

# HOUSE BILL REPORT

## SHJM 4005

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### As Passed House:

March 10, 1995

**Brief Description:** Requesting federal assistance to obtain an equitable solution to the shellfish harvest issue in Washington State.

**Sponsors:** By House Committee on Natural Resources (originally sponsored by Representatives Hargrove, Cairnes, Pelesky, Goldsmith, Buck, Johnson, Clements, Carrell, McMahan, Campbell, Koster, Padden, Huff, Backlund, Reams, Pennington, Stevens, Fuhrman, Silver, Crouse, Casada, Thompson and Sherstad).

### Brief History:

#### Committee Activity:

Natural Resources: 2/21/95, 2/28/95 [DPS].

#### Floor Activity:

Passed House: 3/10/95, 77-19.

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## HOUSE COMMITTEE ON NATURAL RESOURCES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Fuhrman, Chairman; Buck, Vice Chairman; Pennington, Vice Chairman; Basich, Ranking Minority Member; Beeksma; Cairnes; G. Fisher; Stevens; B. Thomas and Thompson.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Regala, Assistant Ranking Minority Member; Jacobsen and Romero.

**Staff:** Linda Byers (786-7129).

**Background:** The Washington Territory was organized out of a part of the Oregon Territory in 1853. The first territorial Governor and Superintendent of Indian Affairs for the new territory was Isaac Stevens. Stevens requested and in 1854 was granted by the Commissioner of Indian Affairs the authority to negotiate treaties with tribes in the Washington Territory. In 1854 and 1855, Governor Stevens negotiated a series of treaties with tribes in what is now the state of Washington. These are referred to as the Stevens Treaties.

In these treaties, "the said tribes and bands of Indians hereby cede, relinquish, and convey to the United States, all their right, title, and interest in and to the lands and country occupied by them" (excerpt from the Medicine Creek Treaty). The tribes

reserved certain parcels of land for reservations and were promised monetary payment for the lands ceded and for the expenses of moving to and settling on the reservations. The treaties also contained substantially similar language about the tribes' reserved right to fish:

The right of taking fish at usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the Territory, and of erecting temporary houses for the purpose of curing, together with the privilege of hunting and gathering roots and berries on open and unclaimed lands. *Provided, however,* That they shall not take shell-fish from any beds staked or cultivated by citizens (excerpt from the Treaty of Point Elliot).

As Washington's population increased and the fishing industry grew in size and complexity, conflicts over this fishing right emerged and escalated. This treaty provision has been the subject of numerous state and federal court cases, and several appeals to the U.S. Supreme Court. A recent federal district court opinion interpreted the language in the Stevens Treaties referred to as the shellfish proviso. The final judgement and order in this shellfish case is expected to include an implementation plan for the decision.

**Summary of Bill:** The Memorial asks the United States government to do three things:

- (1) Be part of the solution to the conflicts over the shellfish litigation by offering federally-owned tidelands for tribal shellfish harvest as part of the shellfish decision implementation plan;
- (2) Assist the state with funds to help offset the costs of the state's appeal of the shellfish decision; and
- (3) If the state's appeal is unsuccessful, provide funding for the administrative costs of development and implementation of a dual management program, for compensation to the commercial shellfish industry, for compensation for private property owners, for the purchase of tidelands, and for any other costs associated with implementing the final order of the court in the shellfish litigation.

**Appropriation:** None.

**Fiscal Note:** Not Requested.

**Testimony For:** (Testimony was taken simultaneously on both HB 1939 and HJM 4005. This summary reflects comments on HJM 4005 only.) What is taking place now, as well as what has taken place in the past and what will take place in the future

must be dealt with. There is nothing to do but go back to Congress and ask them to straighten things out. We need to do what's right for the sake of all people. We must get this behind us so that families will not be disrupted and children will not have to go through this time and time again. Private property rights are sacred. They should not be dealt with in any way that destroys them. This right is fundamental to mankind. When a judge says that someone can come across your private property and take what is yours, then something is fundamentally wrong with the system. Congress can interpret or amend treaties or can abrogate treaties. Two remedies are available to provide relief to citizens: Congressional action to interpret or amend the treaties, and mandating an appeal of the shellfish decision. It would be helpful to put language in the memorial to bring closure to the continuing conflicts between tribal neighbors and other residents. One problem is in the definition of sovereignty. Tribal members have extra-territorial status. There is on-going friction. Tribal membership is determined by the rules of the tribes. Non-tribal members living on tribal lands should have a voice in government. The memorial expresses a frustration held by many that enough is enough. First salmon, then shellfish, what next? Growers of berries and fruit crops should beware. Maybe it is time to renegotiate these treaties. The dissention, unrest, and inability of the department to resolve these issues is a reason to pass this memorial. We must put these divisive issues to rest. The resource is for all of us to share and should be shared in an equitable manner.

**Testimony Against:** (Testimony was taken simultaneously on both HB 1939 and HJM 4005. This summary reflects comments on HJM 4005 only.) Since 1871, it has been illegal to negotiate treaties with our own citizens. The 14th amendment guarantees equal protection to all citizens, so it is probably unconstitutional to renegotiate a similar kind of deal as the treaties. Instead you may want to direct Congress to interpret or amend the treaties.

Between 1975 and 1985, there have been political proposals to declare the Boldt decision wrong and null and void, to make steelhead a national game fish so that Indians could not harvest it commercially, to declare the treaties old and out of date. The state should not be on record in the nation's capital as asking for abrogation of treaties. The state is not even a party to the treaties. Treaties are viewed by the Constitution as being the law of the land, and Congress is proud of that. Treaties were viewed in history books as a way to move Indians on to reservations, like sweeping a people out of sight and out of mind on to reservations. The European view of treaties as agreements between two distinct nations was passed on to this country. Treaties have been ratified by the U.S. Senate, and the courts have upheld them numerous times. Treaties are property rights. Is the Legislature only interested in an ethnocentric application of property right protection, Indians need not apply? The Stevens Treaties include treaties in Idaho and Montana; are these treaties included in the memorial? At treaty times, "in common with" had special meaning. Indians and non-Indians would do things together. Stevens recognized that this was a

subsistence and trade economy and wrote that Indians made up a considerable portion of the trade of Puget Sound, providing salmon for tribal and non-tribal people. We should take these lessons from long ago to heart and deal together in common. The Centennial Accord is an example of how relations can be better. You ask tribes for campaign contributions and for votes; why not ask them for help with important issues? This shellfish war has every appearance of the situation post-Boldt. The Quinault Nation is interested in working with your state government. If there is friction between the legislative and executive branches, that is your business; we are happy to talk to both. A treaty is a supreme contract. It has passed the test of Constitutional law. The treaties have stood the test as has the tribe's willingness to cooperate with the state.

**Testified:** Representative Steve Hargrove, prime sponsor; Jim Johnson, United Property Owners of Washington; Matt Ryan, Kitsap County Commissioner; Bill Dewey, Taylor United and Puget Sound Shellfish Growers; Tom Burton; Jerry Fingason (all in favor); Randy Scott, Quinault Indian Nation and Colville Confederated Tribes; and Guy McMines and Phillip Martine, Quinault Tribe (opposed).