

HOUSE BILL REPORT

SSJM 8019

As Passed House - Amended:

April 10, 1995

Brief Description: Requesting federal assistance to facilitate the implementation of judicial decisions concerning the harvest of fish and shellfish.

Sponsors: Senate Committee on Natural Resources (originally sponsored by Senators Oke, Owen, Snyder, A. Anderson, Haugen, Bauer, Gaspard, McDonald, Swecker, Roach, Strannigan, Palmer, Hochstatter, Morton, West, Rasmussen and Spanel).

Brief History:

Committee Activity:

Natural Resources: 3/22/95, 3/28/95 [DPA].

Floor Activity:

Amended.

Passed House: 4/10/95, 73-21.

HOUSE COMMITTEE ON NATURAL RESOURCES

Majority Report: Do pass as amended. Signed by 8 members: Representatives Fuhrman, Chairman; Buck, Vice Chairman; Pennington, Vice Chairman; Beeksma; Cairnes; Stevens; B. Thomas and Thompson.

Minority Report: Do not pass. Signed by 5 members: Representatives Basich, Ranking Minority Member; Regala, Assistant Ranking Minority Member; G. Fisher; Jacobsen and Romero.

Staff: Linda Byers (786-7129).

Background: On May 19, 1989, 16 treaty tribes in Washington initiated a new proceeding in the on-going legal case known as the Boldt case (*U.S. v Washington*). The tribes seek a determination of the nature and extent of their off-reservation treaty rights to harvest shellfish. The state of Washington is a defendant in this case, and private tideland owners and commercial shellfish growers are involved as intervenors.

Federal District Court Judge Rafeedie issued a decision on December 20, 1994, that affirmed the tribes' treaty right to take shellfish from tidelands and bedlands of Puget Sound and the north coast of Washington. The court determined that "shellfish" includes all species of shellfish. The court further determined that the only limitation

on the harvest of shellfish is that contained in the "shellfish proviso," which is language found in each treaty substantially similar to the following:

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 . . . *Provided, however, That they shall not take shell-fish from any beds staked or cultivated by citizens* (excerpt from the Treaty of Point Elliot, emphasis added).

The court interpreted the terms "staked" and "cultivated" as the terms were defined and used in the shellfishing industry at and before treaty time. The court concluded that the shellfish proviso does not apply to natural or native shellfish beds and that "natural beds, if any, located on privately owned tidelands, are part of the tribal fishery."

Although Judge Rafeedie issued an oral decision on December 20, he has not yet issued a final order from which an appeal may be taken. In the December decision, the judge directed the parties to submit a jointly agreed upon plan of implementation or separate proposals if the parties could not agree. The parties in the case did not all agree on an implementation plan and submitted separate proposals to the court. On March 3, the judge issued a second interim order. This second interim order clarifies that implementation of the decision need not commence until a final order has been issued by the court. The second order also provides that tribal members will not have land access to privately owned tidelands. The judge has set a date of May 8 for a further evidentiary hearing prior to the court's adoption of a final implementation plan.

Summary of Bill: The memorial portrays the federal treaties as a federal mandate on the state of Washington and finds that the federal government bears the responsibility for the negotiation, implementation, and subsequent interpretation of the treaties. The memorial asks the federal government to fulfill its obligations to the state and its citizens by doing the following:

- 1) Acting promptly to clarify, interpret, or amend federal law including treaties to assure that the exercise of Indian treaty rights does not extend to privately-owned property, that tribal members may have access to private lands only with prior written permission of the owner, and that all citizens enjoy the same harvest rights except upon tribal reservation lands and federal lands set aside for tribal purposes by the federal government;
- 2) Being part of the solution to the conflicts by offering federally owned tidelands for tribal shellfish harvest as part of any implementation plan;
- 3) Assisting the state with funds to offset the cost of the state's appeal of the decision; and

- 4) Providing funds for the purchase of tidelands for tribal and public recreational shellfish harvesting.

Appropriation: None.

Fiscal Note: Not requested.

Testimony For: The issue is critical. We must send a strong signal asking for federal assistance. The new interim order reaffirms that the state and federal governments have a responsibility to innocent purchasers of tidelands. We need to instruct Congress in an constructive way to help avoid this taking of private property. There is legislation being introduced in Congress now which could be amended to address tribal access to public lands. This legislation will help us win our appeal. This could be a win-win situation; the tribes could meet their portion from federal, state, and municipal lands without violating private property rights.

Testimony Against: The idea for a memorial asking for federal assistance is probably good, though we have some issue with the content of this one. Hopefully we have learned something from the headache and heartache of the Boldt decision. It would be better to have a memorial that represents everyone in Washington, tribes too, looking for a way to benefit all parties and the resource.

Testified: Senator Bob Oke, prime sponsor; Bill Dewey, Puget Sound Shellfish Growers (both in favor); Barbara Lindsay, United Property Owners of Washington (in favor, offering amendments); and Randy Scott, Quinault Indian Nation (offering amendments).