBERSHIP

SECTION 1. MEMBERSHIP SHALL BE OPEN TO INDIAN TRIBES WHO HAVE RATIFIED THE MEMORANDUM OF UNDERSTANDING WITH BONNEVILLE POWER ADMINISTRATION AND PACIFIC NORTHWEST REGIONAL COUNCIL (THE GOVERNORS OF IDAHO, OREGON, AND WASHINGTON) AND WHO

- A. IS RECOGNIZED AS A TRIBE BY FEDERAL TREATY, STATUTE, OR AN AGREEMENT, AND WHO
- B. IS ORGANIZED AND OPERATING UNDER A CONSTITUTION AND BYLAWS, AND WHO
- C. RATIFIES THIS CONSTITUTION AND BYLAWS BY APPROPRIATE TRIBAL RESOLUTION.

ARTICLE III - GOVERNING BODY

SECTION 1. THE GOVERNING BODY SHALL BE THE COMMISSION. THE COMMISSION SHALL CONSIST OF THE FISH COMMITTEES DESIGNATED BY TRIBAL RESOLUTION FROM EACH MEMBER TRIBE.

SECTION 2. THE TERM OF OFFICE OF EACH COMMISSIONER SHALL BE DESIGNATED BY THE RESPECTIVE GOVERNING BODY OF EACH TRIBE.

SECTION 3. THE COMMISSION MEMBERS SHALL REPORT IN WRITING TO THEIR RESPECTIVE GOVERNING BODY ON THE BUSINESS TRANSACTED, INCLUDING RECOMMENDATIONS FOR FINAL APPROVAL RELATING TO ANY CONTRACT OR AGREEMENT TO BE ENTERED ON BEHALF OF MEMBER TRIBES, BY THE COMMISSION.

SECTION 4. A SPECIAL MEETING OF THE COMMISSION CAN BE CALLED BY THE CHAIRMAN AT THE REQUEST OF ANY COMMISSION MEMBER.

ARTICLE IV - OFFICERS

SECTION 1. THE OFFICERS OF THE COMMISSION SHALL BE CHAIRMAN, VICE CHAIRMAN, AND SECRETARY AND SHALL BE ELECTED BY THE MEMBERS OF THE COMMISSION.

SECTION 2. THE TERM OF OFFICE OF EACH OFFICER SHALL BE FOR ONE (1) YEAR AND SHALL COMMENCE WITH THE REGULAR MEETING, EXCEPT THE FIRST ELECTED OFFICERS SHALL SERVE UNTIL THE FIRST REGULAR ELECTION.

ARTICLE V - VACANCIES AND REMOVAL

SECTION 1. IF A COMMISSIONER OF OFFICIAL SHALL DIE, RESIGN, PERMANENTLY LEAVE THE STATE OF AREA WHICH HE REPRESENTS, OR SHALL BE FOUND GUILTY OF A CRIME OR MISDEMEANOR INVOLVING DISHONESTY BY ANY COURT, THE COMMISSION SHALL DECLARE THE POSITION VACANT AND SHALL REQUEST A REPLACEMENT FOR THE BALANCE OF THE UNEXPIRED TERM FROM THE RESPECTIVE GOVERNING BODY.

ARTICLE VI - DUTIES OF OFFICERS

SECTION 1. THE CHAIRMAN SHALL PRESIDE OVER ALL MEETINGS OF THE COMMISSION SHALL PERFORM ALL DUTIES OF A CHAIRMAN AND EXERCISE ANY AUTHORITY DELEGATED TO HIM BY THE COMMISSION AND SHALL HAVE AUTHORITY TO SIGN ALL DOCUMENTS FOR THE COMMISSION. HE SHALL VOTE IN ALL MATTERS FOR HIS RESPECTIVE TRIBE.

SECTION 2. THE VICE CHAIRMAN SHALL ASSIST THE CHAIRMAN WHEN CALLED UPON TO DO SO AND IN THE ABSENCE OF THE CHAIRMAN HE SHALL PRESIDE. WHEN PRESIDING HE SHALL HAVE ALL THE RIGHTS, PRIVILEGES, AND DUTIES AS WELL AS THE RESPONSIBILITIES OF THE CHAIRMAN.

SECTION 3. THE SECRETARY SHALL BE RESPONSIBLE FOR MINUTES OF ALL MEETINGS AND MEETING NOTICES.

SECTION 4. THE DUTIES OF THE OFFICERS AND ANY APPOINTIVE COMMITTEES OR OFFICERS MAY BE FURTHER DEFINED BY APPROPRIATE RESOLUTION OF THE COMMISSION.

SECTION 5. THE EXECUTIVE DIRECTOR SHALL BE APPOINTED BY THE FISH COMMISSION. (SEE ATTACHMENT A: JOB DESCRIPTION.)

ARTICLE VII - MEETINGS

- SECTION 1. A. THE CONDUCT AND PROCEDURE OF THE MEETINGS MAY BE FURTHER DEFINED BY APPROPRIATE RESOLUTION OF THE COMMISSION.
- B. A QUORUM SHALL CONSIST OF ONE COMMISSIONER FROM EACH MEMBER TRIBE.

- C. EACH MEMBER TRIBE SHALL BE ENTITLED TO ONE VOTE.
- D. ALL DECISIONS BY THE COMMISSION SHALL BE BY UNANIMOUS VOTE.

ARTICLE VIII - POWERS OF THE COMMISSION

SECTION 1. THE COMMISSION SHALL HAVE THE FOLLOWING POWERS:

- A. FORMULATE, IN CONSULTATION AND CONSENT WITH LOCAL TRIBAL COUNCILS, A BROAD GENERAL FISHERIES PROGRAM DESIGNATED TO PROMOTE AND COORDINATE THE CONSERVATION PRACTICES OF THE MEMBERS.
- B. REQUEST TECHNICAL ADVICE AND/OR ASSISTANCE FROM ANY SOURCE WHATEVER FOR THE PURPOSE OF ASSISTING INDIAN FISHERIES AND TO CONSULT WITH ANY AND ALL INDIVIDUALS, ORGANIZATIONS, INSTITUTIONS, AND GOVERNMENTS (TRIBAL, LOCAL, STATE, FEDERAL, AND INTERNATIONAL) ON MATTERS PERTAINING TO FISHERIES.
- C. TO RENDER ANY ASSISTANCE WITHIN THE AUTHORITY OF THE COMMISSION TO ANY TRIBE REQUESTING SUCH ASSISTANCE.
- D. AS A NON-PROFIT ORGANIZATION TO ACCEPT FUNDS FROM STATE, FEDERAL, PRIVATE FOUNDATIONS OR OTHER SOURCES FOR OPERATIONS, WHEN NOT IN CONFLICT WITH FUNDING EFFORTS OF INDIVIDUAL TRIBES.
- E. TO PROVIDE PUBLIC INFORMATION.

SECTION 2. ANY AND ALL RIGHTS AND POWERS VESTED IN THE MEMBER TRIBES SHALL NOT BE ABRIDGED BY THIS CONSTITUTION.

ARTICLE IX - AMENDMENTS

THIS CONSTITUTION AND BYLAWS MAY BE AMENDED BY UNANIMOUS VOTE OF THE MEMBER TRIBES UPON AT LEAST 15-DAYS NOTICE PRIOR TO SUCH MEETING TO CONSIDER A PROPOSED AMENDMENT SUBMITTED TO MEMBER TRIBES.

ARTICLE X - RATIFICATION

THIS CONSTITUTION AND BYLAWS SHALL BE IN FULL FORCE AND EFFECT WHEN RATIFIED BY ALL MEMBER TRIBES. PASSED THIS _____ DAY OF _____, 1977, AT _____.

NEZ PERCE TRIBE OF IDAHO

CONFEDERATED TRIBES OF THE WARM
SPRINGS RESERVATION OF OREGON

Richard A. Haljmoon

Will Jackson

CONFEDERATED TRIBES AND BANDS OF
THE YAKIMA INDIAN NATION

CONFEDERATED TRIBES OF THE UMATILLA
INDIAN RESERVATION

Watson Totus

Julian Witham