

Tribes and Their Relationship to the Management Process

Steve Joner – Makah Fisheries Management

Columbia River Treaty Tribes



US v Oregon case area tribes

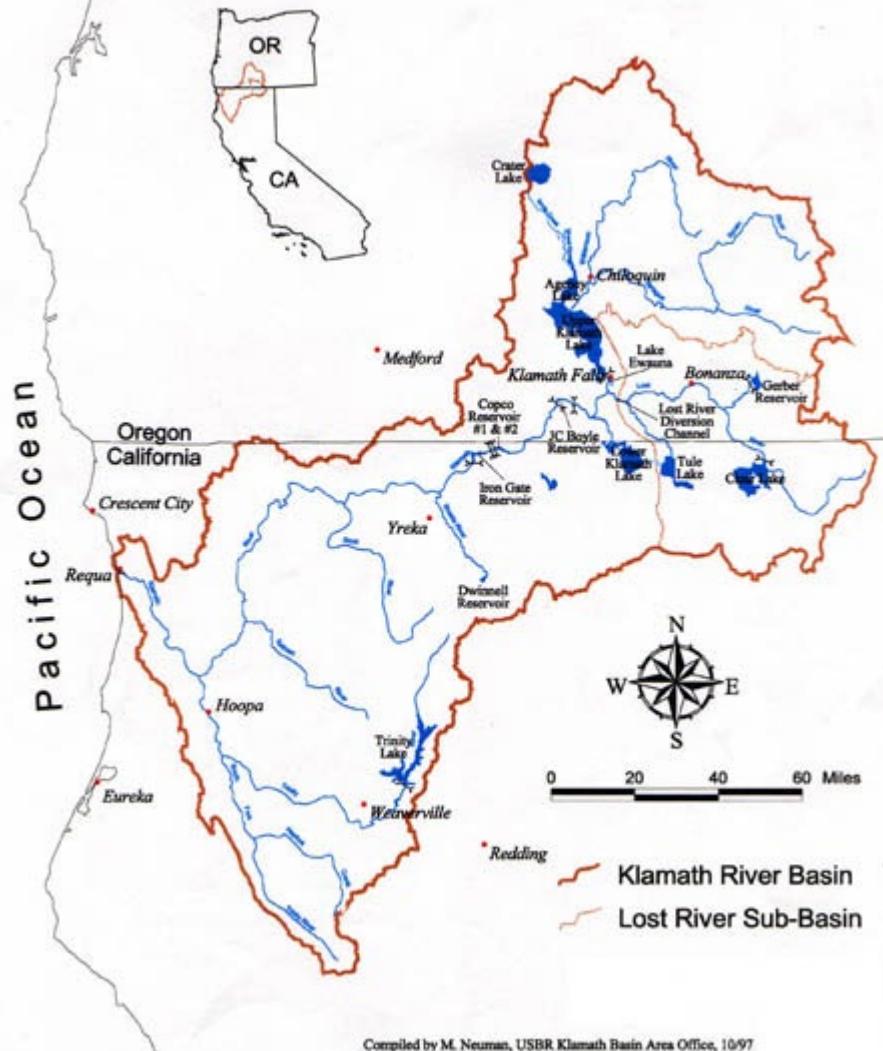
Treaties

1855
Umatilla
Nez Perce
Warm Springs
Yakama



Klamath River Tribes

- Reservation-based fishing rights
 - Hoopa valley
 - Yurok
- Reservations established 1855-1876
- 50% harvest entitlement established 1993



Compiled by M. Neuman, USBR Klamath Basin Area Office, 10/97



Northwest Washington Treaty Tribes



US v Washington case area tribes

Treaties

Medicine Creek

Muckleshoot
Nisqually
Puyallup
Squaxin Island

1854

Point Elliott

Nooksack
Lummi
Sauk Suiattle
Stillaguamish
Suquamish
Swinomish
Tulalip
Upper Skagit

1855

Point no Point

Jamestown S'klallam
Lower Elwha Klallam
Port Gamble S'klallam
Skokomish

1855

Neah Bay

Makah

1855

Olympia

Hoh
Quileute
Quinault

1855

Background-Northwest Washington Stevens Treaties

- In 1854-55 the United States entered into five treaties with the tribes living on the Washington Coast and the Puget Sound in what is now Washington State. A common provision of all five treaties is:
- *“The right of taking fish at all usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the territory” (or with all citizens of the United States)*

The Treaty with the Makah Tribe

- *“The right of taking fish and of whaling or sealing at usual accustomed grounds and stations is further secured to said Indians in common with all citizens of the United States”*



The Sea is my Country

- Kal chote
 - *“He ought to have the right to fish and to take whales where he liked. He was afraid that if he could not take halibut where he wanted, he would become poor.”*
- Tse-Kaw-Wooti
 - *“He wanted the sea. That was his Country. If whales were killed and floated ashore, he wanted for his people the exclusive right of taking them...”*
- Governor Stevens
 - *“He was far from wishing to stop their fisheries, he wished to send them oil kettles, and fishing apparatus.”*

U.S. v Washington – The Boldt Decision

- In the late 1950's and early 1960's, Washington state attempt to enforce its regulations on tribal fishermen, confrontations ensue and tensions run high. There are state criminal court proceedings against individual tribal members. Tribal attorneys and U.S. Department of Interior attorneys assist in defense efforts in state courts.
- Puyallup I – 1968 & Puyallup II – 1973
- In 1970 the United States and several of the western Washington Indian tribes filed complaint against the state of Washington.

Key Rulings

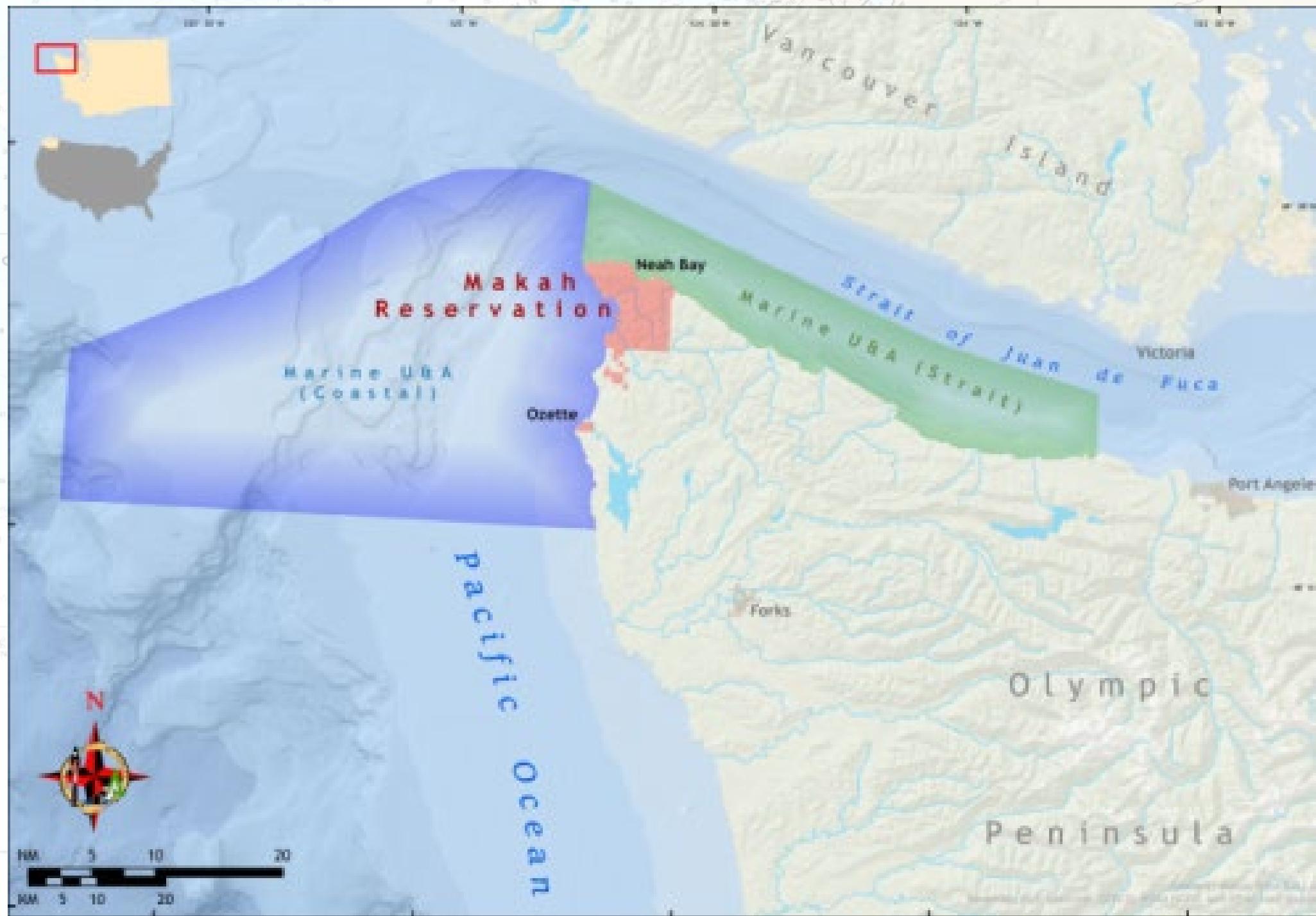
- The treaties were not a grant of rights to the Indians but a grant of rights from them, and a reservation of those not granted.
- Tribes are entitled to 50% of the harvestable fish passing through the respective tribal U&A's
- State (and later Federal) regulation of tribal fisheries **must be for conservation necessity only.**
- Tribes and the states share co-management

Key Rulings

- Self-regulating tribes are required to have:
 - competent and responsible leadership
 - well organized tribal government
 - enforcement of tribal fishing regulations
 - well qualified experts in fisheries sciences and management
 - an officially approved tribal membership role
 - photo identification of tribal fishermen
- The court further established procedures for filing fishing regulations, and established a Fisheries Advisory Board
- The court determined usual and accustomed fishing areas for each tribe

Ocean U&A Determinations

- Judge Boldt determined U&A areas for inside waters and the northern and southern boundaries for the coastal tribes in 1974.
- Following the Magnuson Act and establishment of PFMC Makah sought determination of its western boundary.
- 1982- Makah western boundary was established at 125 degrees 44 minutes W. (40 miles offshore).

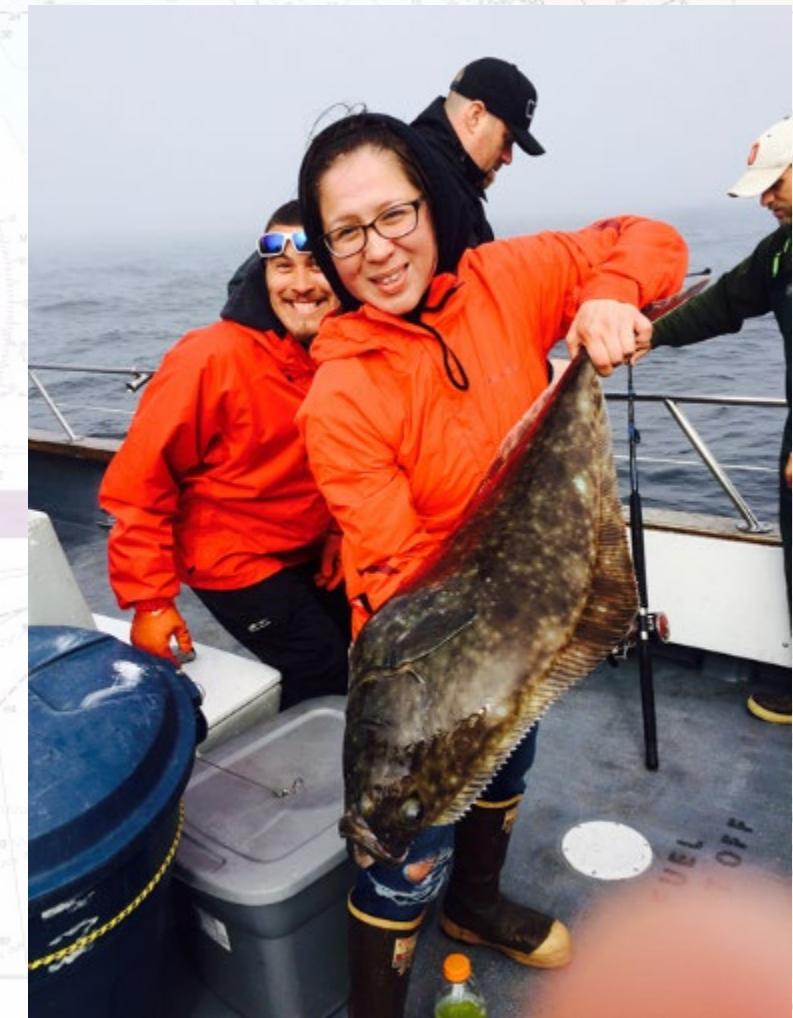
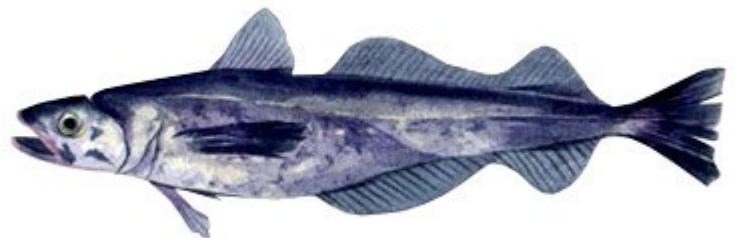


Post-trial Period

- Fish wars took place in the case area as individuals came to grips with the courts rulings
- Judge Boldt at times was the enforcer of his own rulings
- Fisheries Advisory Board active through early 1980's
- Judge Boldt's Decision in US v Washington was affirmed by the 9th circuit, and upheld by the US Supreme Court in 1979, with slight modifications

US v Washington Sub-proceedings

- Size limit in the Makah Troll fishery
- Makah Bay net seizures
- Halibut
- Shellfish
- Whiting



Halibut Ruling (Subproceeding 92-1)

- Makah filed the case in 1985 (Makah v Baldridge)
- Area 2A-1 established, allocation to tribal fisheries in the late 1980's
- December 1993 Judge Rothstein rules on five motions
 - Treaty tribes entitlement 50% of harvestable surplus in U&A and must be based on conservation necessity principle
 - Total of 13 tribes with treaty rights to halibut

Shellfish Ruling (Subproceeding 89-3)

- Judge Rafeedie
- Shellfish are fish
- Deep water species count toward treaty share
- The right secured by the treaties is not limited as to species of fish

Other Groundfish Species

- Sablefish
 - Halibut allocation principle applied in 1994-95
 - Treaty share equals 10% of Pacific coast north OY
- Whiting
 - Makah whiting fishery began in 1996
 - Annual allocations in 1996 through 1998
 - Sliding scale allocation began in 1999
 - Current allocation is 17.5%
 - Three trips to the 9th Circuit Court



Neah Bay, WA – Makah Marina



Treaty Management Measures

- Set asides
- Trip limits
- What about the rockfish conservation areas, and essential fish habitat?

Federal Groundfish Regulations

- § 660.50 Pacific Coast treaty Indian fisheries.
- (a) Pacific Coast treaty Indian tribes have treaty rights. Pacific Coast treaty Indian tribes have treaty rights to harvest groundfish in their usual and accustomed fishing areas in U.S. waters. In 1994, the United States formally recognized that the four Washington coastal treaty Indian tribes (Makah, Quileute, Hoh, and Quinault) have treaty rights to fish for groundfish in the Pacific Ocean, and concluded that, in general terms, the quantification of those rights is 50 percent of the harvestable surplus of groundfish that pass through the tribes U&A fishing areas.
- (1) Tribal allocations, set-asides, and regulations. An allocation, set-aside or a regulation specific to the tribes shall be initiated by a written request from a Pacific Coast treaty Indian tribe to the Regional Administrator, prior to the first Council meeting in which biennial harvest specifications and management measures are discussed for an upcoming biennial management period. The Secretary generally will announce the annual tribal allocations at the same time as the announcement of the harvest specifications.
- (2) Co-management. The Secretary recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. Accordingly, the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

Halibut Regulations

PACIFIC HALIBUT FISHERY REGULATIONS 2016

22. Fishing by United States Treaty Indian Tribes

(1) Halibut fishing in Subarea 2A-1 by members of United States treaty Indian tribes located in the

State of Washington shall be regulated under regulations promulgated by NMFS and published in the Federal Register

(3) Section 13 (size limits), section 14 (careful release of halibut), section 16 (logs), section 17 (receipt and possession of halibut) and section 19 (fishing gear), except paragraphs (7) and (8) of section 19, apply to commercial fishing for halibut in Subarea 2A-1 by the treaty Indian tribes.

(4) Regulations in paragraph (3) of this section that apply to State fish tickets apply to Tribal tickets

that are authorized by WDFW.

(5) Section 4 (Licensing Vessels for Area 2A) does not apply to commercial fishing for halibut in Subarea 2A-1 by treaty Indian tribes.

Tribal Fisheries Management

- The Makah Tribe has regulated its fishermen since 1937 and has promulgated written regulations since 1952
- Makah Fisheries Management Program (MFM) was established in 1975
- MFM manages fisheries for salmon, halibut, shellfish, groundfish, and marine mammals with a total of over 25 separate fisheries



Culvert Case

- Phase IF US v Wash. – Treaty right includes hatchery fish and right to have fishery habitat protected from degradation
- 2001 Request for Determination Re: Culverts that blocked the free passage of salmon
- 2013 District Court Injunction – 800 obstructing culverts must be replaced by 2030
- Upheld by 9th Circuit in 2017 and the US Supreme Court in 2018
- Current cost \$3.5 to 4 billion

Makah Trawl Fisheries and Bycatch Reduction

- Whiting –
 - Fishing vessels are required to use salmon excluders to minimize salmon bycatch.
 - Active bycatch triggers in place so if notable bycatch occurs the observers or processor are required to notify Makah Fisheries Management.
 - All landings are observed by federal or tribal observers.
- Bottom Trawl
 - Small footrope trawl gear is the only legal gear type for Makah fishermen.
 - Reduces trawlable areas, avoidance of rockpiles.
- Midwater Yellowtail Fishery
 - Maximum tow duration.

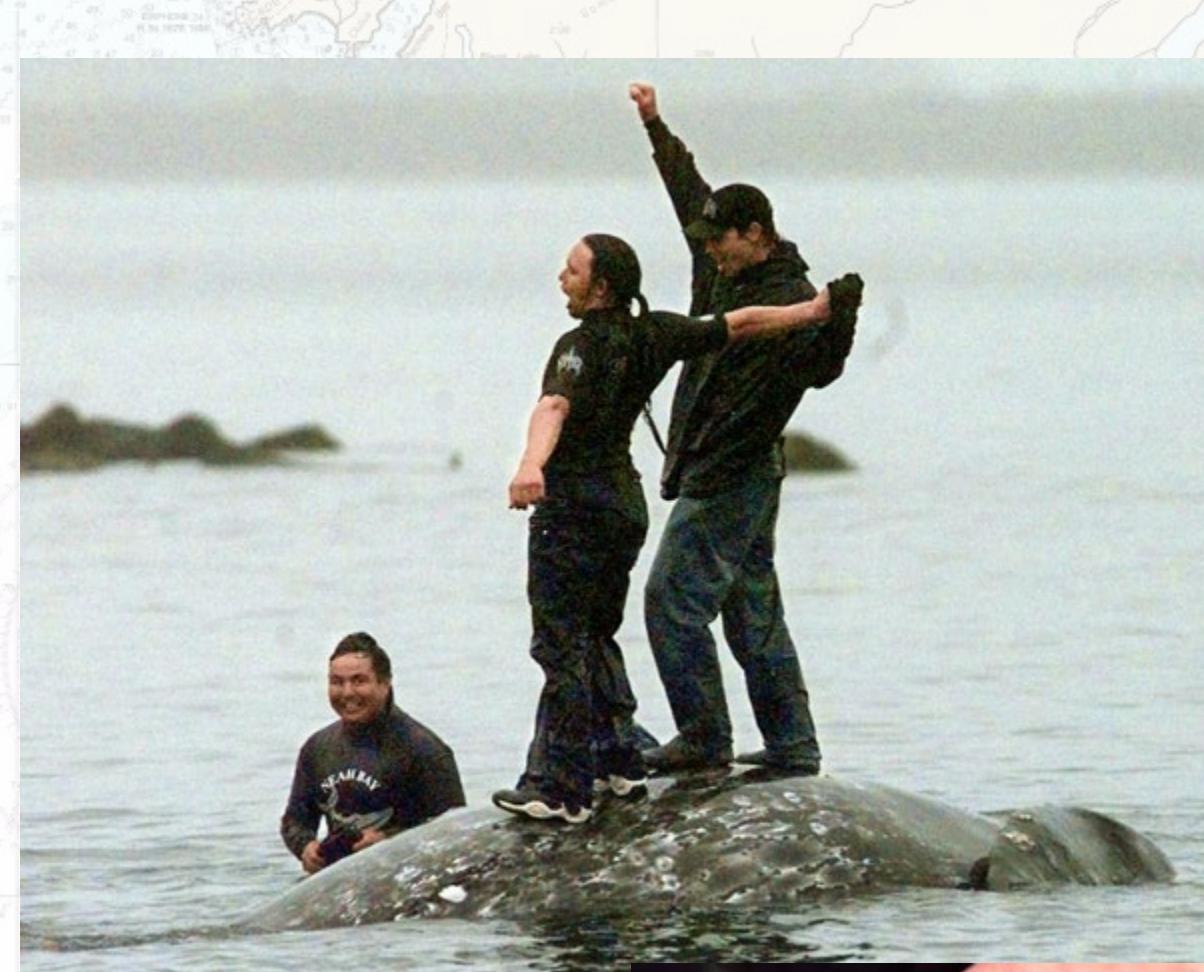
Marine Mammals

- Mammal Management

- The Makah Tribe conducts studies on the population of whales within the region.
- Individual whales can be identified by the barnacle patterns on their backs, genetic samples are used to distinguish lineage.
- Two distinct populations of grey whales reside near Neah Bay.

- Whale Hunting

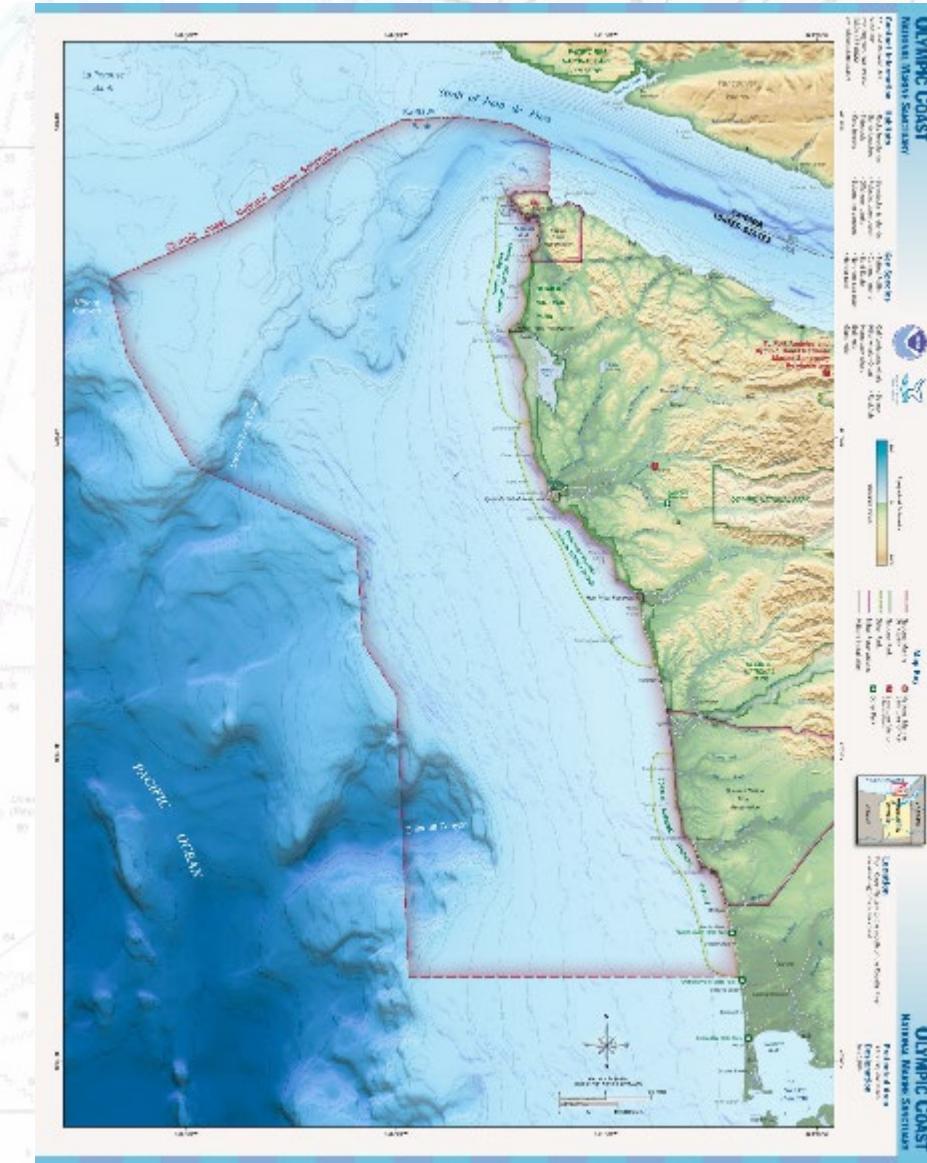
- Tribal members wish to continue the tradition of whaling while making sure that the species taken are in healthy abundance.
- Before a whale is taken the whale is identified so that tribal hunters have a low likelihood of affecting a weak stock.



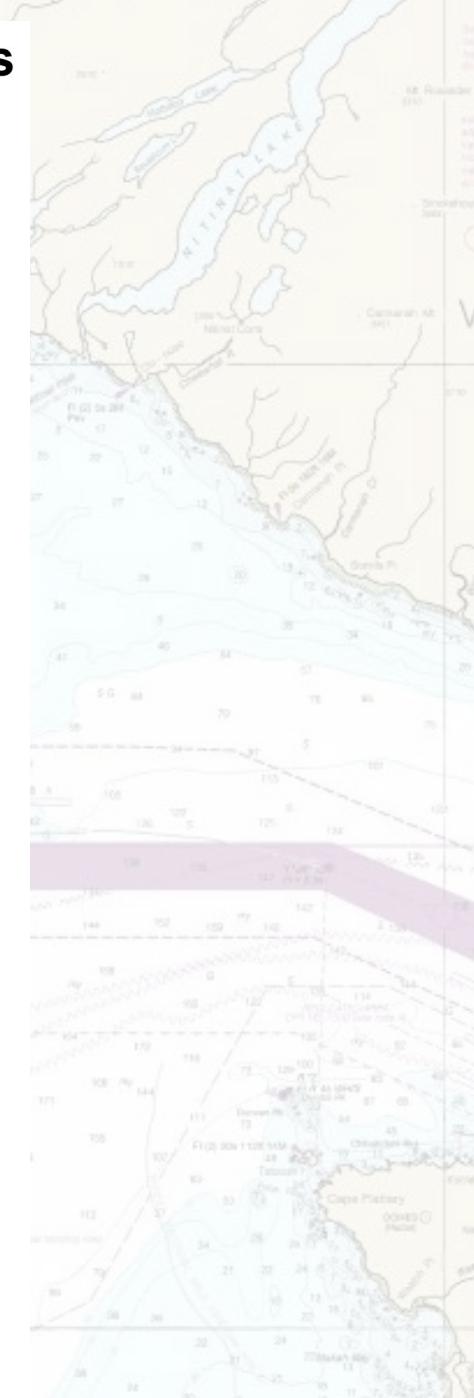
Biopsy = A small piece of skin and blubber

Olympic Coast National Marine Sanctuary and the Tribes

- Intergovernmental Policy Council established in 2007
- Coastal Tribes, Washington State and NOAA
- Habitat Framework



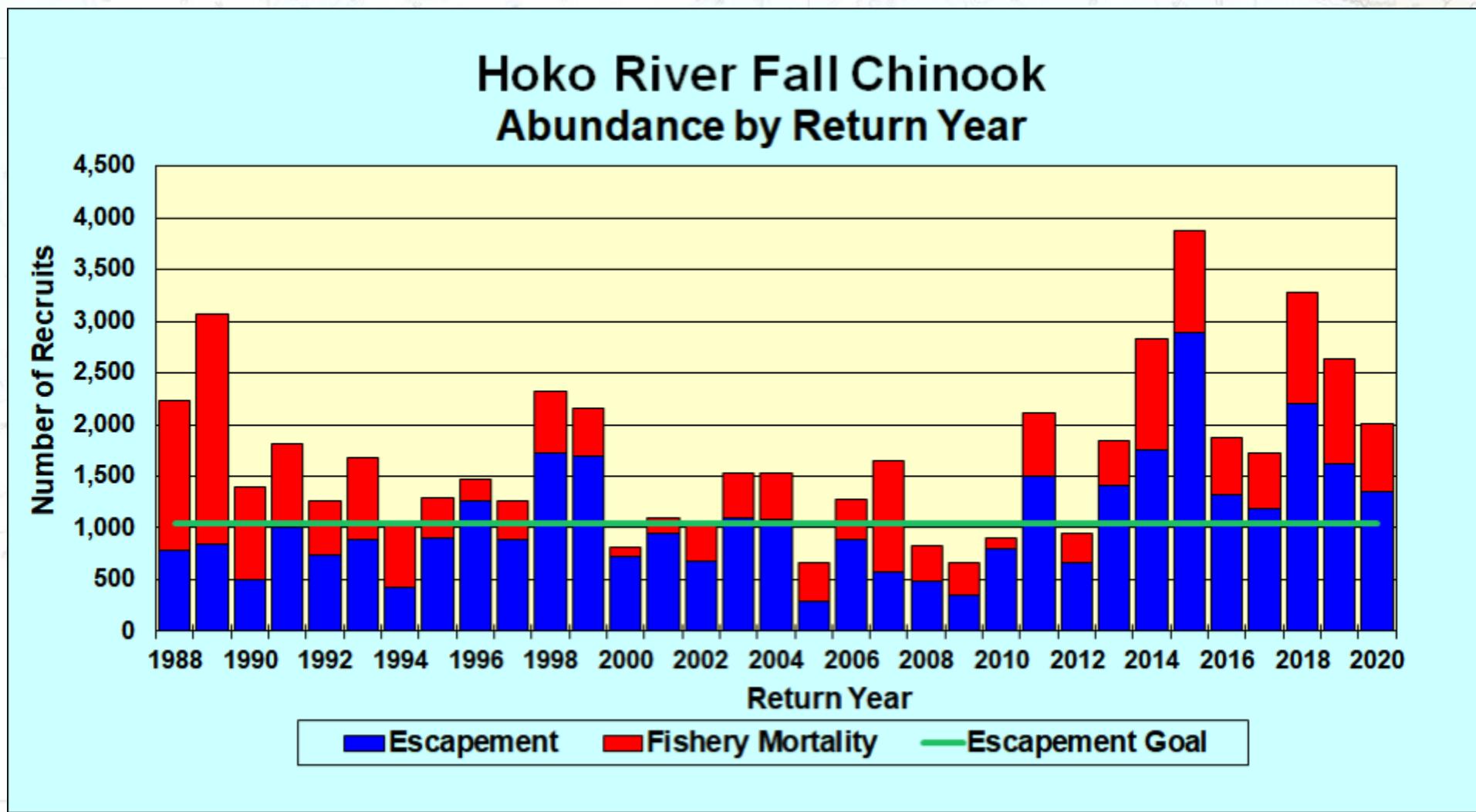
Western Washington Tribal Hatcheries & Associated Rearing Facilities



Tribal Hatchery Releases

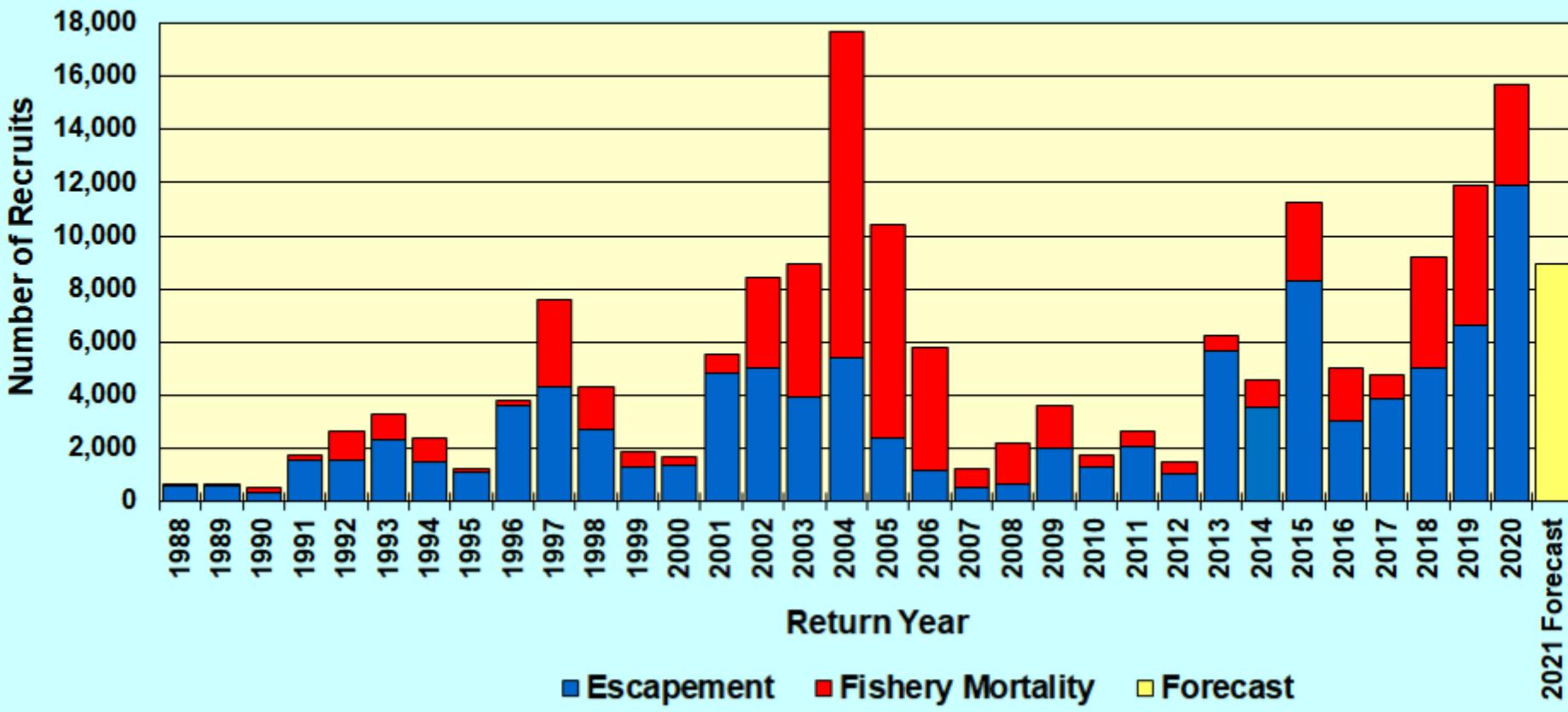
Tribe	Fall chinook	Sp/Sum Chinook	Coho	Chum	Sockeye	Pink	Steelhead	Total Fish
Lummi		951,428	3,112,117					4,063,545
Upper Skagit				83,900				83,900
Sauk-Suiattle/Swinomish Coop ¹				12,000				12,000
Stillaguamish		265,883	63,825	44,000				373,708
Tulalip		2,145,917	1,001,242	5,263,382				8,410,541
Muckleshoot	1,283,469	411,381	531,146	6,754,673				8,980,669
Suquamish	2,119,757		262,408	1,500,000				3,882,165
Muckleshoot/Suquamish Coop			423,198					423,198
Puyallup	1,217,002	818,457	244,190	2,552,690			30,000	4,862,339
Nisqually	4,034,470		341,172					4,375,642
Squaxin Island			561,358 *					561,358
Skokomish				2,133,725				2,133,725
Port Gamble S'Klallam			383,148	903,916				1,287,064
Jamestown S'Klallam		50,132 *						50,132
Lower Elwha Klallam			365,519	59,778			143,922	569,219
Makah	406,924				240,983		5,480	653,387
Hoh								0
Quileute		252,007						252,007
Quinault	920,931		716,336		595,251		481,005	2,713,523
	9,982,553	4,895,205	8,005,659	19,308,064	836,234		660,407	43,688,122

Tribal Hatchery Results



Tribal Hatchery Results

Tsoo-Yess River Fall Chinook Abundance by Return Year



Area 2A – Conservation Necessity Principle

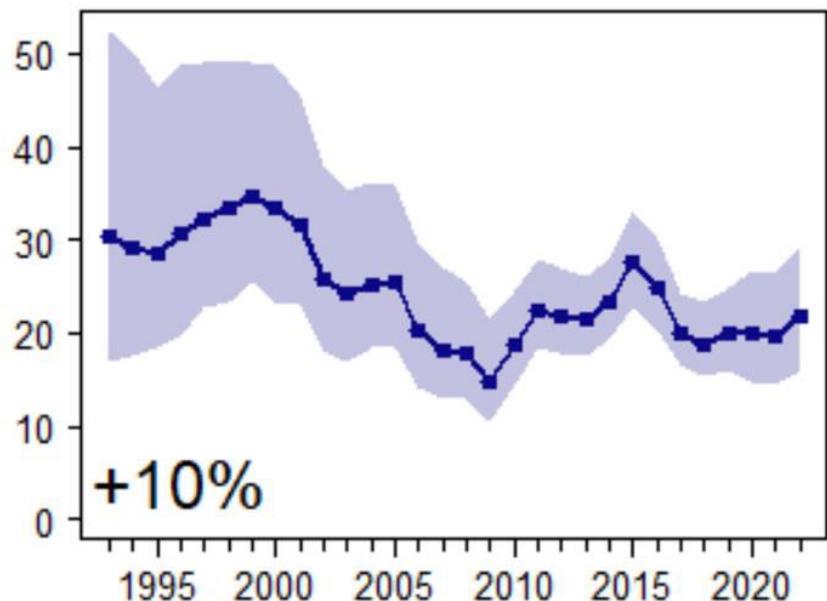
- Area 2A halibut apportionment for 2019 – 2022:
 - TCEY 1.65 Mlbs, FCEY 1.5 Mlbs. Each year for 4 years
 - Based on long-term removals
 - Catch, bycatch and WPUE in 2A commercial fishery supports catch level
 - Area 2A has full accountability of bycatch
 - Bycatch additionally reduced by 70-80%
 - Supports 2A Halibut Catch Sharing Plan and Tribal Halibut Management Plan
 - Allows testing of multi-year harvest policy
 - MSAB, fishery SPR targets, apportionment methods

Use Commercial Fishery Data

- Tribal and Non-Tribal WPUE had a different trajectory than Survey WPUE
- Indication of a healthy stock within area 2A

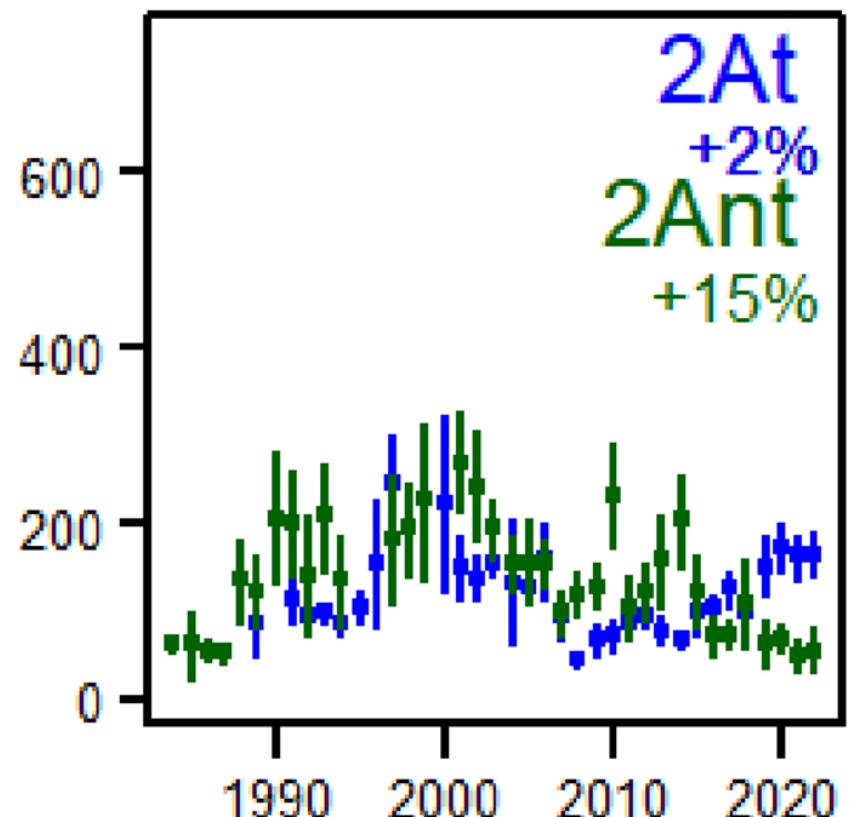
FISS WPUE

2A



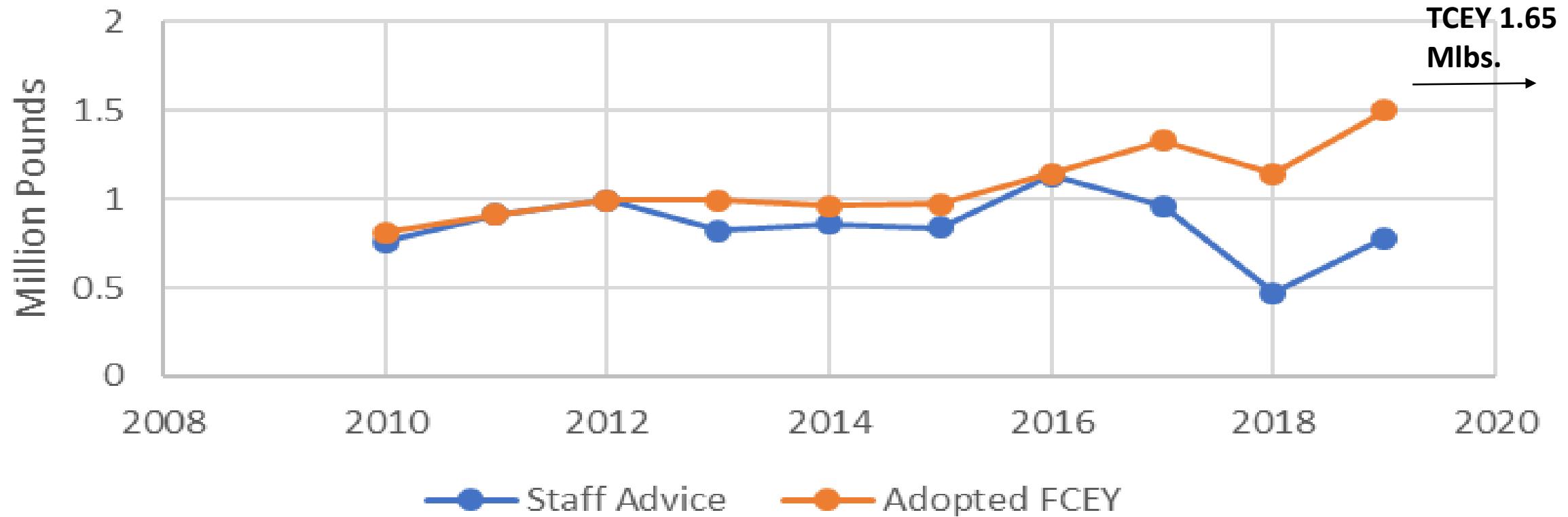
Commercial Fishery
WPUE

2At
+2%
2Ant
+15%



Application of Treaty Commercial Fishery Data and the Conservation Necessity Principle

Area 2A: IPHC Harvest Policy vs. Adopted FCEY



Tribal representation on the Pacific Fishery Management Council

- Tribal Council Seat
 - Magnusson Stevens
- Tribal Seats on PFMC Advisory Bodies
 - GAP, GMT, SSC, SAS, STT, HMS, CPS, EWG, and AdHoc working groups



North of Falcon

- Began 1984 - Ocean and inside salmon fisheries north of Cape Falcon Oregon
- Start with Pacific Salmon Commission in January and February
- March and April PFMC meetings with NOF following March meeting
- Tribal and non-tribal troll, ocean recreation quotas set.
 - FRAM model for chinook and coho
- LOAF for Puget Sound fisheries. Terminal area agreements for Washington Coast
- Columbia River Compact for in-river fisheries