

**Two Studies of Public Policy
in Washington State:**

Salmon at Risk

and

Elite Planners

by

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This book is xerographically produced in small lots of only several hundred copies each. This allows the relatively rapid alteration of the text as new events occur and as I gain more knowledge of what has occurred.

The edition number is advanced each time the text has a major advance in its content.

1. Salmon at Risk

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2. The Elite Planners

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0.1 Preface for Two Studies of Public Policy in Washington State:

These two studies discuss Washington State politics.

Salmon at Risk is an independent review of the politics of salmon in Washington State.

I wrote this book because, as a fisheries scientist, I was appalled at the deliberate mis-management of salmon and the other exploited natural resources in Washington State. I found compelling evidence that these abuses are deliberate and arise from a from the actions of a coalition.

My viewpoint on the management of exploited natural resources is that they should be managed to maximize the long-term benefit to the citizens of the State. For living resources that means self-replenishing while for mined resources that means extraction over a long time period.

This management should be based on sound science and should be conducted or overseen by qualified experts. However, expertise alone isn't sufficient. Personal integrity and impartiality are necessary for both good management and good science. Furthermore, management decisions and scientific results should be open to public scrutiny.

The Elite Planners is an analysis of the interlocking directorates of the most influential planning organizations in Washington State. They are the source of many of our current public policies, including those on natural resource and land-use management.

It should also be said that this is a living document. — It is a repository of information. Its early editions had been a book, which provides its organization, but I added things to it from time-to-time as I came across them. Consequently, you will find that it contains a wealth of information, but also that it is of very uneven writing quality. — I stopped adding to it in 1995.

The second printing is identical to the first except 1) this preface and appendix E; 2) *Elite Planners* appears after *Salmon at Risk* instead of before it; and 3) its first three chapters were omitted. The reason for these latter two changes is that those chapters of *Elite Planners* contained a brief history, which has now been entirely superseded by my, soon to be published book, *Revolutionary Change* which is now virtually done, and unlike this, is of finished quality throughout.

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ADFG	Alaska Department of Fish and Game
BC	British Columbia
BPA	Bonneville Power Administration
CEO	Chief Executive Officer
CFR	Council on Foreign Relations
COFS	College of Ocean and Fisheries Sciences at UW
CQS	Center for Quantitative Sciences in Fisheries and Forestry
D	Democrat
EPA	Environmental Protection Agency
FCMA	Fisheries Management and Conservation Act of 1976
GATT	Global Agreement on Trade and Tarrifs
HB	House bill, state legislature
IMF	International Monitary Fund
ITQ	Individual transferable quota
NAFTA	North American Free Trade Agreement
NMFS	National Marine Fisheries Service
NWPPC	Northwest Power Planning Council
NRPB	National Resources Planning Board
NRRC	Northwest Renewable Resources Center
ODFG	Oregon Department of Fish and Game
PFMC	Pacific Fisheries Management Council
PSWQA	Puget Sound Water Quality Authority
QERM	Quantitative Ecology and Resource Management
R	Republican
RCW	Revised code of Washington
SB	Senate bill, state legislature
SFU	Simon Fraser University
SIRM	Sterile Insect Release Method
UBC	University of British Columbia
UW	University of Washington
WDF	Washington Department of Fisheries
WDFW	Washington Department of Fish and Wildlife
WDW	Washington Department of Wildlife
WPPS	Washington Public Power Supply System
WWU	Western Washington University
UN	United Nations
USFWS	US Fish and Wildlife Service

Part I

Salmon at Risk

Chapter 1

The Indian treaties

This chapter presents the Indian treaties. An understanding of their legal and historical background is necessary for an understanding the issues discussed in the following chapters.

1.1 Basis for treaty making

European colonization of North America was primarily English because, by the common law of European sovereigns as it was practiced during the colonial period, the nation which first discovered and claimed a land had the exclusive right to its settlement.

Christopher Columbus discovered the Caribbean Islands in 1492. The North American Continent was first discovered by John Cabot in 1497. John Cabot was a Venetian mariner in the service of England. Therefore, England had the rightful claim to, at least, the East Coast of North America.

The nature of the Indian treaties was described by US supreme court Judge Marshall in 1832 in his decision on the case of *Worcester v. Georgia* (31 US (6 Pet.) 515, 8 L.EWd. 483). The case dealt with a treaty with the Cherokees.

He pointed out that the charters which the King of England gave to the first colonists conveyed the exclusive right to purchase such land as the Indians were willing to sell. The king purchased their lands when they were willing to sell, at a price they were willing to take; but never coerced a surrender of them. Great Britain maintained its exclusive right by preventing other European nations from buying land from the Indians in North America.

The treaty relation the Indians bore to the English was that of a nation claiming and receiving the protection of one more powerful: not that of individuals abandoning their national character, and submitting as subjects to the laws of a master.

After the United States obtained independence, they set out the basic principles governing their intended treatment of the Indians in Article 3 of the Northwest Ordinance of 1787.

Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall not be taken from them without their consent; and in their property, rights, and liberty they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

That generally follows the approach taken by the English.

The text of some of the Indian treaties reflect that view. For example, the US signed the treaty of Hopewell with the Cherokees in 1785. The third article of the treaty acknowledges the Cherokees to be under the protection of the US and of no other power. The ninth article of the treaty gave Congress the sole power of regulating trade with the Indians. Thus, the Cherokees became a dependent state with a limited right to self-government subordinate to the US Congress.

Although many people would like to interpret the Indian treaties in the light of the above theories, there was a substantial difference between theory and practice. The intended treatment set out in the Northwest Ordinance appears to have been rarely followed. For example, Bill Lowman (1978) summarizes the treaty process as follows

With the possibility that the one exception was the treaty with the Delawares, all other treaties were concluded under threat of force. They were peace treaties. The Indians were coerced into signing and in no manner could the treaties be interpreted as contracts between willing participants.

The Indian treaties in Western Washington didn't involve the use of overt force in their initial negotiation and signing. However, whether there was coercion at that stage or not is irrelevant because, within a year of signing the treaties, those tribes and bands broke them and commenced a war. They were promptly conquered and the treaties, without any alternation, were, then imposed upon them by force.

1.2 The Status of the Conquered

Those Indian tribes which made war and were conquered (rather than freely seeking the protection of the US) don't meet the standards set out by Justice Marshall in the case of *Worcester v. Georgia* and, therefore, his ruling that they retain limited sovereign status isn't applicable. Instead, they are peoples who were conquered.

The practice of the law of nations has generally been that the fate of a conquered land and people is at the discretion of their conqueror. The US policy on the vanquished follows that rule. In such cases the US has exercised its discretion, treating each case as it saw fit.

The US hasn't treated all conquered lands and peoples alike. For example, Texas and California eventually became states and all the conquered peoples in them became US citizens, Puerto Rico became a US possession and remains that still, and the Philippines were a US possession for a long time but eventually regained their independence. The residents of neither Puerto Rico nor the Philippines automatically gained US citizenship.

The Indian tribes are in a slightly different position. Their lands are treated similar to a possession. The Indians are treated and regarded as wards of the federal government, but the Indians have also been granted US citizenship. They also have their own tribal governments under federal supervision. Their legal position has many aspects and some of them are mutually contradictory.

The Indian's position isn't clearly defined and static. What it is at any moment in history depends upon which aspects of their character are considered during that period. The only thing which is consistent in the US Indian policy is change. The reason for this is clear, when you consider the exact nature of their relationship to the US government.

Judge White in 1903 in the case of *Lone Wolf v. Hitchcock* (187 US 553, 23 S.Ct. 216, 47 L.Ed. 299) clarified that relationship:

Plenary authority over the tribal relations of the Indians has been exercised by Congress from the beginning, and the power has always been deemed a political one, not subject to be controlled by the judicial department of the government. Until the year 1871 the policy was pursued of dealing with the Indian tribes by means of treaties, and, of course a moral obligation rested in Congress to act in good faith in performing the stipulations entered into on its behalf. But as with treaties made with foreign nations (*Chinese Exclusion Case*, 130 US 581, 600), the legislative power might pass laws in conflict with treaties made with the Indians. . . .

The power exists to abrogate provisions of an Indian treaty, though presumably such power will be exercised only when circumstances arise which will not only justify the government in disregarding the stipulations of the treaty, but may demand, in the interest of the country and the Indians themselves, that it should do so. When, therefore, treaties are entered into between the United States and Indians it was never doubted that the power to abrogate existed in Congress, and that in a contingency such power might be availed of from consideration of governmental policy, particularly if consistent with perfect good faith towards the Indians.

Thus, the Indians are in the hands of Congress, administered by the Bureau of Indian Affairs. As governments change, so do the Indian policies.

1.3 Consequences of Conflicting Legal Status

The Indians have, at once, three different characters: they are dependents of the Federal Government, US citizens, and subjects of tribal governments. As dependents they may get legal services and other benefits from the Federal Government; as US citizens they have certain rights and privileges and can participate in the internal government of the US; and the status of their tribal governments gives them immunity to much of US and state laws and some taxes when they are on their reservations. It also gives their tribal leaders special privileges in US and state government (such as reserved seats on boards and councils).

During other times in history, similar situations have been used to perpetrate notorious crimes: for example, in eighteenth century India, the great statesmen Dupleix, Clive, and Hastings used the ambiguous status of the nobility of the crumbling Mogul Empire to justify wars of conquest and plunder. By treating the local authorities (that is the Nabobs, Nizam's, etc) either as subjects, independent princes, princes subject to the Emperor (the Mogul), whatever best served the momentary purpose, pretext could be found for almost any action (Macaulay 1840, 1841). In particular, this was used to justify the occupation of Allahabad and Corah and their sale to Oude and the conquest of Rohillcund for a fee. To the credit of France and England, these great statesmen were made to account for their crimes. The point of this example is that a multiplicity of character in the status of individuals or governments can easily lead to abuse and there are known cases in history where this has happened with very serious consequences.

1.4 Exploration and Settlement of the Northwest

The West Coast of North America was explored by English, Russian, and Spanish navigators during the sixteenth and seventeenth centuries. The first overland exploration to the Pacific Coast was commissioned by President Thomas Jefferson. It was the Lewis and Clark expedition in 1804–1806.

In 1776 the United States declared independence and with that came the claim to a large unspecified region of North America. In 1819 and 1824, Spain and Russia withdrew their claims to the Pacific Northwest, leaving the US and England in joint possession.

In 1825, Dr. John McLaughlin founded the Hudson's Bay settlement at Fort Vancouver, Washington. In 1833 the Hudson's Bay Company founded two additional posts, Cowlitz Landing and Fort Nisqually. Later they founded another two posts, Coleville and Walla Walla.

The Hudson's Bay Company made agreements with the local Indian tribes and bands regarding land use for these settlements. These agreements appear to have been respected by both sides (Sicade 1940). Trading posts were undoubtedly mutually beneficial. Those Hudson Bay Company Posts were commercially active for about three decades.

In 1846 the US and England agreed to the division of the Pacific Northwest. The border runs along the forty-ninth parallel, except for some variations through the Gulf Islands and around Vancouver Island.

The settling of Washington had been slow until 1850. However, the Oregon Donation Land Act of 1850 dramatically increased its rate. That act granted 640 acres of unclaimed land to any married couple and 320 to any single person. Olympia was founded in 1850, Port Townsend and Steilcoom in 1851, and Bellingham in 1852.

In 1853 President Fillmore signed a bill creating the Washington Territory. Two days later the newly elected President Pierce appointed Mr. Isaac Stevens Governor of Washington Territory and Superintendent of Indian affairs. Mr Stevens was also the leader of the Northern Pacific Railroad survey team. During the Fall of 1853 and Winter of 1854, Governor Stevens negotiated settlements with the Hudson's Bay Company and treaties with the Indians.

1.5 Washington's Indian Treaties

Authority to negotiate Indian treaties had been granted by the Indian Treaty Act of 1850. The reason the US wanted Indian treaties was that the US government couldn't rightfully dispose of land as unclaimed under the Oregon Land Donation Act of 1850 until any Indian claims to land in the region had been established and suitably limited.

The Indian treaties in Washington State deal with four issues, each with several parts:

1. Limit and define land claims:

- (a) Indian land claims (if any) were usually vague and nebulous being established only by traditional use. The Indians didn't have the concept of the explicit ownership of land nor of a sovereign title to territory, except possibly in the immediate vicinity of their villages. They merely traditionally used some regions. Some regions were used more than others and the lands used by the various Indian groups might overlap. The approach taken in the treaty negotiation was to get the Indians to renounce all claims over a broad region (article 1). The intention was to replace vague and nebulous claims with concrete and well-defined ones.
- (b) Establish Indian reservations which were appropriate for their traditional and planned land uses (article 2). This included a clause allowing changes in their reserved lands at a later date (article 6). The Indians were grouped together in small hunter-gather societies which subsisted largely on fish and they had relatively few and limited land-uses. This left large regions unclaimed. That land could be colonized.
- (c) Financially compensate the Indians for any loss (article 4). That compensation was to go to improvements which would benefit the entire tribe (article 4). Individuals Indians were specifically prohibited from receiving compensation (article 7).
- (d) Provide funds for moving the Indians to their reservations (article 5).

2. **Indians relinquish sovereignty:** The most important characteristic defining a state as sovereign is its right to determine its own internal laws. We would generally regard any state which has that right as sovereign.

A characteristic of secondary importance is a sovereign state's right to interact as an equal among the various powers (nations) of the world. A state's ability to make international agreements is part of its sovereignty. Those international negotiations have two aspects: military and mercantile.

In Washington's Indian treaties, the Indians relinquish all three aspects of their sovereignty:

- (a) The right to determine the laws on the Indian reservations and to make judgments and rulings based upon them is transferred to government of the United States or its agent (article 8).
- (b) The Indians acknowledge their dependence on the government of the United States and renounce their right to conduct wars of aggression (article 8).
- (c) The Indians agree not to trade outside the dominions of the United States (article 12).

3. **Assimilation of the Indians:** There can be little doubt that the intention of the treaty was the assimilation of the Indians into the American way-of-life. Furthermore, Carpenter (1971) indicates that the Indians at the time the treaty was signed appeared to want assimilation. The treaties contain the following articles:

- (a) Promote an agrarian lifestyle among the Indians by providing funds for the clearing and fencing of their reserved land (article 5) and an agricultural and industrial school for their education. (article 10)
- (b) Promote the Indian welfare by providing instructors, a smith, a carpenter, and a physician each with all the necessary tools (article 10).
- (c) At the government's discretion, the reservation could be surveyed into lots to be assigned to individuals or families on a voluntary basis, provided that they would build a home upon the lot and use it according to the regulations for the Omahas (which provided a systemic approach for converting the reservations into homesteads which were individually owned and farmed by their Indian owners) (article 6).

4. **Certain pressing social and economic issues:**

- (a) Grant Indian fishing rights on their traditional fishing grounds. This was a principle concern for the Indians, because fishing was central to the way-of-life for many (but not all) of the tribes. The treaty also grants the Indians the right to hunt, gather berries, and pasture livestock on unclaimed land. All these fishing and hunting rights are "in common" with the citizens of the territory.

One of the important issues is the meaning of the phrase "in common". The strict legal definition can be found in the edition of Black's law dictionary (fourth edition 1891-1957 as pointed out by Lowman

1976): "In common: shared in respect to title, use or enjoyment, without apportionment or division into individual parts, held by several for the equal advantage, use or enjoyment of all." One can assume that Governor Stevens knew what "in common" meant when he negotiated the treaties.

Did he attempt to communicate that meaning to the Indians during the treaty negotiation? There is also testimony on this point from General Hazard Stevens (Governor Steven's son) who was present at the treaty negotiations. He testified in the case of Yakima versus Washington that "his father had explained to the Indians over and over again that once off the reservation they would be subject to the same laws as all other citizens of the United States" (quoted from Lowman 1976). This would include off reservation fishing rights.

Also as Mr Lowman (1976) points out, the phrase "in common" is also used in another part of the treaty with the Yakima's. In that case it guarantees the Indians the right to use the public highways "in common" with the citizens of the state. There can be little doubt about the meaning in this case.

- (b) Establish the citizen's rights to cultivate shellfish in staked beds.
- (c) Prevent the free release of unaltered stallions (article 3).
- (d) Prevent the consumption of alcohol by Indians (article 9).
- (e) Free the Indian's slaves and prevent their acquiring new slaves (article 11). The Indian cultures of the Pacific Northwest included the ownership of slaves. At the time of the treaties, a substantial proportion of the Indian population were slaves to other Indians.

The Negro slaves in the American South were in an enviable position compared to the Indian slaves. Social pressures in the South prevented certain abuses which the structure of Northwest Indian society promoted. For example, I take the following quote from Williams and Neubrech (1976):

Along the Northwest coast, hereditary slavery was practiced and one of the great displays of wealth was for a chief to kill a slave in front of another chief. It was a practice when building a new long house to dig a hole where the huge cedar post was to go, then to drop a slave into the hole (sometimes alive) and drop the post in on top of the slave and fill the hole.

The Northwest Indians weren't innately noble. That is a myth. Neither, were they unusually savage. It appears that they weren't particularly different from any other people whose society was at the same level of development.

1.6 Text of the Steven's Treaties

There is no substitute for reading the exact text of the treaties. Please verify that what I have said in the preceding section is consistent with them.

The full text of all the treaties can be found in (Anon 1873). Below is the full text of only the Medicine creek treaty. From the other treaties, I copy only the fish and wildlife related articles. All the Steven's treaties are almost identical, differing primarily in a few other technical details such as the regions ceded and reserved.

Medicine Creek Treaty

Signed on December 26, 1854 with the Nisqually Indian bands.

Article 1. 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, bounded and described as follows, to wit: Commencing at the point on the eastern side of Admiralty Inlet know as point pully, about midway between Commencement and Elliott Bays; thence running in a southeasterly direction, following the divide between the waters of the Puyallup and the Duwamish, of White Rivers, to the summit of the Cascade Mountains; thence southerly, along the summit of said range, to a point opposite the main source of the skookum Chuck Creek; thence to and down said creek, to the coal mine; thence northwesterly, to the summit of the Black Hills; thence Northwesterly, through the portage known as Wilke's portage, to Point Southworth, on the western side of Admiralty Inlet; thence around the foot of Vashon's Island, easterly and southeasterly, to the place of beginning.

Article 2. There is however, reserved for the present use and occupation of the said tribes and bands, the following tracts of land, vis: the small island called Klah-che-min, Situated opposite the mouths of Hammersley's and Trotten's Inlets, and separated from Hartstene Island by Peale's Passage, containing about two sections of land by estimation; a square tract containing two sections, of twelve hundred and eighty acres, On Puget's Sound, near the mouth of the She-nah-nam Creek, one mile west of the meridian line of the United States land survey, and a square tract containing two sections, of twelve hundred and eighty acres, lying on the south side of Commencement Bay; all which tracts shall be set apart, and, so far as necessary, surveyed and marked out for their exclusive use; nor shall any white man be permitted to reside upon the same without permission of the tribe and the superintendent or agent. And the said tribes and bands agree to remove to and settle upon the same within one year after the ratification of this treaty, or sooner if the means are furnished them. In the mean time, it shall be lawful for them to reside upon any ground not in the actual claim and occupation of citizens of the United States, and upon any ground claimed or occupied, if with the permission of the owner or claimant. If necessary for the public convenience, roads may be run through their reserves, and, on the other hand, the right of way with free access from the same to the nearest public highway is secured to them.

Article 3. 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, and of erecting temporary houses for the purpose of curing, together with the privilege of hunting, gathering roots and berries, and pasturing their horses on open unclaimed lands: Provided, however, that they shall not take shell-fish from any beds staked and cultivated by citizens, and that they shall alter all stallions not intended for breeding-horses, and shall keep up and confine the latter.

Article 4. In consideration of the above cession, the United States agree to pay to the said Indian tribes and bands the sum of thirty-two thousand five hundred dollars, in the following manner, that is to say: For the first year after the ratification hereof, three thousand two hundred and fifty dollars; for the next two years, three thousand dollars each year; for the next three years, two thousand dollars each year; for the next four years, fifteen hundred dollars each year; for the next five years, one thousand dollars each year; all which said sums of money shall be applied to the use and benefit of the said Indians, under the direction of the President of the United States, who may from time to time determine, at his discretion, upon what beneficial objects to expend the same. And the superintendent of Indian affairs, of other proper officer, shall each year inform the President of the wishes of said Indians in respect thereto.

Article 5. To enable the said Indians to remove to and settle upon their reservations, and to clear, fence, and break up a sufficient quantity of land for cultivation, the United States further agree to pay the sum of three thousand two hundred and fifty dollars to be laid out and expended under the direction of the President, and in such manner as he shall approve.

Article 6. The President may hereafter, when in his opinion the interests of the Territory may require, and the welfare of the said Indians be promoted, remove them from either or all of said reservations to such other suitable place or places within said territory as he may deem fit, on enumerating them for their improvements and the expenses of their removal, or may consolidate them with other friendly tribes or bands. And he may further, at his discretion, cause the whole or any portion of the lands hereby reserved, of such other land as may be selected in lieu thereof, to be surveyed into lots, and assign the same to such individuals of families as are willing to avail themselves of the privilege, and will locate on same as a permanent home, on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable. Any substantial improvements heretofore made by any Indian, and which he shall be compelled to abandon in consequence of this treaty, shall be valued under the direction of the President, and payment be made accordingly therefore.

Article 7. The annuities of the aforesaid tribes and bands shall not be taken to pay the debts of individuals.

Article 8. The aforesaid tribes and bands acknowledge their dependence on the Government of the United States, and promise to be friendly to all citizens thereof, and pledge themselves to commit no depredations upon the property of such citizens. And should any one or more of them violate this pledge, and the fact be satisfactorily proved before the agent, the property than shall be returned, or in default thereof, of if injured or destroyed, compensation may be made by the Government out of their annuities. Nor will they make war on any other tribe except in self defense, but will submit all matters of difference between them and other Indians to the Government of the United States, or its agent, for decision, and abide thereby. And if any of the said Indians commit any depredations on any other Indians within the territory, the same rule shall prevail as that prescribed in this article, in cases of depredations against citizens. And the said tribes agree not to shelter or conceal offenders against the laws of the United States,

but to deliver them up to the authorities for trial.

Article 9. The said tribes and bands are desirous to exclude from their reservations the use of ardent spirits, and to prevent their people from drinking the same; and therefore it is provided, that any Indian belonging to said tribes, who is guilty of bringing liquor into said reservations, or who drinks liquor, may have his or her proportion of the annuities withheld from him or her for such time as the President may determine.

Article 10. The United States further agree to establish at the general agency of the districts of Puget's Sound, within one year from the ratification hereof, and to support, for a period of twenty years, an agricultural and industrial school, to be free to children of the said tribes of said district, and to provide the said school with a suitable instructor or instructors, and also to provide a smithy and carpenter's shop, and furnish them with the necessary tools, and employ a blacksmith, carpenter, and farmer, for the term of twenty years, to instruct the Indians in their respective occupations. And the United States further agree to employ a physician to reside at the said central agency, who shall furnish medicine and advice to their sick, and shall vaccinate them; the expenses of the said school, shops, employees, and medical attendance, to be defrayed by the United States, and not deducted from the annuities.

Article 11. The said tribes and bands agree to free all slaves now held by them, and not purchase or acquire others hereafter.

Article 12. The said tribes and bands finally agree not to trade at Vancouver's Island, or elsewhere out of the dominions of the United States; nor shall foreign Indians be permitted to reside in their reservations without consent of the superintendent or agent.

Article 13. This treaty shall be obligatory on the contracting parties as soon as the same shall be ratified by the President and Senate of the United States.

Point Elliot Treaty

Signed on January 22, 1855 with the Dwamish and Suquamish tribes

Article 5: 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, and of erecting temporary houses for the purpose of curing, together with the privilege of hunting, gathering roots and berries, and pasturing their horses on open unclaimed lands: Provided, however, that they shall not take shell-fish from any beds staked and cultivated by citizens.

Point No Point Treaty

Signed on January 26, 1855 with the S'Kallams Indians.

Article 4: 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 United States, and of erecting temporary houses for the purpose of curing, together with the privilege of hunting, gathering roots and berries, and pasturing their horses on open unclaimed lands: Provided, however, that they shall not take shell-fish from any beds staked and cultivated by citizens.

Neah Bay Treaty

Signed on January 31, 1855 with the Makkha Tribe.

Article 4: The right of taking fish and of whaling and sealing at all usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the United States, and of erecting temporary houses for the purpose of curing, together with the privilege of hunting, gathering roots and berries, and pasturing their horses on open unclaimed lands: Provided, however, that they shall not take shell-fish from any beds staked and cultivated by citizens.

Quinaielt River Treaty

Signed on July 1, 1855 with the Quinaielt and Quillehute Indians.

Article 3: 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, and of erecting temporary houses for the purpose of curing, together with the privilege of hunting, gathering roots and berries, and pasturing their horses on open unclaimed

lands: Provided, however, that they shall not take shell-fish from any beds staked and cultivated by citizens, and that they shall alter all stallions not intended for breeding-horses, and shall keep up and confine the stallions themselves.

Yakima treaty

Signed on June 9, 1855 with the Yakima Nation of Indians.

Last paragraph of article 3: The exclusive right of taking fish in all streams, where running through or bordering said reservation, is further secured to said confederated tribes and bands of Indians, as also the right of taking fish at all usual and accustomed places, in common with all citizens of the Territory, and of erecting temporary houses for curing them; together with the right of hunting, gathering roots and berries, and pasturing their horses and cattle on open unclaimed land.

1.7 Negotiation of the Treaties

The difficulties and irregularities in the treaty negotiations illustrate the level of social structure of the Northwest Indians at that time.

1. The Indian societies weren't all at the level of tribes or nations. The treaties refer to the Yakima Indians as a nation, and the Dwamish, Squamish, and Makha as tribes, but many of the other Indians were in bands of various sizes and had no settled form of government. For example, Judge Boldt found this applied to the Nisqually Indians. They lived in villages of not more than three longhouses with each longhouse containing two to four families. The Nisqually Indians appeared to have had a primary allegiance to their villages, but also had some allegiance to other villages in their river-system. Marian Smith (1940) says that the Nisqually Indians spoke of themselves as people of their village or, when outside their river-system, as people of their river-system. The US took the approach of treating all the Indian groups as if they were sovereign nations even when they hadn't that type of social structure.
2. Not all the Indian groups had leaders. For example, Marian Smith (1940) and Meeker (1905) says that the Nisqually Indians had no permanent leaders for the entire river-system but that leadership was provided by prominent members of the villages, usually the heads of families. However, the Nisqually Indians could, like any group of people, temporarily follow a river-system-wide leader when it was needed: for example, the year after the treaty was signed they followed Leschi as the warchief for all the Nisqually bands and villages. For the purpose of making a treaty with the Nisqually Indians, Governor Stevens issued letters appointing chiefs for each village. Those Indians were the ones who put their witnessed marks on the Medicine Creek Treaty. There were also other Indians who had been issued letters of authority but who didn't sign the treaty: for example, Leschi.
3. Translators were available only for some of the Indian language groups and dialects. Therefore, negotiations were done, in some cases, in the Chinook trading language. This language consisted of only about 300 words. Hazard Stevens (1900) stated that his father had taken every care to ensure that the Indians understood the terms of the agreement. In contrast, Meeker (1905) also was at the meetings but thought that the treaties were void because the negotiations were rushed and involved over-persuasion and deceit: that it was a case of the strong and sophisticated taking advantage of the weak and naive.

All the treaties with the tribes in Washington State date from the same period and are virtually identically (see appendix). Most of the tribes signed one or another of the treaties, but a few tribes and bands never signed any treaty.

1.8 Indian War

The Nisqually and Puyallup Indians appear to have been dissatisfied with their reserved lands and began a war. They were supported by most of the Indian tribes in Washington. An exception was the Chehalis Indians who neither signed any treaty nor participated in the war.

Carpenter (1971) indicates that other factors may have contributed to causing that war (Gates 1941, Johansen and Gates 1941). She states that General Wool (in his report on the conflict) accused some settlers of deliberately provoking war because of the large revenue which it would bring into the region. In fact, the pay to the soldiers totaled approximately \$1,000,000 and a substantial part of this may have remained in the Pacific Northwest.

The territorial militia, volunteer units, and the regular army were called into action under General John E. Wool. The war ended in the Western Washington in 1856 but the Yakima Nation didn't surrender until the following year. To remove the cause of the conflict, the dissatisfied Indian groups were given better reserved lands. Since the treaties contain a clause allowing changes in the reserved lands at a later date, there was no need to alter the treaties.

1.9 Settlement and Statehood

Part of the process of settlement was the building of railroads. When the railroads were built in Washington State, the US government granted a sector of land to the railroad companies all along their lines. This involved a vast amount of land and timber. That is the origin of Burlington Northern's holdings (that is, Plum Creek Timber Co.) and the Northern Pacific's holding (sold to Weyerhaeuser Co.).

Also the federal government retained substantial amounts of land in Washington State. The U.S. Constitution prohibits federal land ownership except for a few restricted uses such as forts, magazines, arsenals, dockyards, light-houses, and other needful buildings. That is Article 1 section 8. The tenth amendment prohibits any other federal land ownership.

"Public lands" meaning federally owned land is a fiction. These lands are controlled by the federal government. It, in turn, is strongly influenced by big business. It is no coincidence that the large Eastern financial interests lobbied the US Congress to retain federal lands at the time Washington State was formed. It is no coincidence that although the first Constitution of Washington State was ratified by its citizens on November 4, 1878, it but was never accepted by the US Congress. A second Constitution wasn't accepted by the citizens of the state until November 11, 1889: after an additional 11 years had elapsed.

The State's first Constitution includes such features as allodial title (which guarantees property rights); declaring the navigable waters of the state to be public highways open to all; declaring that common law is the law of the land; granting the counties the right to regulate fishing and hunting; and many other admirable features. The State's second Constitution is much more officious.

This was due to the influence of big business on Congress. Thus, Washington State has, from the time of its inception, been greatly affected by big business.

1.10 Federal Regulation: 1857–1934

After 1857 Indian affairs were under federal regulation. Until 1934 the general thrust of the federal programs was to induce the Indians to assimilate into American society. Governor Stevens took a census of the Indian population in 1854. He reported finding 7559 Indians in Western Washington. By 1934 there were only approximately half that number (see the findings in the Boldt case: anon. 1974). Although some had died of smallpox, tuberculosis, and other diseases, Carpenter (1971) attributed their declining numbers to their successful assimilation.

Today undoubtedly the vast majority of the decedents of the original Northwest Indians are culturally assimilated and have neither special privileges nor disabilities. This is especially true of individuals whose ancestors inter-married with non-Indians.

The tribes and tribal authorities only deal with a small portion of the decedents of the Northwest Indians. The membership on the tribal rolls requires that individuals have at least one-sixty-fourth Indian descent and have either retained their association with their tribes or re-established it. Some of those people are difficult to describe as "Indian". One-sixty-fourth part is not closely related at all: that includes one great-great-great-grandparent or two great-great-great-great-grandparents.

1.11 Indian citizenship and suffrage

Part of the assimilation process involved granting Indians US citizenship and the right to vote. In 1866, the fourteenth amendment to the US Constitution made all Indians born off reservation US citizens.

Originally, the reserved lands were held in common by the tribes. The General Allotment Act of 1887 (also called the Dawes Severality Act: 25 USC 331–334, 339, 341, 342, 348, 349, 354, 381) allowed tribes, upon their own discretion, to divide their lands into individually owned tracts. This is in accordance with article 6 of the Medicine Creek treaty. Carpenter (1971) says that many of the Northwest tribes including the Nisqually, Puyallup, Muckleshoot, and Squaxin placed themselves under this act.

The US government held each tract in trust for 25 years (except where an act of congress allowed the period to be shortened for specific cases). At the end of that period the individual Indian or his or her heirs received full title and their land ceased to be part of the reservation. The Indian owners of those allotments might have obtained US citizenship.

However, they weren't always allowed to become citizens because statutes from that era often made citizenship conditional upon proof of assimilation (see Getches and Wilkinson 1986 their page 549). In particular, the Dawes severality act required that the Indians obtain an affidavit of competence.

In 1924, the Indian Citizenship Act (43 Stat. 253, 8 USC) made all Indians US citizens.

The right to vote doesn't necessarily come with US citizenship. Voter requirements are a state prerogative. The Indians gradually gained suffrage as the states one-by-one changed their voter requirements. The last state to grant voting rights to all Indians residing in the state was Utah in 1957.

There was a long series of court cases on Indian suffrage. The central question in granting suffrage was whether an Indian had adopted the customs and habits of civilization and was exercising his or her full responsibilities as a US citizen (see Getches and Wilkinson 1986 their pages 580–585).

Indian suffrage gradually became more lenient, but the right to vote has never been universal among American citizens. It is only granted to those who exercise their full responsibility as citizens: for example, suffrage has never been extended to juveniles, certain types of criminals, and the insane.

This principle has until recently applied equally to the Indians. For example, in 1962 in the case of *Montoya v. Bolack* (70 N.M. 196,372 p.2d 387) the New Mexico supreme court stated that the right to vote is coupled with the responsibilities of citizenship. They remarked that doing otherwise could place the Indians in a favored position

The anomalous situation [in which the Indians vote but are not subject to control by the elected officials] places the Navajo in a more favored position than other legal residents of the state.

(from Getches and Wilkinson 1986 their page 583).

This was changed by the Civil Rights Act of 1975 which gave the right to vote to all the remaining Indians on the same terms as other US citizens regardless of the favored position it might give them.

1.12 Indian's partial immunity to state law

Indians are treated as having immunity to some state laws. Specifically, incidents happening among Indians on their reservations are treated as being under the jurisdiction of the Tribal Courts.

This isn't consistent with the treaties: Specifically, Article 8 of the Medicine Creek Treaty states that

Article 8. The aforesaid tribes and bands acknowledge their dependence on the Government of the United States, and promise to be friendly to all citizens thereof, and pledge themselves to commit no depredations upon the property of such citizens. And should any one or more of them violate this pledge, and the fact be satisfactorily proved before the agent, the property then shall be returned, or in default thereof, of if injured or destroyed, compensation may be made by the Government out of their annuities. Nor will they make war on any other tribe except in self defense, but will submit all matters of difference between them and other Indians to the Government of the United States, or its agent, for decision, and abide thereby. And if any of the said Indians commit any depredations on any other Indians within the territory, the same rule shall prevail as that prescribed in this article, in cases of depredations against citizens. And the said tribes agree not to shelter or conceal offenders against the laws of the United States, but to deliver them up to the authorities for trial.

Evidently, the federal government transferred jurisdiction over crimes involving only Indians on their reservations to the Tribal Courts.

Except for Indian fishing violations, up until this year, crimes committed by Indians off reservation in the State of Washington and all crimes involving non-Indians have been (to the best of my knowledge) under the jurisdiction of our courts.

However, those crimes which occur among Indians on their reservations can be treated as subject to the jurisdiction of the Tribal Courts couldn't all crimes involving Indians be treated in the same manner. The treaties place them on the same footing.

A recent development in this direction is that on Aug 12, 1994 Judge James Allendoerfer of the Snohomish County Court ruled that two juvenile Indians could be sentenced by their Tribal Courts (specifically, the Tlingit Indians of Southeast Alaska's Prince of Wales Island) (Anon. 1994d). The traditional punishment is that they will have to spend a year camping "banished" on an Alaskan Island.

The two youths had been convicted in the County Court of robbing a pizza delivery driver and beating him with a baseball bat. He sustained permanent injuries which affect his sight and hearing. The robbery didn't occur on a reservation and their victim was a non-Indian.

What Judge Allendoerfer did was suspend the sentencing phase of the trial until after the criminals had served their banishment. Thus, there is no guarantee that they will be required to also serve the full and conventional sentence in our system. In a sense, that would be double jeopardy and they will undoubtedly argue against it.

The judge in defending his decision stated that the tribal punishment provided a better chance for the youths' rehabilitation and for their payment of full restitution to their victim. However, the precedent may be set that Indians who commit crimes against the citizens of Washington State will not be fully subject to the jurisdiction of our courts nor equally subject to our laws.

Some Indians recognize the danger in Judge Allendoerfer's decision. In old English law, "outlaw" didn't mean a criminal, it meant someone who was outside the control of the law. It went on to say that it was every man's duty to kill any outlaw he might encounter.

That law is no longer in force, but it expresses the general principle that the law by restraining a man also protects him. A human being who is outside the restraints of the law and is violent or commits lawless acts can pose a grave risk to society. When the law provides no recourse, that is, no protection against outlaws, it may often transpire that killing outlaws or some other extreme course is the only available means for preserving life and property.

After a little reflection, the Indians should realize that they don't want to be outside the law. It is better to give their victims a means of redress or they may become victims themselves. The latter seems inevitable unless the present situation is rectified.

It is appalling that, in the present times, a group of US citizens could be placed in that position based on their blood-line and nation of origin.

1.13 The Howard–Wheeler Act of 1934

In 1934, during the great depression, President Roosevelt reversed the general direction of the Indian programs: that is the process of assimilation was reversed. This is a case of Congress using its power to abrogate stipulations in the treaty.

The Indian Reorganization Act of 1934 (also known as the Howard–Wheeler Act) allowed the tribes which had assimilated and dissolved their tribal governments to reorganize. That act also had provisions to channel large amounts of money to them and provided for the restoration of allotted land to reservations under tribal rather than personal ownership.

The reorganized tribes were required to develop tribal constitutions (they are found in SRI [no date]). For many years, there was no guaranty of the personal liberties of Indians under these tribal governments. In 1968 those tribal constitutions were required to guaranty a set of civil rights (Indian Civil Rights Act of 1968).

It should be noted that the basis for Indian's rights differs from the basis for our rights. They have civil rights, we have unalienable rights. Civil rights are rights granted by the government. The government could remove those rights if it chose to do so. In contrast, US citizens have unalienable rights. We gained those rights through revolution. The bill of rights doesn't grant us those rights, it only recognizes our possession of them.

Many of President Roosevelt's policies have been accused of being directed at creating dependent special interest groups and, hence, an electorate which is beholden to the Democratic Party. This process is called "balkanization": that is to break up the public into small hostile groups who are dependent on an external power for their security or benefits, just as the Balkans are broken into small hostile states who were dependent for their security upon their more powerful neighbors.

The Indians are an example of balkanization. They were granted many privileges and they were dependent upon the Democratic Party and the federal government for the maintenance of those privileges. However, they are only one of several such groups which were created by President Roosevelt's policies.

Granting privileges sets a social process into motion. When an individual receives charity or special privileges, he or she is forced to admit that there is a difference between himself or herself and the rest of humanity. It sets them apart. Furthermore, if the motivation for the charity or special privilege is that in some way the recipient occupies a lower social position, then the act is degrading. Few individuals will accept being degraded, day-after-day, year-after-year, and in the case of the Indians generation-after-generation. It is human nature for them to find some reason why it isn't charity, but is owed to them — their just due.

For the Indian, the stereotypic justification is that the greedy whitemen trod them down to steal their land which the whiteman then raped and polluted. Thus, the American majority is vilified and the Indian is due compensation. Although such justifications usually have little or no historical basis, most Americans know very little about history and listen all too much to a mass media which repeatedly reinforces such stereotypic beliefs.

The balkanized groups are dependent upon the government for their privileges. Especially, they are dependent on the Democratic Party. The government also serves to protect the American majority from the minorities. That is especially the role taken by the Republican Party. The roles played by the two major parties make a cozy arrangement, to the advantage of big government and to both parties¹.

Whether the creation of dependent minorities beholden to the Democrats was President Roosevelt's intention or not, it was the result. Because the House of Representatives originates all budgets, they are the source of the funds which are given to those groups. Therefore, members of those groups have a tendency to vote for congressmen who are Democrats. This is thought to have contributed towards keeping the Democratic party the majority party in the House of Representatives. They have held that majority most years since President Roosevelt's term, and continuously ever since the beginning of President Eisenhower's term in office (1949).

This colors the whole progress of law over the last four-and-a-half decades. When the Democrats are in control also of the other parts of the government (that is the presidency and the senate), they advance their agendas; but when the Republicans are in control they need to negotiate a compromise with a Democrat-dominated House. This has produced, over the years, a series of shifts towards the left interrupted by periods of either little change or only a slight readjustment back towards the right.

1.14 Voluntary termination

In 1953 President Eisenhower (Republican) tried to restore the original direction of the Indian regulations: that is, towards assimilation. House Concurrent Resolution 108 provided for the voluntary termination of Indian tribal governments and Public Law 280 allowed States to assume law enforcement on reservations upon request. These laws were relatively weak because they weren't compulsory. Nevertheless, several tribes did follow that course. In those cases, because compliance was voluntary, the force of the termination is greater.

The arguments for Indian termination were motivated by the conditions on the Indian reservations. During the early 1960's they were characterized by poverty, a lack of initiative on the part of the Indians, and alcohol and drug problems. Senator Watkins (Orfield 1966) said of the record of the federal government, "We have been operating now in many cases over 150 years as guardians of some of these Indians, and I do not think we can point with any degree of pride to what we have accomplished." Furthermore, the Indians were already, at that date, full US citizens and had assumed many of their responsibilities as such. It was felt that it would be in their interest to grant them full liberty.

¹If this conjecture about balkanization is true, then it is also obvious how to end it — terminate all special privileges, end charity to all except the truly needy, teach history in school, and somehow get more balance in the media (possibly by inducing more plurality in the ownership or the major news medias).

The idea that a people's degree of liberty will affect their economic and social well-being isn't confined to the Indians. The economic collapse of the USSR and Eastern Europe illustrates this. It has also been commented upon in history. For example, Sir Edward Creasy (1876) suggested that the rapid decline of the Spanish power after its zenith around 1588 (when they had conquered much of the world and tried to obtain dominion also over all of Europe) was due to the Spanish people, at that time, having passed abruptly from being a free people at liberty to order their own affairs to being virtual slaves under the Spanish Inquisition and an absolute monarch. Thus, it is widely held that the loss of liberty and freedom will inevitably cause the loss of motivation and vigor. Therefore, it was felt that the best way to improve the Indian's condition was to terminate their status as wards and grant them full liberty by making them equal to all other US citizens.

1.15 Termination Reversed: the 1960's

President Kennedy's administration once again reversed the direction of the federal Indian policies and Congress restored some of the tribal governments which had been terminated. President Kennedy's view was supported by President Johnson in his 1968 congressional address and by President Nixon in his 1970 message to congress. The same general direction was continued by all the presidents who served since then.

The Payutes of Nevada are one of the tribes which had voluntarily terminated their tribal government, but later had it restored.

A young woman working for a department of the Payute tribal government said (personal communication 1993) that just after she had graduated from High School, she, the tribal leaders and (possibly) her parents had gotten together and decided what job she would take. After that was decided for her, she had attended a short training course; and then she took her job. She expected to have that same job for the rest of her life.

In addition to the lack of free choice in employment, add socialized medicine provided by the federal government, tribal ownership of land, and government assisted housing and the sum is a socialist government which runs many aspects of the Indian's lives. Furthermore, the tribe is only a few thousand individuals, and its government was described as being like that of a small town: that is, in practice run by a few prominent people, and with all the politics and rivalries with which small towns are too often infected.

The Payute tribal government appears to be about as close to classical communism as it is possible to get: that is, a state which owns the means of production, owns many other things, controls most aspects of its subject's lives, and which is controlled by a ruling oligarchy. Furthermore, the tribal government is maintained in power and financially supported by the U.S. Federal government.

One occasionally hears other Indian nations described similarly, as small communist states. The invasiveness of the tribal governments' socialism and the quality of their tribal governments must vary from tribe-to-tribe. However, the underlying theme of socialism is fairly ubiquitous among them.

The greatest condemnation of the current state of affairs is the drug and alcohol problems and the high rates of juvenile suicide on the reservations. They are usually higher than in non-Indian populations which have the same economic level. They are among the highest for any social group in the state. These things speak of hopelessness.

This recalls to mind Senator Watkins' (R, Utah) statement in arguing for Indian termination (Orfield 1966),

...I see the following words emblazoned in letters of fire above the heads of the Indians, 'These people shall be free!'

But that is far from the course events took.

Chapter 2

The Boldt and Orrick Decisions

In Alaska the primary Indian issue was the aboriginal title to land. In Washington State the primary issue is the Indian's right to fish. This chapter provides a review and discussion of the court decisions on the Indian fishing rights.

2.1 The Indian Movement

In 1962, under President Kennedy, the Indians commenced "fish-ins", demonstrations, civil disobedience, and became active in the courts.

The Indians did have some legitimate complaints. However, many of the complaints aired were actually part of the federal policy or were advanced by the international businesses.

The approach of minority activist politics continued until the mid 1970's. Among their leaders were non-Indians from the extreme left-wing (Steiner 1968).

Clifton (1994) says of this period "Among the many special interest groups clamoring for special privileges and entitlements from the federal government were Indians, mostly visibly led by the militant Red Power leadership, with their skillfully staged political theater, the fish-ins and sit-ins, their Trail of Broken Treaties, and their occupation and destruction of the offices of the Bureau of Indian Affairs in Washington". They also occupied the Wildlife offices in Olympia. Williams and Neubrech (1976) give a fairly detailed account of these events.

During the 1960's the courts had become favorable to the "Indians" because a succession of pro-internationalist presidents had appointed many liberal federal judges. Since judges have a long tenure on the bench, the favorable conditions for the Indians in court persisted for many years. For example, Judge Boldt was nominated by President Eisenhower and Judge Orrick was nominated by President Nixon.

Beginning in 1962, the Indians brought a succession of cases to the courts, either by their suing or by their provoking arrest (Steiner 1968). The number of Indian law cases heard by the Supreme Court reached a peak in the 1970's. There were 33 such cases. The high case load continued into the early 1980's but seems to have slowed down after that.

Of course, this slowing down was because the public funding for the Indian lawyers was decreased after the Carter Administration.

2.2 Indian Fisheries Law Cases

Since 1942, the Indian fisheries had been governed by the decision in the case of *Tulee vs. Washington* (315, US 681 1942). That decision is that the state has the power to regulate Indian fisheries, equally with others, for the purposes of conserving the stocks.

The first substantive change in the Indian fishing rights, since 1942, came when Judge Rummel (Washington State Supreme Court, Judge Bartlett Rummel, Memorandum Decision No. 158069, based on Puyallup Case, Nov. 24, 1970) ruled that the Indians had some special rights. A number of court cases and legislative actions followed, together with a lot of publicity. This was culminated by the Boldt (1974) and Orrick (1980) decisions.

A Supreme Court Decision which is important to remember, and is still in force, is the case of *Sohappy v. Smith*. The ruling was that the state has the right to manage, both on and off reservation, for the purpose of conservation, not merely for preserving the last salmon.

The Boldt and Orrick decisions are among the most extreme of the decisions made during that period. That probably accounts for their prominence. Extreme political groups and parties promote these decisions because they best advance their political agendas.

2.3 The Boldt Decision

Judge Boldt (anon. 1974)

1. ruled that the Point Elliot and Medicine Creek treaties are still in force because they could be revoked by the US legislature at any time, but the legislature had never done this;
2. ruled that the Indians had reserved the right to fish rather than it being granted by the US government;
3. interpreted "in common" to mean an equal division of the harvestable surplus (after removing the number of adults needed for spawning, for Indian subsistence needs, and for tribal ceremonies) between the Indians and the citizens of the state (that is, each group gets an equal part rather than each individual);
4. ruled that Indian fishing on their traditional fishing grounds couldn't be restricted by the state unless no other restriction could preserve the stock;
5. ruled that the Indians had the right to self-regulate their fishing if they are qualified and practice effective enforcement; and
6. stated that the treaties didn't freeze Indian society at the status and form it had in 1854: they had a right to social change. This included the modernization of fishing methods.

Judge Boldt's decision is the keystone of the current Indian policy. That policy grants special privileges and advantages to the Indians. However, there are such serious defects in the Judge Boldt's decision that if it were ever critically and impartially re-evaluated I can't doubt that it would fail the test and the Indian policy would crumble with it. The Boldt decision is held in place by political maneuvering.

2.4 Flaws in Boldt's decision

To understand this maneuvering, it is necessary to know what the flaws are.

1. The treaties violated the US Constitution when the Indians became US citizens because these treaties create a privileged class of citizens based on their nation of origin and bloodline. That violates the equal protection clause in the fourteenth amendment. It also violates the Washington State Constitution (except with regard to Indians not taxed when they are on their reserved lands) and Citizen's Initiative 465 (which I discuss at the end of this chapter).

The Indian's special privileges include not only fishing but also disproportionate representation in government, disproportionate access to the courts, immunity from some laws when they are on their reservations, and immunity from some taxes.

Nevertheless, the Civil Rights Act of 1975 said in effect that minorities can be granted special privileges and it set up several classes of minorities to whom it granted special privileges. The Civil Rights Act of 1975 and the Boldt decision in 1976 both exhibit that perspective. That was an era of affirmative action and other discriminatory practices.

2. The treaties were revoked by mutual consent not only once, but (for some tribes) twice. The first time occurred under the Indian Allotment Act of 1887, but the treaties were restored by the Indian Reorganization Act of

1934. The second time occurred under House Concurrent Resolution 108, but the treaties were restored under President Kennedy's administration.

Undoubtedly Judge Boldt found some technicality to say that these instances didn't involve the revoking of the treaties, merely the abrogation of certain articles. However, their practical effect was to revoke the treaties because their intention was to make the Indians full and equal citizens. Prior to the Civil Rights Act of 1975, equality meant not only not less than other citizens but also not more than other citizens. This can be seen in many court decisions, including the case of *Montoya v. Balock* (1962). Therefore, to suggest that only part of their treaty rights were terminated would be contrary to the two act's intention of granting the Indians full and equal citizenship. My opinion is that the treaties were terminated both times.

Furthermore, termination by mutual consent is certainly the most binding way to terminate a treaty. That is what happened in both instances.

The right to make treaties is given exclusively to the President with the advice and consent of Congress who must ratify them. Citizens are, thereby, prohibited from making treaties. Hence, once the Indians became citizens they could no longer make a new treaty to restore their previous status. Instead, Congress resurrected the terminated treaties and claimed they were still in force. This action by congress may exceed their authority and it also exceeds the authority of the Indians (as citizens) to accept the reinstated treaties. What Congress did is merely a means to get around the Constitution so that they can make a treaty even though they are prohibited from doing so.

Furthermore, an act to reinstate a treaty only needs to be passed by a simple majority rather than by the two-thirds of the Senate required for the ratification of a treaty. The authority of a reinstated treaty lies in the Act which reinstated it. After that time, the so-called "treaty" isn't entitled to the dignity and status of a treaty because its force arises simply from an act of law.

Thus, the treaties were terminated, their reinstatement contravened the intention of the constitution, and once they were reinstated they are acts of law rather than treaties. Judge Boldt's decision is difficult to account for.

3. The first part of Judge Boldt's ruling on "in common" was to reserve the number of adult fish needed to sustain the run, reserve Indian catch for ceremonial uses, and to reserve Indian subsistence catch. The fifty-percent allocation only applied to the fish in excess of those reserved. First consider the reservations.

Judge Boldt's decision grants first priority to the fish needed for breeding. However, for many stocks, year-after-year not enough adult salmon were allowed to escape the fishery and breed.

Thus, it seems that this reservation hasn't been honored, yet this is a biological necessity to the preservation of the stock. It ought to have the first priority because without it the runs will decline. Furthermore, Judge Boldt ruled that the state could re-assert its authority to preserve the stock. That does imply a higher priority to this reservation.

Most citizens of the State would probably agree with the reservation for religious ceremonies, provided that the number of fish taken for those purposes remains modest and doesn't endanger the stocks. This would be consistent with the widely held belief that it is proper to grant some latitude to religious practices. However, The tribes have repeatedly tried to increase the number of ceremonies or the number of fish taken for each ceremony. This has repeatedly been a point of contention.

The third reservation is the Indian subsistence catch. This appears to have been done without any justification: Judge Boldt doesn't offer any justification nor do the treaties refer in any way to subsistence fishing. They only say that Indians may fish in common with the citizens of the territory. That part of Judge Boldt's ruling appears to have been an arbitrary decision, a grant made by him to the Indians. It is doubtful that a judge has the right to make such grants.

To summarize the three reservations: the first is necessary to the perpetuation of the salmon stocks, the second is probably widely acceptable in principle but a source of contention in practice, and the third appears to be without justification.

4. The more critical issue is what Judge Boldt ruled about those fish in excess of those reserved. Judge Boldt used a radical interpretation of the phrase "fish in common" when he divided the resource equally between groups rather than equally among individuals.

The central issue is whether equality is an individual or a group right was discussed in the chapter of *The Elite Planners* entitled "The Philosophical Conflict: Liberty versus Leviathan". The conclusion is that by our customs, we have individual rights. This is also true of the Indians, because their fishing rights were either inherited or acquired through marriage. Thus, Judge Boldt's interpretation that the fishing right is a group right isn't compatible with the heritage of either party.

However, it is consistent with the philosophy held by most of the elite planning organizations (that is, the philosophies of Hobbs, Fichte, Hegel, and Marx). Their basic view being that rights are granted to man from government rather than being inalienable to man. Thus, Boldt's interpretation of "in common" shows that he held their viewpoint and also hint which groups he served.

In the chapter on Indian treaties I also presented evidence based on eye witness testimony from the treaty negotiations and the text of the various treaties which shows that "in common" doesn't imply apportioning.

5. Judicial legislation is an abuse of the court's power. The courts aren't granted that power in the US Constitution nor is it implied on account of it being necessary for the performance of one of the court's stated functions because legislation isn't the court's function. Therefore, judicial legislation is prohibited to the Federal court by the tenth amendment.

In addition, the Supreme Court has ruled on the illegality of judicial legislation on Indian treaties: According to the *Lone Wolf v. Hitchcock* decision, the power over relationships with Indian tribes is exercised by Congress and, specifically, not by the Judicial Department. Hence, a re-interpretation of the phrase "in common" by the federal court is null and void according to their own rulings.

6. It appears that a total ban on fishing may be necessary to restore some of the more severely depleted salmon stocks. Hence, the state can now regulate Indian fishing on those stocks. Of course, other court decisions repeated reaffirmed the state's right to regulate for the purposes of conservation. The point is that, now, even the Boldt decision appears to grant that right.
7. Many Indian tribes don't meet the requirements for self-regulation of the fishery;
 - (a) poorly regulated Indian fishing practices (for example, unmarked nets and sometimes abandoned nets in channels) interfere with navigation;
 - (b) the Indians don't manage the subsistence catch and in some cases don't even measure it;
 - (c) the Indians are required to practice good management but they run hatcheries, participate in setting catch limits which are too high, were involved developing the abusive mismanagement policies advanced by the Northwest Renewable Resources Center (see Fraidenburg 1989), and are involved in similar incidents which are going on now.

8. The Indian's objective in the treaty negotiation wasn't so much to obtain fishing rights as to preserve their way-of-life. However, their way-of-life could never have been continued indefinitely because, with the advantages inherent to contact with American society, their population became free to grow beyond that which the fish populations (which are limited) can support.

Furthermore, all people have a right for social development. What the Indians really obtained through the treaties was a long peaceful transition. Clearly the original intention of the treaties was the Indian's adoption of an agrarian or manufacturing lifestyle so they would eventually assimilate with American society.

The Boldt decision, by conveying special privileges to the Indians, runs counter the interests of assimilation. Of course, assimilation was an implied stipulation of the treaty but it was abrogated by the Indian Reorganization Act. Congress has the right to abrogate stipulations in a treaty. However, it should also be recognized that this altered treaty draws its authority from an Act of Congress rather than from the original agreement among the parties. As such it may no longer be entitled to the dignity of a treaty.

9. The fundamental objection most often voiced by the common people is that the privileged position enjoyed by the Indians is discriminatory (Getches and Wilkinson 1986 their page 159).

10. The Indian treaties were never intended to be established forever and unalterable. Their whole direction and thrust has been altered several times. The treaties as they are interpreted today bear little resemblance to the treaties the Indians agreed to. The only part of them which hasn't been fundamentally altered is the prohibition on slavery. There is no reason by Congress couldn't alter or abrogate the treaties.

A side issue is that some tribes didn't sign any treaty. The non-treaty tribes are just ordinary US citizens. However, the Federal and State government grants them privileges. For example, the Chehalis Indians get a salmon catch allocation which comes out of the non-Indian sport catch, and they are allowed to use nets and other gear which are prohibited to other US citizens.

2.5 Washington v. WSCPFA

In 1979 the court (Washington v. the Washington State Commercial Passenger Fishing Vessel Association: 443 US 685 (1979)) stated

Both sides have a right, secured by treaty, to take a fair share of the available fish. That, we think, is what the parties to the treaties intended when they secured to the Indians the right of taking fish in common with other citizens.

The Court further clarified the "in common" phrase:

It bears in mind that the 50% figure imposes a maximum but not a minimum allocation Indian treaty rights to a natural resource that once was thoroughly and exclusively exploited by the Indians secures so much as, but no more than, is necessary to provide the Indians with a livelihood — that is to say, a moderate living. Accordingly, while the maximum possible allocation to the Indians is fixed at 50%, the minimum is not; the latter will, upon proper submissions to the District Court, be modified in response to changing circumstances. If, for example, a tribe should dwindle to just a few members, or if it should find other sources of support that lead it to abandon its fisheries, a 45% or 50% allocation of an entire run which passes through its customary fishing grounds would be manifestly inappropriate because the livelihood of the tribe under those circumstances could not reasonably require an allotment of a large number of fish.

The prohibition on the Indians taking more than a 50% share even if it doesn't provide a moderate living was upheld in the case of Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Wisconsin (740 F. Supp. 1400 W.D. Wis 1990).

The argument that the Indians are not entitled to 50% because they already obtain a modest income from other sources was presented in the shellfish case currently before the courts. In that case the issue is especially clear since it was presented in evidence that for some of the tribes involved in that case the average income of their tribal members is larger than the average income of the non-Indian residents of the county in which they reside. Those tribes clearly meet the standard of a modest income even if they didn't fish at all.

The overall prosperity of those tribes, when considered as groups, doesn't, imply that all their tribal members obtain a modest income. Often the tribe's revenue (for example, from gambling casinos) isn't distributed equally among the tribal members. A few influential families and individuals obtain a large part of the tribal income, while some other tribal members are left destitute.

The unequal distribution of wealth within the Indian tribes isn't a new issue. It was commented on in 1953 during the hearings on the House Concurrent Resolution 108. At that time, the unequal distribution of the Indian's wealth was thought to be one of the main factors contributing to their widespread misery and poverty.

Those conditions provide an available pool of poor Indians who can be brought out and exhibited when it is desirable to elicit public sympathy. The tribal leaders, some of whom are wealthy, exploit that opportunity.

2.6 Legal doctrines

Winters doctrine comes from the landmark decision handed down by Judge McKenna in 1908 on the case of Winters v. United States (207 US 564, 28 S.Ct. 207, 52 L. Ed. 340). That decision was that a grant in a treaty of land to the

Indians for the purpose of farming also implied the reservation of the water necessary to make it arable, otherwise the land would be worthless, which is inconsistent with the sense of the treaty. The treaties were made before the state was formed and, therefore, the water was reserved by the federal government before the state was formed and, therefore, is outside the state's jurisdiction.

The general principle is that when something is reserved for a purpose, that implies the reservation also of all that is necessary to achieve that end.

In the second phase of the litigation over Washington's Indian treaties, that principle is applied. Specifically, the right to fish implies the right for there to be freshwater fish habitat and adequate water.

A second doctrine which is consistently applied to Indian cases is that any ambiguity should be resolved in the Indian's favor. This view was first enunciated by Supreme Court Justice John Marshall. He was a Virginia slave holder and his views reflected the racial beliefs of his time (Hall et al. 1992)

He felt that the white Americans who had negotiated the treaty were morally and intellectually superior, had command of a written language, and were familiar with the technicalities of the law. In contrast the Indians were child-like, savages, illiterate, and completely naive as regards the technicalities of the law. However well that may have described the situation at that time, it certainly isn't true today. James Clifton (1994) concludes regarding the continued use of this doctrine

... what sense do these canons, based on such antique convictions about the inherent inequality of human groups, make today, except for weighting the scales of justice heavily on the side of modern Indians in treaty rights cases. I conclude they make no sense whatever. Here we can see, however disguised by jurisprudential logic and niceties, the heavy hand of institutional racism operating blatantly in the federal court system.

There are three issues involved. First, the original treaties are only such agreements as the people involved could have made, taking into account their cultures, abilities, and disabilities. Second, many articles of the treaties were abrogated or re-interpreted. Some of these changes profoundly alter the sense of the treaties. These changes come from a later date and Marshall's doctrine (based on the status of the Indians at the time the treaties were signed) can't justly be applied to those changes. Third, the doctrine is applied in a one-sided fashion. It neglects the disabilities of the whites. Those treaties dealt with the issues facing nineteenth century nations. The whites negotiating them couldn't foresee how those agreements would be altered and re-interpreted today. There needs to be more balance in applying Marshall's doctrine.

2.7 Boldt II Decision

Judge Orrick presided over phase II of the litigation on the Indian treaties (anon. 1980).

Judge Orrick decided that the government has a duty "... to refrain from degrading the fish habitat to an extent that will deprive the tribes of their moderate living needs ... the state may not subordinate the fishing right to any other objectives or purposes it may prefer."

Judge Orrick assumed that salmon are habitat-limited. However, the evidence reviewed in later chapters indicates that for most river systems in Western Washington the salmon are limited by factors other than habitat at this time. This means that Judge Orrick's decision isn't applicable at this time. However, the major news media are perpetrating this hoax (either knowingly or unknowingly) and the state and federal governments are acting as if habitat limitation were the cause for the decline.

Judge Orrick essentially gave the Indians (or the state on their behalf) regulatory powers over any activity which affects salmon habitat. These are very large powers, because a very wide range of activities potentially affect salmon habitat. This includes anything which either directly or indirectly affects runoff or produces any substance which could get into the water. Considered in its broadest sense, this includes, agriculture, mining, forestry, manufacturing, building, housing, recreation, power, water, sewage, transportation, regional growth plans, zoning, If this is carried to the extreme, very few activities couldn't be included.

Furthermore, it placed the Indians in the position to dictate public policy or to have a veto power. Since, the Indians are the wards of the Federal Government and the federal courts will make decisions on disputed issues, a large part of this power is transferred to the Federal Government.

That would involve a significant loss of liberty and freedom for the citizens of Washington. To clearly make this point, consider the classical definitions of liberty and freedom (from Cicero 51 BC).

Liberty the right to participate in deliberative and executive functions.

Freedom the absence of any external or arbitrary control except that which comes from natural laws or morality. Freedom is often confused with license.

License a complete exemption from any form of social control.

If the public doesn't participate in the formation of public policy on those issues and doesn't have the ultimate control over them; then with respect to those issues, the public has lost its liberty (in the above sense). If that occurs the citizen's activities will be limited by external and arbitrary authority and moral issues aren't involved. That is a loss of their freedom (in the above sense).

Judge Orrick's decision contradicts one of the principle functions of the treaties: that is, the treaties established titles to the land. Specifically the Indians renounced title to all lands except their reservations.

A title to land is really a title to the *use* of the land. The owner may build upon it, farm it, harvest trees from it, . . . , whatever he or she sees fit. The owner, of course, has liability for the consequences of his or her land use practices should they injure some other party or their property.

The introduction of new restrictions on land use are, therefore, the partial confiscation of property. The Indian treaty granted property rights but Judge Orrick took them away again. Thus, the treaty no longer accomplishes its primary function with regard to those property rights.

The US constitution guarantees due process and fair compensation in cases of confiscation. However, it is doubtful that this will be allowed, because Winter's doctrine says that the confiscated rights had been reserved and were never rightfully the land owners.

A remedy isn't likely to be found by appealing to the courts. According to Clifton (1994) "the full weight of the United States today comes down on the side of Indians in treaty rights cases . . .". The Indians may also receive some funds and legal assistance from the federal government. Furthermore, their legal warchests are liberally financed. This gives them an overwhelming advantage in the courts. Furthermore, the courts have a liberal bias, federal judges have life-time appointments, and judges are rarely impeached.

The main remaining legal recourse appears to be for Congress are to abrogate or alter the treaties. The treaties have often been altered, and they aren't suddenly sacred now just because the Indians like their situation.

Thus, in practice, there are few restrictions on the powers granted by Judge Orrick's decision and any policy will be difficult to overturn if it is based on his decision and is supported by the Indians. The practical consequence is that his decision provides a mandate for the arbitrary regulation of many living and business activities in Western Washington.

Many other people have also conclude that this is the situation. For example, even before the Orrick decision, based only on Judge Boldt's decision, Lawrence Coniff, an assistant attorney general for the State of Washington said "This is dangerously close to a dictatorship where all actions of the State of Washington are subject to the whim of a Federal judge who enjoys a lifetime appointment and is not accountable to the people." (quoted from Williams and Neubrech 1976).

2.8 The supremacy clause

I have shown above that there are a number of ways in which the Boldt decision is unconstitutional. However, many parties, including Judge Boldt himself, have argued that this is irrelevant because the second paragraph of Article 6 of the US Constitution states implicitly that the US Constitution and treaties have equal force in law.

That paragraph is called the "supremacy clause". The exact text is

This constitution and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges of every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

The interpretation of this favored by Judge Boldt is that the unconstitutional aspects or implications of treaties don't necessarily make those treaties invalid. They only create a conflict which the court may resolve either in the constitution's favor or otherwise. Thus, treaties may provide a mechanism by which the form of our government can be fundamentally altered into something contrary to what is described in the US Constitution. Also state's rights and citizen's rights may be abridged.

Not all judges agree with that interpretation. For example, Judge Rosellini concluded that "The treaties which are passed may not violate the constitution and may not deprive the citizen of his constitutional rights" (Williams and Neubrech 1976 also quoted by Lowman 1978).

The supremacy clause isn't a new concern. Johnson (1984) reviews the issue. The following summary of the history of this issue is drawn from his review.

2.8.1 Historical background

The ability of the federal government to abridge state's rights through treaties was first established in the supreme court decision on the case of *Missouri vs. Holland* (252 US 416, 1920). Their decision was that a treaty (the specific treaty involved dealt with the protection of migratory birds) could override state law. However, the court reserved the right to decide in the state's favor in other cases.

A second related issue is that presidents have often made "executive agreements" with foreign powers even though the right to do this isn't granted to them in the constitution (and, therefore, is prohibited by the tenth amendment). Some of these agreements have even been secret, that is, unknown to the US legislature. Although executive agreements have no constitutional basis, they are something which is done in practice and may facilitate government business.

The supreme court decision in the case of *US vs. Pink* (315 US 203, 1942) was that such executive agreements have the same dignity as treaties and are the supreme law of the land and, as such, they can override state's rights.

Executive agreements aren't treaties and don't require ratification by two-thirds of the senate; they appear to usually have been authorized by the president. Thus, the dictates of a single individual, the president, can change our laws, rights and, potentially, our form of government.

In 1951, Senator Bricker (R, Ohio) introduced a senate joint resolution (SJ Res 102) which began the process of amending the constitution to close that loophole in Article 6. He stated (Hearing May 21 1952) "The primary purpose of [his resolution] is to prohibit the use of the treaty as an instrument of domestic legislation for surrendering national sovereignty".

Senator Bricker and many conservatives from that era were especially concerned about the impact of the UN. The UN Charter was a treaty signed in 1945. Their particular concern was that the US might be surrendering part of its sovereignty to the UN and that articles in the UN Charter might supersede US domestic law.

Their concerns weren't wholly unfounded: for example, the decision by the California Court of Appeals in the case of *Fujji vs. California* (217p. 2d 481) overturned the California Alien Land Act (a state law) on the grounds that it was in conflict with the UN Charter. That decision was later overturned, but the incident showed them that Article 6 posed more than an idle threat.

Senator Bricker's proposed amendment and its various modifications contained overly restrictive sections which might have interfered with the orderly conduct of government business, had his amendment been adopted. The Bricker amendment was replaced by a more moderate amendment introduced by Senator George. The George amendment had two key sections:

1. A provision of a treaty or other international agreement which conflicts with the constitution shall not be of any force or effect.
2. An international agreement other than a treaty shall become effective as internal law in the United States only by an act of Congress.

This amendment failed ratification by a single vote (February 1954). Johnson attributed its failure especially to the eleventh-hour defection of Senator Magnuson (D, Washington).

During the 1970's a second attempt was made to alter the effect of Article 6. This was led by Senator Fulbright. The objectives this time were to limit the president's power to make executive agreements, to establish what types of issues are appropriately dealt with by treaty and which by executive agreement, and for the senate to be informed

of all agreements which are made. After long debate, a system was devised which allows the senate to provide advice and consent. It also provides some sanction for executive agreements.

Thus, the interpretation is still applied that treaties or executive agreements may alter the form of our government or the internal law of the US.

2.9 Judicial legislation on Indian treaties

The situation with Washington's Indian treaties is slightly more involved. In that case, it isn't the treaties which are in conflict with the Constitution, it is the federal district court's re-interpretations of those treaties. Judge Rosellini (Lowman 1978) reached the same conclusion.

If Judges Boldt and Orrick could re-interpret "fish in common" as they did, or rule that there is an *implied* right for fish habitat which has precedence over our land-use rights when the securing of land-use rights was the primary intention of the treaties, what couldn't similarly inclined judges do to other treaties? Thus, treaties provide white paper on which judges can rewrite our laws even in unconstitutional ways.

This approach can be used to take away our rights and reform society and government according to whatever model they may prefer. In the most extreme case this provides a legalistic means for imposing arbitrary government.

Steven Berstch (A lawyer from Everett) pointed out that although we are accustomed to the Supreme Court reviewing the constitutionality of laws, state legislatures and juries also have that right, although for juries, the right to rule on law is restricted to the individual case.

As the state legislature or a citizen's initiative has the power to rule on constitutionality. They could say something like: "The interpretation of the phrase 'in common' in the case of US versus Washington is unconstitutional and is, therefore, null and void in the State of Washington".

Citizen's initiative 456 came close to doing that. In fact, the sense of the initiative does that, although the wording isn't ideal for the purpose.

2.10 Citizen's Initiative 456

On November 6, 1984 the voters of Washington State approved Initiative 456. It is still part of state law (RCW 75.56.010-75.56.040). However, it appears to have been essentially ignored.

In contrast with the voices of the Indians and the courts, Initiative 456 expresses the voice of the people in 1984. The initiative speaks for itself. (quoted from the Revised Code of Washington (RCW))

75.56.010 Declaration. The people of the state of Washington declare that an emergency exists in the management of salmon and steelhead trout resources such that both are in great peril. An immediate resolution of this crisis is essential to perpetuating and enhancing these resources.

75.56.020 Petition to Congress. The people of the state of Washington petition the United States Congress to immediately make the steelhead trout a national game fish protected under the Black Bass Act.

75.56.030. Management of natural resources — State policy. The people of the State of Washington declare that conservation, enhancement, and proper utilization of the state's natural resources, including but limited to lands, waters, timber, fish, and game are responsibilities of the state of Washington and shall remain within the express domain of the state of Washington.

While fully respecting private property rights, all resources in the state's domain shall be managed by the state alone such that conservation, enhancement, and proper utilization are the primary considerations. No Citizen shall be denied equal access to the use of any resource on the basis of race, sex, origin, cultural heritage, or by and through any treaty based upon the same.

75.56.040 Declaration — Denial of rights based on race, sex, origin, of cultural heritage. The people of the state of Washington declare that under the Indian Citizens Act of 1924, all Indians became citizens of the United States and subject to the Constitution and laws of the United States and state in which they reside. The people further declare that any special off-reservation legal rights or privileges of Indians established through treaties that are denied to other citizens were terminated by

that 1924 enactment, and any denial of rights to any citizen based upon race, sex, origin, cultural heritage, or by and through any treaty based upon the same is unconstitutional.

No rights, privileges, or immunities shall be denied to any citizen upon the basis of race, sex, origin, cultural heritage, or by and through any treaty based upon the same.

75.56.900 Transmittal of act to president and Congress. The secretary of state shall transmit copies of this act to the president, the United States Senate, the speaker of the United States House of Representatives, and each member of Congress.

75.56.905 Severability. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

It is, particularly, to be noticed that section 75.56.040 declared the Indian treaties as they have been re-interpreted to be unconstitutional. That should be adequate. Therefore, the Boldt decision and all that follows from it appear to have been null and void since November 4, 1984.

The problem is that the courts, legislature, administration, and departments of state government have ignored this ruling by the people.

The lesson to be learned is that it isn't enough to have the law on your side, people who are friendly to the cause of liberty must also be in positions to implement it. Therefore, the solution is found at the ballot box.

2.11 The UN Charter: Indigenous people

2.12 Indigenous People, Rights of under the UN

As we struggle with this dilemma, a more ominous cloud looms on the horizon — another potential treaty granting even more sweeping rights to the Indians.

The UN Charter contains a section granting rights to indigenous people. These sections have never been applied to the Indians populations of Western hemisphere. Part of the reason why they haven't been is that the Indian tribes aren't sovereign states and some of them never were. However, a Presidential Order in 1994 says that they now are to be regarded as such. The stage is being set.

The desire of some elements of the American Indian community to have the UN Charter applied to them is evident in the discussions by Falkowski (1972) and there is also hints of it in Wilmer (1993). Placing the Indian issues under the UN would confer strong advantages to the Indians and moving it out of US jurisdiction would be a substantial loss to the liberty of US citizens.

The intent of the UN Economic and Social Council Commission in Human Rights is shown in their "Universal Declaration on the Rights of Indigenous Peoples". That is the draft proposal by a UN Commission, it isn't law at this time, but it illustrates a point of view.

If the UN resolution were rigorously applied by an arbitrary international authority which had no sympathy for non-Indians, we would be moved off the land. However, a more proximate concern is that the UN Charter or other UN treaties might be used as the basis of a court case or an administrative action.

2.13 UN Draft Proposal on Indigenous People

Working Definition: Indigenous people

Adopted by the UN working group on Indigenous people (anon. 1982).

Indigenous populations are composed of the existing descendants of the peoples who inhabited the present territory of a country wholly or partially at the time when persons of a different culture or ethnic origin arrived there from other parts of the world, overcame them, and by conquest, settlement, or other means, reduced them to a non-dominant or colonial situation; who today live more in conformity with their particular social, economic and cultural customs and traditions than with the institutions of the country of which they are now part, under a State structure which incorporates mainly the national, social and cultural characteristics of other segments of the population which are predominant.

Part III

Universal declaration on the rights of indigenous peoples”, by the UN working group on indigenous populations (from Wilmer 1993).

operative paragraph 14

Indigenous peoples have the right to maintain their distinctive and profound relationship with their lands, territories and resources, which include the total environment of the land, waters, air and sea, which they have traditionally occupied or otherwise used.

operative paragraph 15

Indigenous peoples have the collective and individual right to own, control and use the lands and territories they have traditionally occupied or otherwise used. This includes the right to full recognition of their own laws and customs, land-tenure systems and institutions for the management of resources, and the right to effective State measures to prevent interference with or encroachment upon these rights.

operative paragraph 16

Indigenous peoples have the right to the restitution or, to the extent this is not possible, to just and fair compensation for lands and territories which have been confiscated, occupied, used or damaged without their free and informed consent. Unless otherwise freely agreed upon by peoples concerned, compensation shall preferably take the form of lands and territories of quality, quantity and legal status at least equal to those which were lost.

operative paragraph 17

Indigenous peoples have the right to the protection of their environment and the productivity of their lands and territories, and the right to adequate assistance including international cooperation to this end. Unless otherwise freely agreed upon by the peoples concerned, military activities and the storage of hazardous materials shall not take place in their lands and territories.

operative paragraph 18

Indigenous peoples have the right to special measures for the protection, as intellectual property, of their traditional cultural manifestations, such as literature, designs, visual and performing arts, cultigens, medicines and knowledge of the properties of fauna and flora.

operative paragraph 19

In no case may the indigenous peoples be deprived of their means of subsistence.

2.14 Views of a Few Tribal Leaders

A viewpoint which is expressed by several groups is that rural growth in Western Washington should be reversed. They feel that the land should eventually be returned to its pre-colonial status for the benefit of fish and wildlife. Those resources would be exploited by only the Indians and any non-Indians who remains in Washington State should live in urban villages and they would only be allowed to fish or hunt when it is granted them through the generosity of the Indians.

However, as Indians are the wards of the government any transfer of power to the Indians is a transfer of power to government and to those who control government. One thing is sure: in the long-run neither the Indians nor the citizens will benefit. But that doesn't prevent the Indian leaders from calling for what their masters want.

Billy Frank was the fourth speaker at a meeting hosted by Greenpeace on July 30, 1994 at the Seattle Aquarium. His presentation was a work of art: He came up to the podium with every inch of him crying out “Woe is me — I

am nothing but a poor down-trodden Indian"; his speech began in faltering tones; but he soon warmed to his work as he spoke of the need to get the poison out of the land and to restore Nature and Wilderness. It was a masterly presentation of the stereotypic Indian and he never broke from form.

Nevertheless, don't believe it for a minute. Billy Frank has been deeply involved in Indian issues ever since he first was a activist in the 1960's and he is the current director of the Northwest Indian Fisheries Commission.

Although his presentation was mostly artistic rather than substantive, he did criticize rural growth, the need for the widening of highways (which produce quick runoff), and he stated that the forests should be for the bears.

It should be noted that the Federal government had last year suggested the re-introduction of grizzly bears into Washington. This produced a public outcry. These dangerous and protected animals are decidedly not welcome. The State legislature is working on a bill (SB6387) which protects and provides for grizzly bear management but prohibits their importation and a second bill (SSB 6231) which allows them to be killed if they are life-threatening.

It should also be noted that the US Forest Service last year wanted to prohibit the carrying of firearms on US forest land. This also produced an outcry and they withdrew it. These federal plans show an egregious disregard for the public's welfare and safety.

Billy Frank ended his presentation with a glowing introduction of John Smith, obviously a friend and valued colleague. Mr. Smith began with a touching story of how when he was a commercial fisherman, an encounter with a killer whale changed his life. He abandoned fishing and began working on environmental causes in association with the Indians. Then his discussion got more interesting. He showed a clear and definite orientation.

He said that "Habitat restoration is the single most important element for keeping Washington's fisheries on maximum sustainable yield, at this time".

He followed this by a criticism of manifest destiny and the colonization of the US. Then he said,

There is still a belief amongst people my age that success is a house and five acres in rural Pierce county, and as long as we allow people to live like that we will never bring back the salmon streams in this state. Growth management has to be very serious about changing people's perceptions about what cities are for, what people are for, and what wilderness land is for.

At present we are getting none of that in growth management. What growth management is doing right now is how to contain things, how to take sewers to people. That's it! That's it! There is no metal behind what is going on. It is very important because if we bring back habitat quickly [the salmon can be saved].

2.15 Shellfish

During 1994 and 1995 the Indians had a case before the federal court in which they assert that they have broad rights to harvest shellfish. Furthermore, they wish the court to alter the article of the treaty protecting staked shellfish beds.

Judge Raffadee delivered his decision but shortly thereafter withdrew it. According to what he presented, and later withdrew, the Indians have the right to trespass on private property and to harvest anywhere they please, including from staked and cultivated shellfish beds. He appears to have been testing the public response.

Shortly after he delivered his decision, members of the Squaxin Indian tribe, guarded by their tribal police, harvested clams off the staked beds of Taylor United (Anon 1995). Reports of how many pounds were taken varied through an order-of-magnitude but most reports gave amounts in excess of one-thousand pounds. Taylor United is a large shellfish company and was one of the parties in the shellfish suit. The shellfish were taken from beds which had been artificially built up and planted with clams. Those clams were almost mature and were to be harvested later in the Spring. That event was widely publicized in the major news media and may be fanning public resentment.

During the third week in January 1995 there was a shooting of a Indian by a white man. State Attorney General's office discussed the event in a meeting with legislators. Apparently they discussed how to keep a lid on the rising antagonism and they also expressed a concern that open warfare might break out. However, reports from the local area indicate that the shooting had nothing to do with the shellfish case. The two individuals had a long-standing feud and one shot the other with a shotgun — for all I know, loaded with rocksalt.

Reporting on the issue is unreliable and inflammatory. If there is a deliberate attempt to create and fan an antagonism between Indians and non-Indians, it has had little success. Most individuals are inclined to blame

government and almost everyone knows enough Indians to realise that some are guilty of various things while other aren't.

Another aspect of his decision was that he instructed the director of Fisheries and Wildlife to negotiate an agreement between the Indians and non-Indians over the crab, sea cucumber, and sea urchin fisheries. Rather than negotiating, the director, Bob Turner, closed the non-Indian crab fishery. This produced an outcry against Bob Turner rather than against the Indians. Soon he reversed his decision.

Having tested the public response, Judge Rafadee withdrew his opinion. That was an extraordinary action. About two months later he delivered another decision. It wasn't so blatant but granted the Indians very wide latitude. It was immediately appealed by all the parties involved. The case will undoubtedly continue for a number of years.

The closing argument presented by the lawyer, James Johnson, representing the property owners and shellfish growers provides insight into the issues

2.16 Mr. Johnson's Closing Argument in the Shellfish Case

(United States District Court, Western District of Washington, at Seattle UNITED STATES OF AMERICA, et al., vs. STATE OF WASHINGTON, Civil No. 9213 — Phase I, Sub-Proceeding No. 89-3.):

THE COURT: Proceed with your argument, counsel.

MR. JOHNSON: James Johnson representing the private upland and tideland owners, your Honor. As I had earlier noted, they are the successors in interest to what the Supreme Court referred to as quote "citizens of the territory" and as such the "beneficiaries of the reciprocal grant of land in the treaties" end quote.

We are asking here from you a declaration of the rights of the settlers under those treaties and the Donation and Preemption Land Acts and other acts under which we derive title and, secondly, an injunction to protect those private lands.

First, however, mindful of the admonition to answer judge's questions first, I would like to address two which you asked at the conclusion of the preceding argument just before lunch which, coincidentally, gave me an opportunity to go to the library and get a book which I think answers your questions.

Those two questions were first, to paraphrase, were we here arguing for or expecting the court to find an abrogation of the treaty right? Second, which I view to be related, whether the shellfish fishery was a "common fishery" We shall argue that it is such a fishery but one which was expected to diminish of its terms.

I think both questions are answered with some authority, in a case that was actually decided in this very courtroom, United States versus Hicks, found at 587 F.Supp., 1162, 1984. Ironically the U.S., as you can tell from the style of the case, was prosecuting an Indian under these very same treaties for hunting on some United States Government land.

And the court said this, and I will try to abbreviate the quote for the court, your Honor:

The privilege of hunting set forth in the treaty is not an absolute right which, when encroached, requires specific abrogation. The concept of abrogation is inapplicable because of the treaty's self-limiting terms. The circumstances surrounding the negotiation of the treaty together with the treaty language itself describing the lands available for Indian hunting, compel a conclusion that the land available for Indian hunting would change with the times. Homesteading, as well as other kinds of settlement, inimical to hunting were destined to occur and were contemplated at the time of the treaty's negotiations

end quote.

The court went on to conclude that the treaty privilege was precluded within the area in question, the park boundaries.

Similarly here, your Honor, we argue not for abrogation, but that the treaty itself intended and envisioned and that the Indians as well as the settlers and Isaac Stevens, expected this diminishment. With specific respect to shell fisheries, surely there were "in common" shell fisheries, and I note, your Honor, they continue to exist today.

The evidence has shown you that there are approximately 600 miles remaining of Puget Sound beaches which are either in tribal reservation ownership, federal government ownership or other public beaches. A footnote is necessary; of course, the parks beaches, I think, under analysis just read would be set aside (no treaty rights)

But there are common shell fisheries, and we haven't spoken enough about those. I think an ultimate remedy the court ought consider that what the treaty was intended to do was to diminish this treaty "common" fishery to those common areas.

And they are still available, and I ought note, too, that the efforts at cultivation and improvement of the shellfish and the millions spent by the U.S. Government, should be spent improving those common fishery areas in which the tribes presumably may clam, the reservation and federal lands, on which they could continue to fish.

You noted at one point, your Honor, correctly, I think, my use of other's witnesses to try to make this case. I admitted at the time the limited resources available to the tideland owners have compelled this.

As I said in the opening, Governor Stevens is our primary witness, your Honor, who might otherwise be assumed to be a U.S. Government witness.

And there are several things, kind of hypothetical questions you have to ask in your own mind as you analyze all the evidence you heard and the treaties. Is this what was intended by Governor Stevens? With the subsidiary question what did the Indians and the settlers understand?

And when I say "and the settlers", this is a fairly new concept. I have cited in the opening brief, a United States Supreme Court case two months ago, Hagen versus Utah, U.S. Supreme Court, 92-6281, which added this additional concept: Quote "We have also considered the historical context."

And what they said there was you have to look at the understanding of the other parties, being the settlers. One of the reasons, I suspect, your Honor, is because in this case, as in Hagen, the U.S., because motivated by what is "politically correct" today is on the other side with the tribal plaintiffs.

It is kind of a funny case in which both parties to the treaties have their own interpretation which they urge against the beneficiaries. The same was true in Hagen, by the way, a Utah case involving a reservation in Utah.

The court went on to say why it is important to look at what the settlers thought. Quote, "A contrary conclusion would seriously disrupt the justifiable expectations of the people living in the area."

And in that case, they went on to find that the reservation — a total reservation did not exist in the area in question. And we are asking the same thing, consideration for the settlers' understanding, as well as the Indians, surely, to arrive at what this treaty was intended to accomplish.

Well, I will start then with not just this article m. We have talked a lot about it, and I shall briefly talk about it, but you do have to put it in the entire treaty context here, Honor.

Article l says, "All right, title and interest was relinquished and conveyed" end quote. Article 3, we will talk about a lot. Article 8, as Mr. Montecucco has mentioned, also has in it explicit protection for private property of the settlers.

Rhetorically, I would ask Governor Stevens what did you intend when you wrote that article? And we don't have him here to answer the question, your Honor. But we do have the Supreme Court's language, so we will let the Supreme Court answer for Governor Stevens.

Quote, "The treaties were to extinguish the last group of conflicting claims to the lands", . . . "the Indians relinquished their interest in most of the territory in exchange for monetary payments."

And then the Supreme Court also told us, well, what was the purpose of this? Continuing again, this is all out of 443 U.S., your Honor, the Supreme Court said, "By thus separating the Indians from the settlers, it was hoped that friction could be minimized."

That last quote, I think, is real important as backdrop here, in your consideration of both what the treaties intended and the relief you are going to grant.

The intention was to minimize friction between the settlers and the Indians. And what are we doing here today with these kinds of claims? I shall leave the rhetorical question hanging.

We believe that the evidence before the court confirms our understanding; that is, the settlers' understanding that these treaties allowed them to take lands and to exclude the Indians.

And I, in earlier discussion, alluded to and mentioned the ICC petitions filed by these Indians-tribes some years ago in which, among others the Puyallups said quote, "The United States of America or citizens thereof, without let or hindrance by the U.S., have gone in and upon the said fishing grounds and stations and have taken possession thereof and excluded plaintiffs therefrom," end quote, reading from UPOW-21, the Puyallups' claim.

And the date they put on that taking was at the time the treaties, that's when it happened. And this is consistent, your Honor, with the evidence I think you heard. Again the Hagen test is look at what was going on at the times.

I don't see the U.S. Government exhibit there where it is readily apparent to you, but you remember, as do I, the U.S. had an exhibit on which they put mills at treaty times, numerous mills around the tidelands.

The testimony was that exhibit showed only some of them, that there were actually 40 more mills, and they were surely displacing the Indians from shellfish beds.

The one witness I remember testified the Port Gamble mill certainly excluded the Indians just by its presence on the tidelands. Intermixed among all those mills and the ones that are not charted are the settlers' claims.

And you had a little bit of evidence with respect to that, Mr. Dorpat's presentation which I found enlightening in this sense. It sort of filled in the blanks.

You had only seen some sites of mills, and as mentioned, some of them were not on there. What Mr. Dorpat showed you is let's fill in some of the blanks.

Particularly notable were the plats of tidelands where they had been staked out and ultimately showed you how they were filled in. In some of those pictures, you saw settlers' houses literally on pilings right over these same shellfish beds.

And what all this is confirming is at the time of treaties the Indians knew, the settlers knew, and our hypothetical witness, Governor Stevens, knew that this was happening and was going to continue. And the treaties were in part intended to assure that.

I asked the historical witness, Ms. Thompson, I am paraphrasing my own question, your Honor, "you searched all the records of this historical period, Ms. Thompson. Did you find any complaint, any record to show that this was somehow inconsistent with the Indians' understanding of the treaty and what was happening at the time?"

And her answer was no. So we have this—it is hard to prove a negative, but from all the searches, all these witnesses, you don't see anyone showing to the contrary, someone standing up for or for the tribes and saying, boy, we didn't expect this displacement from our shellfish beds.

And that's not surprising, I think. We did have an army of anthropological evidence on the side of the tribes, your Honor, and I think one proposition that they did all tell you about was that the Indians gave the same courtesy to others before the treaty times; that is to say, that if there was not just a settler but another group of Indians, that other Indians would not come and take clams in front of or around their village.

So I think that further confirms what was expected at the treaty times. Within the treaty itself, this process is further confirmed by the exclusion explicitly of staked areas and a separate exclusion of cultivated areas, separate because it is in the disjunctive.

And here we are not going — at least I am not going to allow the divide and conquer technique, your Honor. The treaty did not say cultivated by professional shellfish growers or cultivated by growers.

It said staked or cultivated, and it said by citizens, and thereby, I believe it meant the beneficiaries of the treaty, the settlers, were also allowed—intended, and expected to occupy the property and thereby exclude the Indians. And as I say, the evidence shows that was happening at treaty times.

If we could ask Governor Stevens, we would ask him, well, did you mean this as a technical (oystering) term. Governor Stevens, you have heard Mr. White testify several days and hundreds of pages about what was going on back East and various kinds of things. Did you mean that when you used this term in the treaties?

And I think we would probably get a laugh from the governor and his answer would probably be something like, well, we could have said "whacked". There were real technical terms of art, but the Indians wouldn't have understood it. This treaty was translated through Chinook jargon.

The settlers wouldn't have understood it. The only person who would have understood it may be Professor White and he has a dispute with other experts.

No, what was explained at treaty times through the Chinook jargon was simple concepts occupancy and staking. I won't belabor what has already been said, one additional point to remind you is the reservations themselves were staked.

On the Indian side, they said, well, we will stake your reservation. What that means is settlers won't come on your property. So they surely understood it from that side as well.

The general term that would have been explained would have been something like the settlers will stay off your reservation and you'll stay off the settlers' land. And I think that is consistent with the history, the immediately post treaty history.

In fact, if you go back to the Complaint in this action, the tribes when they started this case, complained of quote "The sale and lease of tidelands by the state to private parties who refused to permit access to Indians which

refusal was enforced by state and local law enforcement.” I presume the time they are speaking of is this same post treaty period, and it has continued, confirming our belief of the expectation at the time of the treaty.

Mr. White floundered on several other issues, too, by my following of his testimony, your Honor. Most significantly, he’s got a technical explanation with this little proviso, and I said, well, what about the general section it refers to?

If you recall, I asked Mr. White with respect to shellfish, are they fishing “grounds” or are they “stations”?

Now, you testify about a qualifier proviso, going into great detail, and he didn’t know. He hadn’t considered either of those.

The tribes’ quote “experts” also vary with respect to these various provisos. But, as I have said, I think that the term of “staking” was well understood. It was understood and to the benefit of the Indians when it dealt with their reservations.

I will further note here in my view, your Honor, there’s been a failure of proof with respect to the usual and accustomed application to our private lands, and all private land in particular.

We have to note a little bit of irony here, the tribes uniformly say the Yakamas haven’t proved specifically any usual and accustomed grounds or station, so throw them out. And by the way, I will join them on that, let’s throw them out.

But let’s apply the same standards which these tribes are applying to the Yakamas, although the Yakamas as geographically remote, it is easier to see, your Honor. I don’t think they’ve proven their case with respect to the private property either, particularly when you deal with the presumptions.

Mr. Roberts and Mr. Montecucco talked about the equal footing presumption. I shan’t repeat. The presumption we are more interested in is that which also has been mentioned, the Nollan case, also a recent United States Supreme Court case, which said as to private property, it is presumed that you have a quote “right to exclude others, one of the most essential sticks in the bundle of rights commonly characterized as property.”

And I just note, your Honor, that Nollan, as you know, came from California. In Washington, my clients and the settlers have a higher kind of right in the sense that they have actual ownership of the tidelands.

Again, a percentage of tidelands we are talking about, not all of them. There are still some common areas, but our claim is stronger than in Nollan, because in your home state you do not and cannot acquire title to the tidelands as we can in this state of Washington.

Finally, I think confirming the conclusion we are urging on you today, your Honor, is the U.S. Supreme Court’s analysis with respect to moderate living. And you have heard the testimony on that.

The Supreme Court by our view—the Supreme Court said not just moderate living but there’s more meaning in the phrase. They said a “livelihood; that is to say, a moderate living”.

And where I might qualify the opinions, particularly of the defendants’ expert, just to remind you that you are interpreting these standards at treaty time.

Now, what did a livelihood mean at treaty times, your Honor? I don’t believe that Governor Stevens, if we were asking him here today, intended to guarantee the tribes the average wage or the average income of the people living in the area which is in question.

In fact, I think it is probably outrageous to suggest that they were intended to guarantee them the same wage as the settlers. It was intended to guarantee a livelihood, and that’s why we say the standard that you should use, which I think both experts have put forth in their report, is that set forth—there is a federal and Washington state standard of a minimum but adequate standard of living.

In this state, it was \$15,000, I think, from Dr. Thomas’ testimony, and yesterday when I asked Mr. Meyer, he said, well, of the two standards, that’s the one he would use if he were using one of those standards.

We think that’s the one you have to apply, and by the numbers in front of you, the tribes easily surpass this moderate living. That works two ways, your Honor. One, we think the treaty right has been fulfilled, and it really means that the equities aren’t here. It cries out for you as a judge to enter some kind of equitable remedy, surely not the Draconian remedy of putting these Indians in conflict with their neighbors and putting them on private lands.

Because I repeat that there are still these 600 miles of tidelands available to them, and assuming *arguendo* that you find that there is some tribal shellfishing right continuing, this common right, it should be exercised on those common areas: First, the reservations, secondly, the federal beaches, third, those remaining public beaches that aren’t dedicated to a specific park use.

And I just repeat for point of emphasis that if all of this cultivation and improvement works, that’s where they

should be spending their energy and money instead of here in litigation; hassling with their neighbors the settlers which the treaties were clearly intended to stop.

Now, I have to just take a few minutes of your time, your Honor, to tell you why it is so important. My five witnesses wanted so much to tell you why it was important to them. And if I remember, there was an objection, and you accurately noted that was for argument.

Well, here it is. To the best I can articulate why people and why my clients have bought and have waterfront land, and you have been around Puget Sound, you have observed some of these things.

First Ms. Lemonds-Roush with a 85 year old mother who lives on a isolated beach area where the family has been there for over 50 years. And she briefly told you she had been there as a child, that she got the land, built herself a house, and she explained some of the privacy concerns she has and her interest in the clams.

Your Honor, I just need a minute to tell you this story, because we did hear days of tribal witnesses and experts telling you about their "cultural" interests. I think it is fair to balance a little bit with that first the other half of the treaties and the interests that our clients have with which I hope will convince you to grant some protection for them.

Mr. Price similarly talked about this piece of land he's had for a long time. He does his planting efforts, he and his wife, and hopes ultimately to move out to the same property.

And Mrs. Walker, her concern was more about the resources, her perception of how the tribal harvesting was devastating to the beach, and she referred to the scene afterward as a battlefield.

Mrs. Rasmussen even put a dollar loss on it, because she is a real estate appraiser and she said, well, cutting off her ability to exclude and the loss of the shellfish would be a 30 percent loss. But she made it very clear, your Honor, that wasn't the important thing to her. The important thing is this other intangible I'm trying to articulate.

And what is it? It's a loss of a dream. She had a dream when she moved into that area which has been already frustrated. And I would say Mr. Price, Ms. Lemonds-Roush, Mrs. Walker each have a kind of a dream that is embodied in this waterfront land.

Finally, Mr. Fielding, what a frustrating process he had gone through, your Honor, with numerous incursions after this case was filed, and then he goes to the various public officials, tribal and local, and they tell him you don't have any rights. These tribal people are asserting rights and you don't have any.

Well, I presume that plaintiffs' counsel will say the Constitution and the treaty doesn't protect dreams. And I think that may be true, your Honor, but the Constitution and the treaties do protect rights and they do protect private property rights.

So what we ask you to do is define those rights, make it explicit that this treaty was not intended to put Indian harvesters on private lands, that the staked provision explicitly excluded private lands from the exercise of this treaty Indian shellfish harvest, define the rights of both parties.

Further, you will have to define moderate living, which we think just confirms our conclusion that no expansion of this fishing right is necessary.

And I know it is probably appropriate here, your Honor. We have made a laches argument, and I know you denied a motion to strike those affirmative defenses. Laches, we have argued in several senses.

One, it's been 140 years since these treaties, before they come to court with this. But a further level of that argument is there was an explicit order of this court in 1986 that said bring these claims back to the court before you go and exercise them.

I shan't belabor the fact that they have been out quote "exercising them", an inarguable violation of the court's order. The more important point, however, is that they sat on these rights for a dozen years after that explicit order of this court, and I think that ought to be factored in at least in the fashioning of a remedy.

So to conclude, the treaty in its entirety, Article 1 with this extinguishment of rights to the lands now occupied by the settlers; Article 2, with the staked provision, and article 8, which is prohibition of the Indians going on or privations against settlers' property indicate that this court should define these rights as exclusive of the treaty Indians, and we have asked for an injunction.

As to the latter, I cite Blake versus Arnett, 663 F.2nd, 906, it is a Ninth Circuit 1981 case. And I will read just a brief concluding portion from that, your Honor. We conclude — and it dealt, by the way, with a reservation area of the Klamath River in California. The issue was whether a private landowner had a right to get an injunction from a federal court to exclude Indians exercising fishing rights.

The answer was yes. The injunction was granted and the Ninth Circuit upheld it, using among others this

language. "We conclude Congress intended that the patents granted under the Act would grant an unencumbered title which would not be subject to any interest in the land which might be implied from the mere creation of the reservation.

We think the fee excluded the interest asserted by the plaintiffs and concluded that an injunction was appropriate." And I think similarly here, your Honor, we are entitled to declaration of our rights and an injunction to protect them and thereby avoid the friction between settlers that the treaty was intended to stop. Thank you.

2.17 The process set into motion

Just as healthy salmon stocks grow until they reach habitat limitation, fishing industries grow until they reach financial limitation (unless some regulation or other factor limits their growth). The Indian salmon fishery may, therefore, be expected to grow as the Indian population grows and as an ever-increasing proportion of Indians make their living by fishing. This growth will continue as long as there is adequate profit from fishing.

However, there are biological limits on the total catch which can be taken. As a limited total Indian catch is divided among progressively more fishermen, the individual share will become smaller. Thus, if the Indian salmon fishery has unrestricted growth, the Indians will eventually not be able to obtain a modest income from salmon and, hence, Orrick's decision inevitably will come into force.

One standard for the point when Orrick's decision comes into force is the "modest income" criteria. However, that criterion is being ignored, for example in the shellfish case. There are also other standards in the political arena. The most extreme criterion is the complete restoration to precolonial status. That is advanced by the UN Rights of Indigenous People and also by the extreme elements of the environmental and liberal communities. It isn't certain what standard will be applied.

Nevertheless, the practical effect of the Orrick decision is to impose restrictions on land use. However, if the Indian's financial situation is known to have arisen solely because of the unrestricted growth of the Indian fishing industry, or due to deliberate mismanagement of the salmon, the most likely consequence is that the public will be enraged, Orrick's decision will be overturned, and the Boldt decision and treaties might be overturned with it.

The Indians would like the Orrick decision to be applied so that their fishing industry can grow as big as possible and also so they will continue to have the power the Orrick decision gives them.

The kind of situation which would get the Orrick decision implemented without adverse consequences to them is a disastrous collapse of the entire salmon fishery (Indian, commercial, and sport) which the public attribute to habitat limitation.

The chapters which follow show that the Indians (acting in a coalition with other groups) have maneuvered so that the salmon populations have been caused to crash and a large part of the public think that the crash was due to habitat limitation, but it wasn't.

Chapter 3

Consequences of Orrick's decision

One of the issues which the Washington Roundtable examined was the Boldt and Orrick decisions.

3.1 The formation of the Northwest Renewable Resources Center

Michael Fraidenburg (1989) says that the business community recognized the Orrick decision as a serious risk to their interests; and their response was to form a coalition. This was called the 'Northwest Water Resources Committee' and involved 26 companies. These included

Burlington Northern Railroad (that is, Plum Creek Timber Co.),
Georgia-Pacific,
I.T.T.,
Puget Sound Power and Light,
Seattle First National Bank, and
Weyerhaeuser

(Monson 1982, Cohan 1986, Fraidenburg 1989). Michael Fraidenburg (1989) says that half the companies were timber companies.

Jim Waldo had been the federal attorney representing the tribes in the case (US v. Washington) decided by Judge Orrick. The Northwest Water Resources Committee hired him to analyze the situation and make recommendations.

He found that the Indians had gained important advantages and that the Orrick decision "...if carried to the extreme, would appear to permit no balancing of interests and no flexibility for the state, the United States, or third parties" (Waldo 1981 quoted from Fraidenburg 1989).

However, Waldo also recognized that, although there were significant risks, the business community could turn the Orrick decision to their advantage by forming a coalition with the Indian tribal authorities. He stated (ibid.) the tribes objectives were:

1. protection of the Indians fisheries income;
2. expansion of their natural resource income base;
3. recognition of the tribes as government entities;
4. acceptance of the Indian treaties rights by the State;
5. acceptance of the Indian treaties rights by non-Indian citizens; and
6. making commerce in the region dependent upon the Indian treaty rights.

They wanted to secure the advantages which the Boldt and Orrick decisions gave them and enlarge them as far as they could.

He proposed a plan for both meeting the Indians objectives and advancing the business interests. He concluded (ibid.) that, "... given the economic and political importance of the members of the Northwest Water Resources Committee, we can bring about these changes, but it will require a concerted and well planned effort." Fraidenburg (1989) writes that the Northwest Water Resources Committee accepted Waldo's plan.

The first stage of his plan suggested a series of meetings with tribal leaders and legislators to forge a coalition. The final meeting of this stage apparently was in 1984 in Port Ludlow (Larsen 1986, 1987). A comprehensive policy strategy was discussed at that meeting and this included the formation of an institution for developing and implementing their natural resource policies.

That Institution is the Northwest Renewable Resources Center (Northwest Renewable Resources Center) which was incorporated in 1984 (Waldo 1984). Their stated objectives were the formation of public policy, the initiation of processes, and the mediation of natural resource disputes.

3.2 The Northwest Renewable Resources Center, Board of Trustees: 1984-95

Symbols mark the years (columns) during which the following individuals (rows) served on NRRC's board. The type of symbol indicates their position on the board: C, Chair; X, Member; and D, Executive Director. This table is compiled from the corporate documents filed at the Secretary of State's Office in Olympia.

Director	95	94	93	92	91	90	89	88	87	86	85	84
Bill Arthur		X	X	X								
Jim Blomquist								X	X			
Stan Carlson		X	X									
D. Chris Carlson					X	X	X					
Pam Crocker-Davis					X	X	X					
Joe DeLaCruz		X	X	X	X	X	X	X	X	X	X	
Daniel J. Evans				X	X	X						
Gregore W. Forge		X	X	X	X	X	X					
Billy Frank jr		X	X	X	X	X	X	X	X	X	X	
Randall Hardy						X	X	X	X			
Diana Gale		X	X	X								
Boyd Holding										X	X	
William R. Hearst II				X	X	X						
Dale Jones		X	X	X	X	X	X					
John S. Larsen								X	X	X	X	
Katherine Fletcher						X	X		X	D	X	
Maura O'Neill				X								
Patricia Otley		X	X	X	X	X	X					
Jerry Pavletich		X	X	X	X	X	X					
Mark M. Reis										D	X	
William Ruckelshaus								X	X			
Amy C. Solomon		D	D	D	D	D	D	D				
Mel Tonasket								X	X	X		
James C. Waldo		C	C	C	C	C	C	C	C	C	C	
S. Timothy Wapato							X	X	X			

3.3 Biographical Information

This biographical information is drawn from the annual reports of the NRRC (available from the Secretary of State's office, corporate division).

Bill Arthur Northwest representative of the Sierra Club, Seattle.

Jim Blomquist Northwest representative of the Sierra Club, Seattle; after 1988 he gives a Washington DC address.

Stan Carlson General Council, Seafirst Corp, Seattle.

D. Chris Carlson Carlson Issues, Spokane.

Pam Crocker-Davis Washington Environmental Council Board Member, Lacey, Wash.

Joe DeLaCruz President, Quinault Indian Nation.

Daniel J. Evans Ex-governor, ex-senator, trilateralist, Daniel J. Evans Associates, Seattle.

Gregore W. Forge Forge Management Consulting, Seattle; before 1994, Vice President of Washington Waste Systems Inc., Kirkland.

Billy Frank jr Chairman, Northwest Indian Fisheries Commission, Olympia.

Randall Hardy Superintendent, Seattle City Light, Seattle.

Diana Gale Budget Director, City of Seattle,

Boyd Holding Seattle.

William R. Hearst II Heir to the Hearst fortune, West Palm Beach, Fl.

Dale Jones Environmentalist, 2501 12th Ave W. Seattle.

John S. Larsen Vice President, Environmental and Regulatory Affairs, Weyerhaeuser Co., Tacoma.

Katherine Fletcher Chair, Puget Sound Waster Quality Authority.

Maura O'Neill O'Neil and Co, Seattle.

Patricia Otley Vice President, Burlington Northern Resources, Seattle.

Jerry Pavletich Northwest Representative, Trout Unlimited, Aberdeen (deceased 1995).

Mark M. Reis Seattle.

William Ruckelshaus Ex-director of the EPA, Lawyer at Perkins Coie, Seattle.

Amy C. Solomon Seattle.

Mel Tonasket Vice Chairman, Coleville Business Council, Nespelam WA.

James C. Waldo Attorney at law, Gordon, Thomas, and Honeywell, Tacoma.

S. Timothy Wapato Executive Director, Columbia River Intertribal Fish Commission, Portland Or.

3.4 Composition of the Northwest Renewable Resources Center

The Northwest Renewable Resources Center's board of directors originally included four members representing business, three members representing tribal authorities, and one from government (specifically, the director of the Puget Sound Water Quality Authority). Fraidenburg (1989) reports that by 1988 two additional board members had been added representing environmental groups and one representing a sport fishing organization. He states that their advisory board also includes representatives from departments of state government.

In 1986, the Northwest Renewable Resources Center published a list of their financial supporters

Airborne Freight	Old National Bank	Reed-Henry Foundation
Boeing Co.	Pacific First Federal	Safeco Insurance Co.
Bullitt Foundation	Pacific Gamble Robinson Co.	Seafirst Foundation
Burlington Northern Foundation	Pacific Northwest Bell	Seattle Foundation
The Chevron Fund	Pay N' Save Corp.	Seattle Trust
First Interstate Bank	Physio Control	Simpson Timber Co. Fund
Hermanson Corp.	Plum Creek Timber Co.	Titcomb Foundation
Laird, Norton Foundation	Rainier National Bank	Washington Mutual Savings Bank
		Weyerhauser Co.

Fraidenburg (1989) shows that the Northwest Renewable Resources Center, the Washington Roundtable, and the donors to the Northwest Renewable Resources Center are highly interlocked. Especially, George Weyerhaeuser and Weyerhaeuser Co. are highly in evidence in both these organizations and also on the boards of directors of many of the financial contributors to the Northwest Renewable Resources Center. This is also basically the same group as is found in the Nature Conservancy.

3.5 The Northwest Renewable Resources Center's approach

The bulk of Fraidenburg's paper deals with their approach to influencing public policy.

1. Begin with a minimal group of the concerned parties;
2. Among that small group establish policy objectives and the acceptable range for negotiation. By initially setting the direction and range of negotiation the small group controls the outcome.
3. Only after the direction and range have been set, add to the coalition those groups which have power to influence the outcome and with which they can reach an agreement. The less powerful and those who don't fall within their established range for negotiation are excluded. Amy (1987) says "...usually the determining factor is whether a group has enough power to block or subvert a final agreement." This coalition building technique assures a fairly wide consensus on a public policy which serves their purpose and a muzzling of their opponents by excluding them from information or power.
4. The last step is to formulate that policy into legislation. Its passage is assisted by the members of state government and legislators who are part of their coalition.

A coalition of users, regulators (that is, departments or agencies of government responsible for regulation), and legislators is called an "iron triangle". Fraidenburg (1989) devotes considerable effort to showing that the Northwest Renewable Resources Center is an iron triangle.

There can be no doubt that an iron triangle structure is present. The side of the triangle which isn't clearly there, is the legislators. However, Weyerhaeuser, Burlington Northern, and the other large corporations are major contributors to political campaigns. Observation of the legislative bills submitted and the voting records shows that certain legislators cooperate with them.

An iron triangle structure is extremely powerful. Amy (1987) extensively discusses it. When the legislators, regulators, and resource users are conspiring together, it is a difficult structure to break.

The state has statutes on conflict-of-interest and appearance-of-fairness. However, they can only be used against the state officials involved. The only official is Karen Fletcher. It isn't clear that there is a direct conflict, but the privileged position enjoyed by the resource users which are represented in the NRRC doesn't bear the appearance of fairness toward other resource users (such as the general public) who aren't represented. Agreements, transactions, and contracts which were made in violation of these laws on conflict of interest and appearance of fairness are null and void. Perhaps this provides an avenue to overturn the Puget Sound Water Quality Plan. However the question of displacing its director is moot because the Puget Sound Water Quality Authority wasn't reauthorized during the 1995 legislative session.

A more substantive approach is to inform the public about the programs which were developed by the NRRC, and for them to press their legislators to cancel those programs.

Whatever else the Northwest Renewable Resources Center may be, it isn't an impartial organization. On their annual reports they summarize their function as "Assist natural resource users, managers, and conservationists to settle conflicts non-adversarially." That is probably reasonably accurate: one-party-rule isn't adversarial. It is tyrannical.

3.6 The TFW Agreement

Michael Fraidenburg (1989) says that the timber, fish, wildlife (TFW) negotiations are an example where the Northwest Renewable Resources Center applied their approach to the negotiation process.

It can be a very effective process. Kurt Smitch (1988, a quote from a speech reported by Fraidenburg 1989) and Larsen (1987) acknowledged the power of the Northwest Renewable Resources Center in forcing that negotiation to the solution they preferred.

The final TFW agreement is consistent with the Northwest Renewable Resources Center's objectives. Specifically, in setting the environmental standards for a timber harvest, the logging company making the cut is included in the decision making process on environmental standards. The other members of the committee include a tribal representative and possibly representatives of environmental and state concerns.

If the timber company involved is in coalition with all the other members of the committee, it seems likely that they may do pretty much whatever they want. In contrast if an individual or small to moderate sized company is involved, the full rigor of the law might be applied. There is also a great opportunity for bribery or for discrimination against non-Indians or by political preference.

The TFW agreement meets part of the Indians sixth objective: that is, to make commerce in the region dependent upon them. It also gives the big timber concerns and the state considerable power and broad latitude to do as they will while holding down their competition with restrictive laws.

I have heard six complaints from land owners about timber cuts which occurred on adjoining properties. Presumably, these were done under the TFW process. In two of those cases, logging occurred from crest-to-crest with no setbacks from the streams; in four of those cases there were flooding and siltation problems in the downstream areas; and in all six of those cases there was no replanting or even re-seeding of the logged off areas.

It appears that the TFW process leads to unduly lax standards for certain concerns resulting in environmental damage, but unduly restrictive standards for other concerns possibly leading to financial hardships. This doesn't appear to be in the public interest either financially or environmentally. It creates a competitive advantage for some companies and an environmental emergency which will benefit the environmentalists and the Indians. Thus, it appears to benefit the coalition at the public expense.

3.7 Coercion

During the negotiations, the Northwest Renewable Resources Center showed their aggressiveness. This is illustrated by a passage from Fraidenburg's paper (1989 his page 227)

... In the same panel, Stu Bledsoe (1988) — formerly of the forest industry's Forest protection Association — quipped that if someone dislikes the negotiated TFW package they would "... be taking us on at their peril."

To place this in context, recall that the Indians occasionally resorted to armed force prior to the Boldt decision. One well known example, is the occupation and destruction of the Bureau of Indian Affairs Building in Washington D.C.. Another example is the Indians seizure and occupation of the Washington Department of Wildlife's Building and the standoff which resulted. Some of the individuals who were involved in that incident are Indian tribal leaders today. Judging from these things, the Indian leaders have the appearance of a group which has regard for the law only when it serves their purposes.

Similarly, some environmental groups are known to use violence and to promote the use of violence, and internationalist businesses are notorious for their disregard for human suffering and life and have even sponsored revolutions.

A family member of one of the trustees obtained a brief infamy in the national press by her activities as part of a terrorist organization. That is Patty Hearst, who joined the Simbionese Liberation Army. It is evident that her family's political activities might place her in a position to know terrorists.

As all three of the types of groups represented in their coalition (Big businesses, Indians, and environmentalists) are known to have used violence to advance their ends. That should be regarded as a course of action they might take.

Threats were used against Tim Moyer who was running in 1994 for the US Congress position representing Northwest Washington against the incumbent Jolene Unsoeld. He withdrew from the race his children were threatened (Anon. 1994g).

US Congresswoman Jolene Unsoeld (Democrat) is one of the legislators who has consistently supported the coalition's programs; and Tim Moyer was replace in the Race by Religious Right Candidate, Linda Smith (Republican).

Linda Smith eventually won the race. Her performance in office contrasts sharply with what everyone hoped and she promised. For just one example, she was a sponsor of HR666, which authorizes warrantless search, in violation of the bill of rights.

Thus, after Tim Moyer's withdraw from the race, it would appear that there was little difference between the two remaining candidates. Evidently, someone was concerned that he might win and wasn't scrupulous about the method of removing him.

3.8 Mediation

In their incorporation documents the Northwest Renewable Resources Center states that it plans to act as a mediator for natural resource related conflicts. From the nature of the Northwest Renewable Resources Center's origin and membership, clearly, the Northwest Renewable Resources Center isn't an impartial organization and wasn't intended to be. Nevertheless, they were selected to mediate a number of natural resource issues which affected their members.

One example is seen in their offer to mediate a dispute over water pollution involving the Weyerhaeuser and ITT Rayonier pulp mills in Grays Harbor (North 1986). As both of these corporations are represented either directly or indirectly on the NRRC, we could hardly expect the settlement to reflect the public interest.

3.9 Co-management of salmon

Department of Fisheries contracted the NRRC to mediate an agreement between the state and the Tribal Authorities. This was personal services contract 1350 in 1984 (WDF 1984).

This wasn't an independent mediation. Environmental groups, tribal authorities, and big business are all affected by the outcome and they are all represented on the NRRC.

The mediated resolution was joint management of Washington's salmon. The agreement grants something like a veto power for the Indians over all of the Department of Fisheries policies. That may also now apply to the Department of Wildlife. In effect, the Indians were given the power to manage the fishery.

The context of this agreement is important. From 1974 through 1984 the Indians were suing the state over their management policy at every opportunity. This took fisheries management out of the hands of the citizens of the state and gave it to the federal courts. The federal courts are notoriously partial. The end result was arbitrary management without any responsibility to the public.

However, Initiative 456 changed the rules of the game. It made granting of special fishing privileges to the Indians illegal in Washington. It passed in November 1984. It was strongly supported and put the responsibility for fisheries management firmly back into the hands of the Department and the legislature, with little room for excuses.

I feel that this was probably what the negotiation under Personal Services Contract 1350 was all about. Both the Department heads and the Indians were probably in full agreement all the time. What they needed was a new device which would replace the federal courts and allow them to continue to exercise arbitrary control over salmon management. That is precisely what the negotiated agreement did.

Joint management continues to this day. Thus, the Indians have had a strong influence over fisheries management since 1984. The current condition of the salmon stocks shows how well this has benefited the public.

3.10 Effects of Fraidenburg's paper

After Michael Fraidenburg's article was published, the Northwest Renewable Resources Center didn't mediate any more natural resource conflicts for the state. However, he said (personal communication 1994) that they have once again been invited to do so.

Contemporary with Fraidenburg's paper, a bill went through the legislature which created an environmental mediation unit in the College of Fisheries and Ocean Sciences at the University of Washington. They are political players and appear to have allegiances to the same group.

Therefore, the results of Fraidenburg's paper may represent a subtle shift of position. Perhaps the NRRC had accomplished its objectives and was being retired; perhaps these events may reflect some internal struggle and shift

within their coalition; or perhaps the creation of a new mediation unit may be a response to the probable effects of his paper. I don't know what the meaning of these events may have been.

Michael Fraidenburg had been an employee of the Department of Fisheries before writing his paper. He took a few years off to get a master's degree at Evergreen State College. During that period he wrote his paper, this thesis (on a different topic) and received his degree. After that he returned to the department. His career doesn't appear to have suffered on account of his paper.

3.11 Public Involvement

The Northwest Renewable Resources Center has participated in the formation of citizen's groups. They try to induce the public to get involved in these groups and their activities. That keeps the public from interfering.

The pattern is to publicize a "crisis" (which may or may not actually exist) and then provide an organization which works to solve the crisis. By directly involving the public, they get very good publicity, provided that their programs are successful.

Fraidenburg indicates that they pick circumstances where they can control the outcome so that their programs are very likely to succeed, although not necessarily for the reasons the public are told.

For example, one of their programs was "Long Live the Kings" beginning in 1986. It was a habitat restoration project directed at restoring the king salmon populations in Western Washington. Fraidenburg (1989) says they promoted the idea that there were chronic habitat problems for king salmon. Indeed, rivers and streams can always be found where there are habitat problems. However, the loss of a little habitat doesn't mean that the king salmon are necessarily habitat limited. The reason for their decline appears to have been that there had been excessive catch. A large part of this was occurring in Canada (Chinook technical committee 1983). The 1985 Canadian-American Salmon Treaty contained agreements which would protect Washington's king salmon. Hence, the king salmon were likely to increase over the following few years. The Northwest Renewable Resources Center instituted Long Live the Kings and obtained substantial public and private support (North 1986a, Dirks 1986) for their program. When the Kings recovered, a few years later they would exhibit their program of habitat restoration as a success.

3.12 Support by the Media

This illustrates the Northwest Renewable Resources Center's ability to lead the public. Through the Northwest Renewable Resources Center's interlocking relationships with large businesses, they can influence through their large advertising accounts or directly own most of the major news media in Washington.

The presence of William R. Hearst II on the board of directors of the NRRC, should give an indication of how close and cordial their relationship with the press is. The Seattle Times, the Seattle Post Intelligencer, the Olympian, and undoubtedly other papers in Washington State are part of the Hurst publishing empire.

The Bullitt Foundation is another tie to the major media. It is one of the leading funding sources for the environmental programs in Washington State. It was one of the groups which funded the Northwest Renewable Resources Center and it has consistently funded the programs related to their activities.

The Bullitt foundation was founded by Dorothy Bullitt in 1952. Her family are heirs to C.D. Stimson's timber and real estate fortunes and own the major Seattle TV and radio stations: that is, King-TV, King-AM, and King-FM. This illustrates the close tie between environmentalism and the major media. Environmental programs and public involvement projects can rely on good coverage.

The Cowles Communications Empire is another tie to the major media. Originally owners of the Des Moines Register and the Minniaplis Star, the Cowles are now also in Spokane. The Cowles family is linked to the Weyerhauser and Stimson families through their common membership in the Senior Year Society at Yale University, Skull and Bones and they also are leading members of the Roundtable and the Nature Conservancy.

3.13 Control of the Press

A change which followed the publication of Mr Fraidenburg's article was that the Indians demanded editorial privileges over the *Northwest Environmental Journal* (M. Fraidenburg, pers. comm 1994). That is the journal which had

published his article in 1989. That journal comes from the Institute of Environmental Studies at the University of Washington.

The Northwest Environmental Journal was replaced by *Illahee* (Its name is derived from Northwest Indian words). With *Illahee* came a new co-editor, Ellen Chu.

The *Northwest Environmental Journal* was a conventional scientific journal and followed the usual editorial standards for scientific journals: that is, the content and accuracy of a scientific article is subject to peer review and editorial control is limited to the form or presentation and the appropriateness of the topic for the journal.

The *Free Press* (anon. 1995) says of this change that

Illahee is prospering more than its smaller, less editorially accessible predecessor.

I presume that means that the editors of *Illahee* exercise control over the content of the articles and that *Illahee* had obtained significant funding either from the environmental movement or from the big businesses involved. This would appear to include Weyerhaeuser Co. On the inside of the back cover of its first edition of *Illahee* you will find a full page advertisement from Weyerhaeuser Co., but there aren't any similar advertisements in the *The Northwest Environmental Journal*.

3.14 Environmental organizations

The environmental groups have a part in the Northwest Renewable Resources Center. Morine (1994) describes a change which occurred in many of the national environmental organizations (including, specifically, the World Wildlife Fund, Sierra Club, and Audubon Society) during the 1980's.

He says that prior to the 1980's these organizations confined their activities to conservation issues. If they addressed political issues, they generally acted as the public's watchdog on government. Those organizations enjoyed wide public support. However, with success came power, they got incorporated into government committees and political coalitions, and some of them got taken over by big business (for example, the Nature Conservancy).

Arnold and Gottlieb in their 659 page book (1993) present a carefully documented review of the origin, objectives, leadership, and funding of many of the leading environmental groups. Their book is widely regarded as the "bible" on environmentalism: it is an excellent reference. He shows, definitively, that many of those groups have leadership and funding from the very wealthy families of the North East (and from their trusts, foundations, and corporations).

3.14.1 Trout Unlimited and Long Live the Kings

Trout Unlimited and the Sierra Club are represented in the Northwest Renewable Resources Center.

It was Trout Unlimited's newsletter which proclaimed the creation of "Long Live the Kings"; in the Olympia area I have seen them distributing leaflets promoting the Northwest Renewable Resources Center's ideas; and in the 1994 Portland meeting on the federal forestry plan they were promoting the incorporation of salmon habitat restoration into that plan (Merwin 1994).

Trout Unlimited's President, Jerry Pavletich was a member of the Northwest Renewable Resources Center. Long Live the Kings originally had its offices within the offices of that center. These three organizations have a close connection.

3.14.2 The Sierra Club

Sierra Club founder, John Muir promoted placing the Sierra Mountain Range under Federal protection since the 1870's and was instrumental in getting Yosemite National Park established in 1890, through his direct influence on President Theodore Roosevelt. Arnold and Gottlieb (1993) say that "Muir's supporters in the east immediately began thinking about an organization to protect the remainder of the Sierra. Simultaneously, students and faculty at the University of California in Berkeley were planning an alpine club. The two factions got together on June 4, 1892 . . . and signed articles of incorporation."

However, their present more extreme position of opposing any profit making commodity production uses (that is logging, mining, grazing, or agriculture) on public or private lands is of more recent origin. It appears to have originated during the 1950's.

Arnold and Gottlieb (1993) say of The Sierra Club:

It is neither an artifact nor an instrumentality of the Rockefeller Money Axis or the Mellon Money Axis.

They raise most of their funds from club memberships and private donations and nature products such as calendars and books. John Muir had advocated placing the Their annual budget in 1991 was \$40 million and their executive officer, Michael Fisher receives an annual salary of \$86,000.

3.14.3 The Audubon Society

The National Audubon Society is an old organization formed in 1905. Most people associate it with bird watchers and related conservation activities. For many years it has lobbied for government regulations to protect birds.

It was perceived as a respectable organization: as solid as a Rockefeller. There is a good reason for that. Arnold and Gottlieb (1993) say of them:

The National Audubon Society is not just funded by the oil industry — taking large amounts of money from EXXON USA, the Amoco Foundation, Allied-Signal Foundation, and other big oil foundations — it is the oil industry. [His reference: Donations from Amoco, Allied-Signal, see *Protecting the environment: Old Rhetoric, New Imperatives*, Jo Kwong Echerd, Capital Research center, Washington D.C. 1990, p 157. Donations from EXXON, see *Patterns of corporate philanthropy*, Marvin Olasky, Capitol Research Center, Washington D.C. 1987, p. 142.]

The National Audubon Society owns oil production facilities from which they obtain revenue.

Whatever they may have been, things changed dramatically in 1985 when Peter A.A. Berle became the society's president and chief executive officer (\$125,000 annual salary).

At that point in time the society adopted a much more aggressive stance. They initiated law suits interfering with a wide range of commercial and private activities. For example, The National Audubon Society is one of the two major environmental organizations which created the spotted owl controversy which stopped much of the logging in the West. The other organization is the Sierra Club's Legal Defense Fund. Their objective, according to *Newsweek* (1991) is, as they quote an environmentalist from Portland, Oregon, as saying, "Cumulatively, the environmental movement is interested in shutting down the timber industry."

3.14.4 The Wilderness Society

The Society was founded in 1935. Prominent among its founders we find Robert Marshall, Benton McKaye, and Aldo Leopold. Robert Marshall was the primary architect of the society, a PhD from Johns Hopkins University, a professional forester, and openly espoused the overthrow of the republican form of government. Benton McKaye was a member of the socialist party and the Society's president from 1945 to 1950. Aldo Leopold was a forester, lobbyist, socialist, and is best known for his book *The Sand County Almanac*. They all fervently supported government confiscation and management of forest land. Their objective isn't its management for commodity production, but preservation for wilderness. Today the Society continues along the same lines as did its overtly socialist founders.

3.14.5 Greenpeace

Greenpeace grew out of a group of draft-dodging Americans living in Vancouver, BC. Their group grew to be an international organization with an annual budget of \$157 million in 1990.

The chairman of Norwegian Greenpeace described them as, "an ecofascist group" before he resigned in disgust and anger. The reason for his resignation had been a fraudulent documentary on seal hunting produced by Greenpeace.

Arnold and Gottlieb (1993) reached similar conclusions, saying of them, "Greenpeace is the archetypical eco-thug organization that behaves as if it were above the law of all nations. It's illegal direct action campaign against industry and industrial civilization have one it fame ...".

Their notoriety greatly helps their direct mail funding campaigns. That is their primary source of revenue. The budget of Greenpeace USA was \$47 million in 1991.

A number of their major publicity events and productions have been fraudulent, as determined by several courts. However, "The secret to [Greenpeace's founder] David McTaggart's success is the secret to Greenpeace's success: It doesn't matter what is true, it only matters what people believe is true. You are what the media define you to be. Greenpeace became a myth and an myth-generating machine" (Spencer and Bollwick and Morais, 1991).

3.14.6 Earth First!

The above organizations are tame compared to Earth First! (sic, the exclamation point is part of their name). Arnold and Gottlieb (1993) say,

Earth First! founder Dave Foreman was approached by the Sierra Club and his employer, the Wilderness Society, in 1979 with an offer to fund a new extremist point group for the movement. It would serve the function of making their own demands look more reasonable.

When the major green groups are promoting reductions of human population, an end to private land ownership, and a new world religion based on Nature worship (see the proceedings of the Rio conference or Arnold and Gottlieb 1993); you can guess how extreme Earth First! is.

For a first-hand account of their activities read *Walking on the Edge* by Claussen and Pomeroy (1994). That is a biography of Barry Claussen. It tells about his experiences as an undercover agent. He infiltrated Earth First!

3.14.7 Ancient Forest Alliance

Another one of the leaders of Earth First! was Dave Friedman. He is now the President of the Ancient Forest Alliance. According to Arnold and Gottlieb (1993) it is a coalition of environmental groups including the Audubon Society, the Wilderness Society and the Sierra Club.

In 1987 this group submitted a petition to the US Fish and Wildlife Service asking that the spotted owl be listed as an endangered species. This kicked off the spotted owl controversy.

The ancient forest concept is aimed at shutting down all logging on Federal lands. It has recieved substantial funding from General Electric and was presented by Donald Ross, the executive director of the Rockefeller Family Fund at the October 1992 meeting of the Environmental Grantmakers Association (Arnold and Gottlieb 1993).

The Ancient Forest Alliance are the primary organization promoting the North Cascades International Peace Park. They are working together with the Discovery Institute.

That shouldn't be such a surprise because we find that the Discovery Institute is in the offices of Perkins Coie; William Ruckleshaus of that law firm is a member of the Northwest Renewable Resources Center; and that firm also has ties to the Nature Conservancy, and the Roundtable. They are all one big happy family funded by internationalist business.

3.14.8 Environmental Grantmakers Association

The environmental movement is literally a movement and represents the actions of many individuals following their own ideas. Admittedly, several large environmental organizations clearly have leadership from big business or elite organizations. However, it is incorrect to say that the entire movement is being run by the eastern establishment or large businesses.

Nevertheless, the eastern establishment and large businesses provide a major funding source for the movement. For example, in 1990 the top ten donors were all members of the eastern establishment and the total amount they gave that year exceeded \$100 million. With that kind of money comes considerable influence.

There is a centralized organization, the Environmental Grantmakers Association, which represents a consortium of 138 member corporations and foundations. Arnold and Gottlieb (1993) say they act as a "command central". Eve Pell says of them "By deciding which organizations get money, the grant makers help to set the agenda of the environmental movement and influence the programs and strategies the activists carry out." Arnold and Gottlieb (1993) say, the Environmental Grantmakers Association "is certainly an adjunct of the Rockefeller Family Fund Inc. doing business as the Environmental Grantmakers Association." and he goes on to say they originated in 1985.

The Bullitt Foundation is one of the major funding organizations in Washington State. Their endowment was about \$80 million in 1993. They provide funds for many of the smaller groups and projects (Taylor 1993).

If you doubt what I am saying about the environmental movement's funding read Arnold and Gottlieb (1993). They examine the movement's funding in sufficient detail to satisfy most people.

Chapter 4

Indian fisheries problems

The changes described in the previous chapter transferred substantial power to the Tribal Authorities. In particular, they became co-managers of the salmon fishery. In addition, Indians are to a substantial degree outside the law with regard to fisheries violations and every effort has been made to make the tribal members feel that they are a separate people from other Americans.

When any user group is granted regulatory power, has impunity, are in a position where they will gain by depressing the resource, and regard themselves as distinct from society; events can be expected to transpire as they did. The last decade has been one of gross mismanagement and the destruction of the salmon resource.

4.1 Under-reporting of Indian Subsistence Fishing

The under-estimation of the Indian total catch can be severe. For one tribe only about 1/5 of the total catch was reported in 1993. The tribal biologist arrived at this conclusion based on an estimate of the unreported subsistence catch. He made that estimate by counting fish in the deep freezes of the tribal members (personal communication, the individual wishes to remain anonymous).

His estimate of the subsistence catch is an underestimate because it doesn't include the fish which were given away as gifts or bartered. The number of fish which are disposed of in that manner must be substantial, because there are evidently a large number of such fish available in Western Washington even to non-Indians. For example, in 1993 I was offered (but declined) frozen steelhead on two occasions by individuals who said they had been given the fish by friends or relatives who are Indians.

A large part of the Indian subsistence catch is taken from streams and rivers. The management agencies (supposedly) regulate the marine fisheries so that just enough adult salmon escape into freshwater to provide the spawning adults plus some margin for the sport catch and reported Indian catch which occur in freshwater. Thus, the illegal and unreported subsistence catch is mostly taken from the escapement, that is, from the adults which are supposed to breed to provide the next generation.

The salmon may be especially sensitive to unreported catch taken from what was supposed to be the escapement. The escapement goals are constant from year-to-year: that is, the commercial catch is supposed to be regulated so that essentially a constant number of fish enter freshwater for each river system every year. Because the illegal part of the subsistence catch is mostly taken from the escapement, it is a problem every year, whether the run that year is large or small. Thus, the survival of salmon is especially sensitive to the illegal subsistence catch.

The crux of the problem which leads to Indian poaching is that only tribal authorities are allowed to enforce fishing laws on tribal members but some tribes regard subsistence fishing as a right and, furthermore feel that it includes the right to barter the fish or give it as a gift. Therefore, they may not enforce the law on that type of offense.

In particular, we have a letter from a retired police officer, who worked for the Pullalup Tribe. In it he states that he was instructed to not enforce fisheries laws (and also many other types of infractions) on tribal members. He was instructed to enforce them only on non-Indians.

Non-enforcement inducing non-compliance would be a very effective means for depressing the salmon stocks, if that were the objective of the Indian tribal authorities.

4.2 Poaching in the Indian Commercial Fishery

The Indians report their total catch based on their sales tickets. In this approach, the only mistakes which are likely to occur are the failure to report some fish. Hence, their catch will generally be under-estimated.

Although there is little or no effective enforcement on the Indian fishermen, some of the non-Indian fish wholesalers have been convicted. One such person is quoted in a National Geographic article (anon. 1991) as follows:

Ten years ago I worked for the biggest mover of steelhead from the Northwest to New York City's Fulton Fish Market. I shipped 20,000 pounds a day. Had 14 aliases going at once. You don't need an ID to get a license. I had the Indians protecting me, erasing and reusing fish tickets to hide the real numbers of fish I was buying.

In the past ten years Washington's natural spawning stocks are down 75 percent. I'd say the illegal take is responsible for a third to a half of that.

I know of another wholesaler who was convicted for a similar operation in the Bellingham-Mt Vernon region of Northwest Washington.

4.3 Indian Wastage

The major media will tell you that the Indian has a great reverence for nature. However, Indians in practice appear different from the Indians portrayed on Television.

Two independent sources have related to me how the tribal members in Northwest Washington have been observed pulling steelhead from their nets and throwing them dead upon the bank to rot. Another source told me of seeing steelhead rotting in Indian gillnets — the owner of the nets didn't even bother to pull them out.

In another case, Terry Heaton (pers. comm. 1994) told me that approximately 300 salmon had been found in November 1994 dumped beside the highway near the town of Concrete. The eggs had been removed from those fish and their bodies were dumped. Only the Indian commercial fishery was in operation at that time.

I have seen large pieces of gillnet abandoned in regions where only Indians were fishing with gillnets (there were also some non-Indians anglers fishing on that river but they use only hook-and-line). Abandoned gill nets continue to catch fish whenever they are in the water. Hence, this is an egregious practice.

The most wanton destruction of salmon I have heard of was the use of explosives to kill salmon in the Duwamish River. There is an eye-witness report (Goerg 1994). In that case, the police refused to respond to repeated complaints.

These are only a few examples of a long list of complaints. If you want to hear more of these, survey the sport fishermen of Western Washington: many of them will provide you with eyewitness accounts of how much reverence the Indians have for Nature.

Neither do the Indians show much respect for their fellow men: I was among about 50 boats waiting at the Ballard Locks one day when two Indian gillnetters went by throwing three-foot high wakes. In another instance during 1989, I had to abandon a scientific study in Lake Union in Seattle, because of repeatedly getting echosounding equipment entangled in unmarked gillnets. Those nets were in the shipping channel. I complained, first, to the police. They said that it was a tribal matter and could do nothing about it. Second I complained to the fishing editor of the Seattle PI (the Police had suggested doing that). Last, I complained to the tribal authorities (the editor suggest doing that). The only measurable result of my complaints was that, a week later, I was telephoned by a tribal member who, in slurred speech. I can't tell whether he was drunk or only very tired. He wanted to know why I was harassing him.

Like the fisheries violations, complaints about these other types of issues are commonplace. An abundance of similar firsthand stories can be obtained by surveying the boating community.

4.4 Indian Bycatch

The coho stocks in the Puget Sound are generally in poor condition. This is particularly the case in the Snohomish and Skykomish River Systems. In those rivers, the chum salmon run overlaps the coho run. The chum stocks are in better condition and are targeted by an Indian gillnet fishery. However, that fishery has a substantial bycatch of coho salmon.

I have talked to two sports fishermen who described seeing coho being removed from the Indian nets. In this case the coho are retained in the catch as they have commercial value. There can be little doubt that there is a bycatch.

If there are data on the bycatch, they are taken either by the Indians or WDFW. Under the circumstances of their known coalition, it would be difficult to place much credence in those estimates.

However, One angler, related a story which indicates that the chum fishery is having a strong effect on the coho. He and a friend (both experienced anglers) fished the river for coho by hook-and-release. The week before the Indian fishery opened, they caught (and released) 41 coho. A week later, during the time the Indian fishery was operating, they went fishing again, just as they had before. The river and weather conditions were quite similar both times. However, this second time they only caught (and released) two coho.

The second time their catch-per-hour was five percent of what it had been the week before. Catch-per-hour is proportional to abundance (see for example Ricker 1975). The implication is that the Indian fishery may be catching around 95 percent of the coho who tried to come up the river during the second week. Since the Indians who fish that river system are known to stretch their gill nets from bank-to-bank, that is the kind of catch rate which might be expected.

Thus, the Indian chum fishery has been seen to catch coho, under the circumstances they should be expected to catch coho, when they are fishing the coho abundance upstream is severely reduced, and the amount of that reduction is generally consistent with what might be expected in light of the fishing methods employed. The conclusion is that the Indians probably are catching a substantial number of coho. This may have a lot to do with why those coho stocks are depressed.

The Point No Point Treaty Council issued a paper this Spring (1995) admitting that Indian bycatch was under-reported last year. It indicates that the extent of unreported bycatch may have increased in 1994 over previous years and suggests that this may have been due to the low market price for coho, resulting in their being stripped from the nets and dumped.

Bob Mottram (Tacoma News Tribune, 4/19/95) documents several instances of these practices. This includes reports from scuba divers finding dead coho on the bottom of Sekiu Bay. However, the problem isn't limited to the tribes of the Olympic Peninsula. For example, one businessman from Mount Vernon, a second from Oak Harbor, and a third from Sedro Wolley independently reported bycatch and dumping during 1994 by Indians in the Skagit and Snohomish River Systems (see *Salmon at Risk* fourth edn, by myself).

This bycatch is having an impact upon coho stocks which are in poor condition. For example, Indian bycatch during their chum fishery appears to be the main factor keeping the coho stock depressed in the Skagit River system.

There is currently an attempt being made to implement the Endangered Species Act (ESA) to protect threatened coho stocks. However, that act won't restrict Indian fishing and, therefore, it won't restore those stocks which are in poor condition due to Indian fishing. Instead, the combination of Indian fishing and the ESA could result in the permanent closure of those all-citizen fisheries.

4.5 Inappropriate Indian catch limits

Neubrech and Williams (1976) document how in a single year of mismanaged fishing the Indian gillnet fishery exterminated a steelhead run on the Skagit River. The Indians fished virtually continuously throughout the entire run. This provides an excellent example of the Indian's profound regard for Nature which the major media tell us so much about. The conflicting management recommendations of the federal government, the state, the University of Washington, and the courts allowed them to do it.

After this happened, an anglers club in Sultan, on the upper basin, decided that they would discontinue their steelhead hatchery operation. They could see no reason why they should subsidize the Indian fishery. This had previously been one of the best steelhead rivers in Washington State and one of the members of that club told me that he had retired to Sultan, because of the steelhead fishing.

4.6 Decreased fish size

WDFW records show that over the period from 1984 to 1994, the average weight of Puget Sound coho decreased from 12–13 pounds to 3–5 pounds (Martinis, 1994).

Other studies show much smaller decreases. For example, Palmisano et al. (1993) conclude that from 1935 to 1989, the average weight per Washington coho decreased by 30%, chinook by 24%, and pinks by 19%. Chum over the same period didn't decrease in weight. They were considering all of Washington's salmon rather than just Puget Sound stocks.

These numbers imply that for some reason the larger fish aren't surviving: that is, that there is a size selective mortality.

The cause of that size selectivity must be a major source of mortality in order for it to have had so pronounced an effect, particularly in Puget Sound. Furthermore, in Puget Sound it must have become a major factor only within the last decade and it is during that period that the salmon stocks have declined sharply. Therefore, if we can find what caused the size selective mortality, we may have identified the leading cause for the decline of the salmon or, at least, a major contributing factor.

Gillnets are very size selective. With the mesh sizes currently employed, the larger fish are taken. Only the smallest fish can pass through the nets. No other fishing gear used on salmon has anything like the size selectivity seen in gillnets.

The natural factors are unlikely to be involved because when they have been studied they generally select against smaller fish rather than against larger ones.

Over the last decade the non-Indian commercial gillnet landings of coho have decreased. However, the legal Indian commercial gillnet landings have increased. During that same period, there have also been massive illegal catches by Indian fishermen (as shown by the convictions of the fish wholesalers). Presumably, those illegally caught salmon were taken primarily with gillnets since that is the preferred gear among the Indians.

The above line of reasoning provides a reasonably strong indication that Indian fishing may have been the leading cause for the decline of the coho stocks.

4.7 User regulation of public resources

A decade of Indian regulation of salmon has provided a glaring example of why resource users shouldn't be allowed to regulate the public resources they exploit.

The thrust of many of the public policies discussed in this book is much the same. It doesn't matter whether it is tribal authorities regulating fishing, timber companies or timber workers regulating timber cuts on public land, water power companies regulating the public waters, or environmental groups (representing big business) regulating pollution. Conflict of interest must be strictly avoided if public resources are to be properly managed.

These abuses have been allowed to go on, because the public is ignorant of what is happening. In other cases they have been told that the resource user is the best steward of the public resources. That is incorrect, and it doesn't matter what group of users is involved. It is time to terminate these absurd policies. Open government and impartial management are the obvious solution to these problems.

In particular, the Puget Sound Water Quality Authority, the TFW agreement, and Indian co-management need to be terminated.

Under both the *Boldt* and the *Sohappy v. Smith* cases, the judge ruled that the state has the right to regulate for the purposes of conservation. Conservation doesn't mean merely saving the last fish. It can mean reaching the desired goals for the number of adults allowed onto the spawning grounds. Thus the state has the power to demand that the Indians comply with reasonable fisheries regulations. It is time they did exactly that.

Chapter 5

WDFW

5.1 History of the Departments of Fisheries and Wildlife

From the time the state was formed until 1933, the management of game fish and wildlife was done by the county governments. Each county established regulations, issued fishing and hunting licenses, and hired wardens to enforce their regulations.

In 1932 the Washington State Conservation Commission developed citizen's initiative 62. That initiative created the Washington Department of Game and placed the management of game fish and wildlife under its jurisdiction. In a report by the Washington Fish and Wildlife Commission (1994) they say that the compelling reason for advancing that initiative was that during the early 1930's influential individuals were exerting undue influence on some county governments and were obtaining preferential treatment and as a result the game fish and wildlife resources weren't always managed for the public benefit. Initiative 62 was accepted by the voters in November 1932.

The 1930's (The Roosevelt era) were an period of dramatic shifts from local authority to big centralized government. Although it is likely that there were some abuses at the county level, these changes may have been part of a program of centralization. Another change which took place during that time was the transfer of county-owned lands to a trust administered by the Department of Natural Resources.

From 1933 until 1955 the Washington Department of Game consisted of the Game Commission and the director of the department. The commission had six members, three from Eastern Washington and three from Western Washington. They were appointed by the Governor for staggered six year terms. Appointments were confirmed by the Senate.

Commissioners were required to be knowledgeable of fish and wildlife in Washington but not to have a financial interest related to those resources. The director of Game also was appointed by the Governor and confirmed by the Senate. The director had a fixed salary and served at the Governor's pleasure.

That was the arrangement until 1955. The mid-1950's were another era of heated political conflict. The overall issue was, once again, big central government versus local control. During 1955, there seems to have been dissatisfaction about the way the fish and wildlife resources of the state had been managed. For example, The Governor's message to the legislature included comments about restoring spawning beds for salmon, making artificial spawning beds, and guaranteeing public access to the waters of the state.

That year a change was also made in how the game department was structured. The director was to be elected by the commission (2/3 majority vote) and to serve at their pleasure. This structure lasted for 30 years. It is widely regarded as having been highly successful. The commission insulated the department from politics. As a result, they are generally perceived as having done their job of managing for the public benefit.

For example, at the time of the Boldt decision Washington Department of Wildlife had been the main force opposing the special fishing rights for the Indians: They had stood up for the citizen's rights and the right of the state to manage steelhead (Washington Department of Wildlife manages game fish, including steelhead). The conflict was more than just one of words. In one instance, when wildlife agents tried to uphold the laws against poaching they came under rifle fire and then charged across a bridge to make arrests (Williams and Neubrech 1976). In another instance the Indians forcibly occupied Wildlife's building in Olympia. Throughout this era, the Department

of Wildlife stood firmly on the side of the law and the citizens of the state.

In contrast the Department of Fisheries supported the Indian cause, as did the Governor. The director of fisheries', Mr Tillofson's, position was so extreme that he was sued by the commercial gillnetters for discriminating against non-Indians.

The Department of Fisheries had existed prior to 1933. Its director has always been appointed by the Governor, with the Senate's consent, and served at his pleasure. There is a Fish Commission. However, it has only limited powers. In practice, it is only an advisory council. Until the 1980's the Department of Wildlife had been funded by a dedicated fund from license fees and an excise tax on sporting goods. However, during the 1980's the departments duties were enlarged to include habitat restoration and various environmental issues. The department's revenue proved unequal to meet their enlarged duties.

During the 1987 session, the commission was forced to a compromise with the legislature. This was embodied in House Bill 758. The compromise was that the director would be appointed by the Governor and serve at his pleasure, but the department would receive \$8,000,000 from the state's general fund during the 1987-1988 biennium. That was about 15% of their budget but there was an understanding that the percentage would increase in succeeding years.

Since that time, the director and commission were appointed by the governors and confirmed by the liberal legislature. From then until 1994 the state government was dominated by the Democratic party. As a result, appointments of commission members and the director and hiring within the department's upper administration was limited essentially to people who shared their political views. Nevertheless, in 1993 there were still employees in the Department of Wildlife who had been hired for their professional ability.

In contrast, as far as I can tell, the Department of Fisheries is entirely politicized and always has been.

5.2 Merger of fisheries and wildlife

Washington Department of Fish and Wildlife was formed in 1993 by combining Washington Department of Fisheries and Washington Department of Wildlife (House Bill 2055).

The coalescing of these two departments resembled a hostile takeover. This merger was probably done to bring Washington Department of Wildlife fully into line, although the merger was presented as a cost-cutting move.

With the reassortment of job responsibilities, after the merger, possibilities arose to retire selected employees, move them out of responsible positions, or induce them to quit.

The merger wasn't completed by 1995. One issue which remains to be resolved is the fate and powers of the two commissions: that is, the wildlife commission and the fisheries commission.

Since the takeover, there have been changes in wildlife management to a much more pro-Indian, anti-resource stance. In particular, an agreement has allowed the Indians to take two elk and seven deer each. This has reduced several large elk herds to only a very small fraction of their previous numbers, and it is now difficult even to find a deer's footprint in some areas which only two years ago had an abundance.

5.3 Personnel structure

Washington Department of Fish and Wildlife hires employees primarily at a bachelors or masters degree level. There is a law prohibiting the consideration of ability and accomplishment (except to meet minimum requirements) when employees are considered for job advancement or for hiring. Advancement and hiring are supposedly primarily based on seniority. That is, hiring is supposed to be based on what positions the employees have held and how long they have held them.

Hiring to mid-level jobs appears to be influenced by politics. The mid-level managers have important and influential positions. They are the individuals primarily concerned with the details of managing the fish and animal populations. Hence, when there is deliberate mis-management for some political purpose, entry to mid-level jobs becomes a critical issue because the upper level managers don't want individuals in the mid-level positions who won't act according to their political agendas. This also affects lower-level jobs. Mid-level managers place the same types of demands on their subordinates. The questions asked at the job interviews clearly show that this is the case.

Top-level managers are political appointees.

5.4 Quantitative skills

One of the greatest aggravations in my profession is to develop a nice new method and then discover that the biologists who will use it don't have enough math to be able to do the computations, much less understand it.

Trying to convince a biologist to pay for research to develop a new quantitative method is like pulling hen's teeth.

I will present the worst example I have encountered, to show how extreme the mathematical inability can be. I developed a spawner–recruit model for Green River salmon for the US Fish and Wildlife Service. However, they were unable to use it because, the biologist who was then in charge of that fishery couldn't do algebra at the high-school level. It was hopeless to try to get him to use a moderately up-to-date scientific tool.

Similar things have happened to me several times both with state and federal government. This is one of the structural problems in fisheries management: government biologists often lack the quantitative skills they need.

Generally the level of skills biologists have is limited to one or two quarters of calculus. This arises in part from the unfortunate misconception that biologists don't need much math and, hence, the college programs don't teach it to them.

Basic population dynamics is based on differential equations and matrix algebra. Differential equations involve rates, such as birth and death rates. A life table used in life insurance is an example of a matrix. That level of mathematical training is what many engineers receive.

Contemporary research in population dynamics requires the same quantitative training as an MS or PhD in statistics. Few biologists get that level of training. A person who gets such training is usually called a "biometrician" or a "quantitative ecologist".

The policy at the University of Washington is to train biologists who have limited quantitative skills but to also train biometricians. As I have point out in a later chapter, the biometricians are a carefully selected on their political orientation. This is a serious problem because it places essential skills exclusively in the hands of a small elite.

WDFW could resolve its problem with quantitative skills internally. An on-the-job training program could be instituted. Of course, some individuals went into biology because they are incapable of doing mathematics. Also many people are resistant to mathematics, because their experience with it is from academic courses. Regrettably, math courses in colleges appear to often be directed at flunking a large proportion of their students rather than teaching. Nevertheless, this resistance can be overcome by an instructor who is willing to teach. Such a program could fundamentally change the nature of the department because I have no doubt that among the WDFW employees there are many who have the potential to learn mathematics and, thereby, acquire the tools of their trade.

Also, if they can't or won't there are a lot of unemployed engineers who already have the necessary quantitative skills and could learn the biology in a relatively short time.

5.5 Fish and Wildlife's admission of non-performance

On March 6, Lembit Ratassepp, the Comptroller of the Washington Department of Fish and Wildlife, approved the fiscal note on House Bill 2021. It states that the department's projections and estimates don't meet an accepted scientific standard. During the week which followed, the department's legislative liaison, Ed Manary, verbally presented the same message to various legislators in Olympia, including Representative Jim Buck.

Representative Buck originated HB2021 in response to the poor condition of many of Washington's salmon and steelhead stocks. This bill would have closed all freshwater fishing (including fishing by Indians) for salmon and steelhead unless specifically opened by the Fish and Wildlife Commission. The commission would have been allowed to open any run which the Department can demonstrate, under scientifically acceptable standards, has achieved or is achieving spawning escapement goals.

This bill would have instituted "escapement first" management. In that approach a sufficient number of spawning adult salmon must escape to the spawning grounds before fishing can begin. This process repeats itself on a weekly or longer cycle. This approach is well-established. For example, that is how Alaska's successful Bristol Bay salmon fishery is managed. Achieving escapement goals is also one of Washington State's and the Pacific Fisheries Management Council's management objectives, but those goals have rarely been achieved. That is partly because they set catch limits based on unreliable forecasts.

The Department has a large budget, but they haven't allocated sufficient funds for data collection or forecasting. They want an additional one-million dollars to support those basic functions. Specifically, they expect reduced

license sales due to the closures and they say they would need a least one more biologist and one more technician in each of the three regions (Puget Sound, Columbia River, and the Coast). Despite their approximately 1300 employees (Washington Fish and Wildlife Commission 1994), they can't find the manpower to perform these basic functions.

In that document they state:

These positions will be necessary to achieve better accuracy/precision of escapement estimates and forecasts because the bill states that the lower ninety-five percent confidence limit of an unbiased estimate should be used to determine whether or not a fishery opening should take place. If we were to remain at the current level of accuracy/precision, there may never be any openings.

The upper and lower ninety-five percent confidence limits are the amount of escapement such that the measured escapement will be between the lower and upper limits during 19 out of 20 years, on the average. Scientists usually base their conclusions on ninety-five percent confidence limits.

The Department's statement says that their estimates and forecasts are so imprecise/inaccurate that they may never be able to show that escapement goals have been achieved to that level of accuracy. The conclusion most scientists would draw is that the Department's estimates and forecasts are unreliable. In particular, they are worthless for the purpose of determining whether the escapement goals have been met. Their inaccuracy also results in smaller runs and decreased catches on the average (proof on page 223 of Fisheries Research, Volume 20, 1994: that is, Crittenden 1994).

This admission by the Department seems strange. It may be related to the requests made by a number of political groups who want a federal take-over of fisheries management. For example on Wednesday, March 15, the Umatilla Tribe of Pendleton, Oregon, asked the President to declare a state of emergency (under 42 USC 5191(a)) and take-over the management of salmon in the Columbia and Snake River Basins (Press release available from Umatilla Confederated Tribes, PO Box 638, Pendleton OR 97801).

Federal intervention isn't a new theme. Billy Frank, the Director of the Northwest Indian Fish Commission, called for it for all Washington salmon during his presentation in Seattle on July 30, 1994. Congresswoman Jolene Unsoeld did likewise in Newport on July 11, 1994.

That approach hardly seems likely to resolve the problem as the Federal Government doesn't have a better record in fisheries management than the state does. Their record includes the severely depressed economic or biological condition of the fisheries for plaice, haddock, and yellowtail flounder in the North East; shrimp in the Gulf of Mexico; tuna in Southern California; pollack in Alaska; and halibut in Washington.

5.6 Funding

Washington Department of Fish and Wildlife and their associated programs aren't funded solely from taxes, via the state's general funds. That is a relatively new funding source for them. For Wildlife it began in 1987 and was about 15% of their revenue. It probably grew during the six years of liberal government which followed.

I believe that the Department of Fisheries had a similar situation.

The combined department's largest funding source is license fees and the excise tax on sporting goods. However, that is insufficient. They are out to make money any way they can, the legislature has placed few restrictions on what they can do, and even if they overstep the bounds audits are rare and the current Attorney General is a left-wing Democrat. Consequently, they have a free hand.

They receive some federal funds, in particular the Wallop-Brough funds; they can receive gifts from private parties, companies, or foundations; and they generate revenue by competing with the private sector in a variety of ways.

For example, you see advertising in the regulation pamphlets. That competes for advertising accounts which would otherwise go to sporting magazines and newspapers.

For a second example, government competes with private consultants for research contracts. Not only departments of state government such as Washington Department of Fish and Wildlife but also the public universities should be included when considering government competition with the private sector over research funds.

Government agencies may often be in a position of undue influence. They may use this to benefit themselves or a closed group who are politically aligned with them. Government agencies also are supported, in part, by public

taxes and fees. These factors give them an unfair advantage over private business. This forces the private sector to align politically if they are to survive.

The worst of this is that by driving the independent scientists out of business, none are left to provide independent review of the government's programs. The universities used to provide some check on government, but, as I show in another chapter, they have become political players and coalition members themselves. Because of these changes, there seems to no longer be any independent review of government programs.

The absence of independent review leaves no guard against deliberate mis-managing of resources to maximize their benefit either as a department or as individuals. The consequence of granting inadequate funding and unrestrained power is inevitable.

5.7 Hatcheries as harvesters

The hatcheries are major harvesters. They sell "surplus" salmon eggs, sperm, and carcasses. That is, usually they close off the stream or river with a weir and collect all the fish which return. The natural spawning grounds are upstream of many of the hatcheries. Hence, this practice catches the wild fish as well as the hatchery fish. Furthermore, if the hatchery is operated correctly, the hatchery stock will be drawn from the local wild stock so there is relatively little distinction between the two sources. Under these conditions, surplus fish are drawn from the wild escapement. If this practice were prohibited, the wild escapement goals would be met much more often than they are.

Considering the present depressed condition of those stocks, this practice is appalling. In particular, many runs were in very poor condition during 1993. However, that year, the state sold 31 million "surplus" salmon eggs (Ronald G. Craig, *The Chinook Observer*, November 15, 1994).

These "surplus" fish and reproductive products are not available to the sport or commercial fishermen and compete with their products on the market at much lower prices that the fishermen can afford to sell at.

The department sells the reproductive products mostly abroad, for example they sold primarily to Japan, Peru, and China in 1993. If the carcasses are in good condition, they are sold domestically for human consumption. Otherwise they are used for pet food, also domestically.

According to WDFW's spokesman, Mr. Tony Floor, the fish and eggs which are sold are only those left over after the following groups have taken what they wanted: In descending order of priority, the Indians, Federal Government, Recreational Institutions (what are they?), and schools. However, only a week prior to that, Mr. Floor had said that no "surplus" fish were sold for human consumption (*Willapa Harbor Herald*, Wednesday October 26, 1994). Also an individual in Sultan Washington complained that their local schools no longer received any salmon from the state. Perhaps things aren't exactly as Mr. Floor says.

The buyers are selected from small closed list of 13 companies for the carcasses (*The Citizen's News*, March 19, 1994, Judy Hatton) and 10 companies for the eggs (*Willapa Harbor Herald*, Wednesday, November 16, 1994, Peter Hunter.) There is no bidding for the "surplus" fish and reproductive products. The companies buying carcasses take turns. The current buyer is Ocean Star Seafoods Inc. of Bellingham (President, Andrew J. Vetaljec). The eggs are allotted among the vendors on the list using a lottery system.

The prices are set by the state: \$10 per 1000 for green eggs, \$20 per 1000 for eyed eggs, \$0.50 for a whole coho, and \$1.00 for a whole chinook (Peter Hunter, *Willapa Harbor Herald*, Wednesday, November 16, 1994; Ronald G. Craig, *The Chinook Observer*, November 15, 1994). The profits obtained by these buyers must be very substantial.

The conditions which allow the department to gain revenue in nefarious ways also would allow the more powerful employees in the department to channel money directly or indirectly into their own pockets. Mr. Craig concludes, "At best, the manner in which fisheries is managing these sales does not have the appearance of fairness."

The amount of "surplus" fish and eggs is quite large. Between 1980 and 1992 the state hatcheries sold \$4,943,790.00 in carcasses and \$4,651,134.00 in eggs (*The Citizen's News*, March 19, 1994, Judy Hatton, citing WDFW documents). At the above prices that would be 5 to 10 million carcasses and one-half to one billion eggs. This probably had a substantial effect on the wild runs.

The loss to the watershed of the spent carcasses may also adversely affect the wildlife. The salmon carcasses provide a food source for bears and other predators and scavengers during the Fall when they must put on fat to overwinter. The carcasses also provide nutrients to the aquatic system.

5.8 Hatcheries and overfishing

Hatchery programs have been conducted by Washington Departments of Fish and Wildlife for many years. The mis-management of hatcheries has also been repeatedly pointed out as one of the causes for the long-term decline of Washington's salmon.

To understand this issue you need to know a few things about salmon genetics: in particular, that salmon follow a bug-like genetic strategy. This is very different from that of humans.

Much of salmon life-history is genetically determined. Specifically, the timing of the sockeye fry and smolt migrations and their migration routes have been shown to be genetically determined and heritable. Each wild stock has a migration pattern which is specific to its breeding ground. In contrast, their adult return-migration appears to be at least partially learned.

Among salmon, sockeye may have the most tightly genetically controlled juvenile migrations. Sockeye juveniles migrate to a nursery lake just after hatching. The timing of hatching is critical as well as the migration route. They need to reach the lake just after the Spring bloom. Similarly, the timing and route of their smolt migration to the sea is tightly controlled and strongly affects their survival. Their smolt migration will eventually take them half-way across the Pacific to their feeding grounds on the Arctic fronts. In contrast, coho, kings, and steelhead are stream fish and mostly remain coastal as adults in the ocean. Therefore the migration route and timing may not be as critical for them as for sockeye.

If one wanted to exterminate a species which had an insect-like genetic strategy, one approach would be to try the method used to exterminate insect pests. The sterile insect release method (SIRM) for exterminating insect pests has two steps:

1. release genetically damaged (usually irradiated) males
2. raise the mortality rate for the whole population by trapping, spraying, etc.

The sterile insect release method was originally suggested by Knippling (1955). It has been successfully applied in field conditions against many insect species including the screwworm fly (Baumhover et al. 1955, Krafsur et al. 1986), the fruit fly (Iwahashi, 1977) the codling moth (Proverbs et al. 1977) and the pink bollworm (Graham, 1978).

Washington's salmon hatchery program was essentially the sterile insect release method applied to salmon:

1. The hatcheries often used brood stocks from other areas or in some cases deliberately cross-breed stocks. As a result, these hatchery fish often had the wrong migration pattern for the local wild stock. When these hatchery fish returned as adults, they cross-breed with the wild fish. This gave their offspring the wrong migration pattern. Depending on the fishes' genetic structure (specifically, the degree of linkage and whether hybrid vigor provides some protection for the first generation), this may either be fatal in the first generation or it may take several generations to have its full effect.
2. The catch rate was set at what the hatcheries could sustain. However, only 1/10 to 1/100 as many returning adult fish are needed to maintain a hatchery run as are needed for a wild stock of the same size. This is because the hatchery fish have little mortality during their freshwater life. Also, the natural size of wild stocks often are substantially larger than the hatchery stocks from the same river system. The result is that if escapement goals are set to maintain the hatchery stock, the mortality rate is often considerably too high for the wild stock.

Thus, lethal genes were introduced into the wild salmon populations and the mortality rate was raised. The sterile insect release method for exterminating pest insects has been shown to be effective, and it is probably, in some cases, equally effective in exterminating the wild stocks of salmon. As long as hatcheries are used in this way and catch limits are set based on what the hatcheries can sustain, the wild stocks will necessarily be depressed. Also, the hatchery stocks will introgress into the wild ones and the latter will lose their unique genetic composition.

Most independent scientists regard this as one of the causes of the long-term decline of wild salmon. However, there is a range of opinion on how important a factor it may be. The reason for this uncertainty is that there have been relatively few studies of it, despite the problem first being recognized more than two decades ago by William Ricker (1972). For more information on the issue see the symposium on hatchery-wild stock interactions presented in the October 1993 volume of *Fisheries Research*.

It is worth noticing that most of Washington's hatcheries are operated by Washington Department of Fish and Wildlife, the Indian tribes, and non-profit organizations often with substantial advice from Washington Department of Fish and Wildlife. Those parties have an interest in depressing the wild salmon stocks.

5.9 Genetic manipulation of stocks

Salmon stocks can be manipulated by selective breeding. For example, there is a small hatchery run by the School of Fisheries at the University of Washington. That hatchery has been in operation for many years, at least for five decades. The adult salmon of the original stock returned to UW to spawn in the late summer. However, that wasn't convenient for the teaching schedule. Therefore, the stock was selectively bred so that it now returns during about the third week of classes.

A second example which is quite similar involves the state hatchery on the Cowlitz River. The hatchery is mitigation for the Mayfield Dam. That dam has no fish ladder nor does the department transport the fish around the dam in any other way. The wild stocks from that watershed originally returned from early spring until late fall. Presumably, they were from many stocks. However, the Department of Fisheries decided that they wanted the salmon to all return during a relatively short time period. That would be more convenient for commercial fishing and also for their own operations. Therefore they eliminated all the other stocks except those which return during a very short time period.

A third example is the Washington Department of Fisheries hatchery on Grays River. In 1974, the department planned to phase out the run of silver salmon which they had been using for more than a decade and replace it with a run from the Cowlitz River System which returned later in the year. The stock they had been using returns in September and October. The new stock would return in November, after the commercial season closes. The department had attempted to keep this change secret, but somehow the commercial fishermen got wind of it. A public uproar ensued (The Wahkiakum County Eagle, November 7, 1974; *ibid.* November 21, 1974; *ibid.* November 28, 1974; January 1976 newsletter from the Fisheries Advisory Council No. 1).

A factor which may have contributed to the department's decision to change stocks was that the local gillnetters were in conflict with them. For example, almost simultaneously with the discovery of this planned stock change, the local gillnetters filed a lawsuit against the department and its director Tollefson. They contended that "...the department is mismanaging the state's salmon resource and discriminating against coastal gillnetters." (The Chinook Observer, Thursday, November 14, 1974).

5.10 Failure to transport

A number of river systems in the state have barrier dams: that is, dams which the returning adult salmon can't pass. WDFW used to transport the fish around these dams, or run a hatchery below the dam to produce young to be planted in the upper watershed. but in some cases they no longer do this. In other cases, a fish ladder could be built, but never was.

Just as putting a weir across a river at a hatchery and "surplusing" the fish, WDFW's failure with regard to barrier dams has exterminated the wild runs in some watersheds. In particular, the sediment dam on the Toutle River, the Mayfield Dam on the Cowlitz River, and the dams on the Elwah and Cedar Rivers are examples. These dams aren't the problem, the failure to provide for fish passage or transportation is the problem.

5.11 Paper salmon

Mr Wyatt, a commercial fisherman, pointed out to me that there was an abrupt decrease in the number of salmon just after the Boldt decision. He wanted to know whether they were paper fish before or after that decision.

I had been told the answer to that question by an individual who was in a position to know. He said that the estimates of salmon abundance before the Boldt decision had been inflated in order to make the hatchery program look like more of a success than it was.

If that is true, then the Indians didn't get half the salmon with the Boldt decision, they probably got more like 80%.

Following the Boldt decision the numbers decreased rapidly. That would be consistent with the above explanation. The immediate effect of the Boldt decision would be heavy overfishing because of the over-estimates. Also, the estimates would have to get back to reality in only a few years, because many people, at that time, were looking critically at WDF's numbers and policies.

Today, perhaps we may be back to paper fish again. There seems to be more fish than they say there are. That would hide the large Indian catch, the hatchery's surplus, and promote the idea of an environmental disaster.

However, this may also be a case of asking too much of the department's numbers. They are of such poor quality that the department effectively admitted that their estimates and projections are useless for determining if escapement is being achieved. That answers the question of whether their estimates and projections are deliberately biased: The bias doesn't matter because given their gross imprecision, we should know better than to base any policy decision on them anyway.¹

5.12 Restructuring the Fish and Wildlife Commission

The structure of the new Department of Fish and Wildlife is peculiar. It has two parts. One part covers foodfish and shellfish. It is under the sole authority of the director. It is defined by chapter 75 of the Revised Code of Washington (RCW). The other part covers all other species and is under the authority of the commission and the director. It is under chapter 77 of the RCW.

When the commission and the director designate a species a "foodfish", its management moves to the other division. That is all "foodfish" means. However, in practice "foodfish" includes all species of commercial interest. As we saw above, being under the director means, in practice managed by the tribal authorities. The implication of this structure is clear — all commercial fisheries will be Indian fisheries.

In both divisions the director is appointed by the governor with the consent of the senate and serves at the governor's pleasure.

5.13 Appointed Commission

An initiative before the people in November 1995 will create a commission nominated by the governor and confirmed by the legislature with staggered six year terms.

This will probably reduce the problems in the long run. However, it will take several years to displace the current group of commissioners which were appointed by the previous governors. Thus, the immediate consequence of this initiative will be to continue the current programs.

The proposed legislation doesn't have adequate safeguards against the commissioners representing special interests. The result will probably be that the commission will fall into the same pitfalls as we have observed with the regional management councils under the Magnuson Act. The commissioners should represent the public rather than special interest groups and they should be required to absent themselves from voting when they have a financial interest.

A safeguard is also needed to insure that minority interests are protected. In particular, the different interests of the rural and urban populations are a concern. Those two groups have different views on the objectives for fish and wildlife management. One approach to insure the protection of the minority's (the rural population's) interests is to appoint commissioners by region rather than by population.

5.14 Reviving the Department

To obtain good management of fish and wildlife, it isn't enough to just change the director and the commission, it is probably also necessary to either retrain or dismiss many of the department's employees. Assume that the governor and legislature change and a new director is appointed under a reasonable commission. How could these changes within the department be brought about?

¹The information which the fiscal note conveyed was that the variance of the estimates or projections is so large that no test is likely to be significant. The "paper fish" bias is probably small or moderate relative to this standard error (the variance is the square of the standard error). Therefore, the bias isn't likely to change the outcome of the tests.

Employees who are willing to march to a new drumbeat and have potential should be retrained to do scientific management. On-the-job training is certainly feasible. This shouldn't be done by the University system — they are the cause of the problem.

However, some employees will need to be dismissed, due either to incompetence, unwillingness to learn, or lack of integrity. The political appointees can simply be dismissed, but it is more difficult to fire public employees. Nevertheless, the liberals have been doing this for the last two decades. Their methods can be used as a guide.

Essentially, there are four ways to get rid of a state employee.

1. The first is to pay key people to retire. This is the easiest method, but is too expensive to apply widely.
2. The second method is to transfer undesirable people to obscure and degrading jobs. Some may quit and the others will be out of the way.
3. The third method is to close programs or sections of the department. The staff in those programs and sections are dismissed when the program is closed. Before a section is closed, undesirable employees should be transferred into it. Closing sections is the most effective way to get rid of large numbers of people.

As state government has a superabundance of overlapping departments and also duplicates many functions of county government, transferring responsibilities to other departments or the counties should be feasible almost immediately.

4. The fourth method is to demonstrate malfeasance, misfeasance, or criminal acts and then to fire for cause. This approach is difficult, slow, and expensive.

In general, it isn't a good idea to simply displace undesirable employees. They need to be found employment outside government. Otherwise, they may form a pool of antagonistic people looking for an opportunity to upset things.

Privatization of some of the department's functions could serve the purpose of divesting the government of its undesirable employees. It is also necessary to create a money stream to support a body of independent scientists outside government who will provide criticism and review of the government's performance and projects. The dismissed state employees wouldn't be the ideal to serve that role, but they would be able to do field work. Where there is a funding source, more qualified individuals will be attracted.

Hence, my feeling is that a combination of closing programs, transferring programs to the counties, and privatization is the best approach.

5.15 Escapement First Management: SB2021

This bill is sponsored by Representatives Buck, McMorris, Carrell, Fuhrman, Pennington, Campbell, Goldsmith, Hargrove, K. Schmidt, and Schoesler.

I wrote the first draft of this bill at the request of Representative Jim Buck. He wanted a bill which would restore the salmon runs. He recognized that 1995 would probably be a bad year for the salmon and he wanted to fix the problem if he could.

This bill establishes "escapement first" management of the State's salmon and steelhead resources. It closes all terminal area fisheries until the department demonstrates to the commission that escapement has been achieved or is being achieved.

The state has the right to manage the fishery for the purpose of conservation. That right was affirmed by a US Supreme Court Decision in the case of *Sohappy v. Smith* and has subsequently been reaffirmed by virtually every case which followed. Since it would be ineffective to close only part of the fishery, this bill would close the entire fishery in the terminal areas (including all Indian fisheries) in order to conserve the stock. What the bill does is quarentee that the spawning fish get onto the spawning grounds.

This bill died in committee, but had it become law it probably would have restored many salmon and steelhead runs in a single generation (that is, three or four years for most stocks). Predictably, the department and the tribal authorities mounted a serious effort to kill this bill.

Representative Buck said that the Department didn't like the requirement that they demonstrate escapement at the usual scientifically accepted level of significance. They said that they weren't capable of meeting that standard.

HB2021 is relatively short so I include its full text:

An act relating to management of fisheries and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

New Section. Sec. 1.

Legislature finds that during recent years most of the wild salmon and steelhead stocks in Washington have declined and many have been listed as "at risk" or "endangered" or are being considered for such listing. Furthermore, unusually few adult salmon and steelhead spawned in Washington during 1992. As most of Washington's salmon stocks have a three year life-cycle, it is, therefore, anticipated that the number of salmon and steelhead returning during 1995 will be substantially less than returned during the preceding years. Considering that during the preceding years, many stocks were already in low abundance, many of the salmon and steelhead stocks in Washington state are in need of conservation during 1995.

Therefore, fishing for salmon and steelhead in all terminal areas is prohibited except where it is specifically opened by the Fish and Wildlife Commission. The closure includes the Indian commercial and Indian subsistence fisheries everywhere within the state both on and off Indian reservations. The Department of Fish and Wildlife is instructed to adopt such rules and regulations as may be necessary to accomplish the above purposes and to enforce all of the fisheries rules and regulations involved.

However, as some salmon and steelhead stocks in Washington remain in good or reasonable condition, the Fish and Wildlife Commission may open fishing on such stocks and in such terminal areas as they determine to have achieved or are achieving spawning and spawning escapement goals.

1. For the purposes of this section, terminal area means
 - (a) all freshwater;
 - (b) all areas designated as inland waters for the purposes of navigation;
 - (c) all narrow waterways through which the stock must pass and which are less than 1000 yards across, measured by the shortest distance between mean lower low water marks; and
 - (d) 500 yards on either side of a rivermouth.
2. For the purpose of this section, conservation means the achievement of goals for successful spawning. The objective in setting the spawning goals is to maximize the harvest in numbers of wild salmon or wild steelhead which can be taken every year on a perpetual and self-renewing basis through natural spawning in the wild. In stating this objective in numbers of fish, it is assumed that a constant amount of habitat is available over time and the size distribution of the stocks will not be altered to increase their numbers but will be restored to either closely resemble its natural condition or to favor larger fish.

Goals for successful spawning may be set for each week during the run of each stock. Such weekly goals should reflect the temporal pattern of the run so that the proportion of the fish which are caught is approximately equal over all the weeks throughout duration of the run.

Small spawning adult salmon or steelhead especially jacks (that is, fish which have spent less than a year in saltwater before returning to breed) may be treated separately in the goals and estimation of spawning or spawning escapement. The objective in treating them separately is to allow policies which will promote the restoration of the size distribution of the stock.
3. An estimate of spawning escapement may be used in lieu of a direct measure of spawning success. The measure of successful spawning or spawning escapement shall be one of the following:
 - (a) the lower 95 percent confidence limit of an unbiased estimate;
 - (b) the total count when spawning success is measured by total enumeration; or
 - (c) the lower 95 percent confidence limit of any alternative measure which has a lower mean-squared-error than the best available unbiased estimator.
4. Data to make the above estimates may consist of any of the following:
 - (a) Counts of successful redds;

- (b) Counts of spawning pairs or adults on the spawning grounds;
- (c) Counts of adults escaping to the spawning grounds based upon data from any of the following methods: visual counts, counts at weirs, echo-sounder surveys (over time or space), Doppler sonar surveys, mark-recapture studies, or test fishing.
- (d) counts of breeding pairs on the spawning grounds.
- (e) or any other method which can be demonstrated to measure spawning success or spawning escapement.

Data must be taken in a scientifically accepted manner according to a scientifically accepted sampling design.

5. Sampling methods which produce more than a ten percent total mortality of the sampled fish are prohibited. The carcasses of any fish which are killed in the act of taking data must be left in the water or along the shore.
6. The commission may delay opening the terminal area fishery to allow a reasonable time for the fish to spawn.

5.16 Save Our Sealife's Initiative 640

For contrast, here is what the opposition wants. They are running Initiative 640 in the November 1995 election. The lead author of this bill is Mr. Frank Haw. Among its directors we find Jerry Pavlotich (deceased) of Trout Unlimited.

The practical impact of I-640 will be

1. to make most all-citizen fishing for foodfish and shellfish in Western Washington dependent upon the pleasure of the Director of the Department of Fish and Wildlife; and
2. to require, in many cases, 100
3. to limit the all-citizen commercial fishery primarily to chum salmon;
4. to substantially reduce or eliminate small commercial fishers and individual sport fishers.
5. to make maximizing the economic benefit (revenue less costs) for the state government a management objective; and
6. to transfer the expenses of fisheries management onto the tax base.

To understand how I-640 would have these effects it is necessary to understand how it transfers sweeping and arbitrary power to the Director. The key to this lies in the two bycatch standards the initiative contains ("bycatch" means catch of non-target fish, shellfish, and protected animals which are captured or destroyed during fishing (sec. 3)).

The structure of the initiative is as follows: Fishing may only be done with legal gear (see I640 secs. 5.1, 5.3, 5.4, 7, 14) and only gear which meet the first bycatch standard are eligible to be deemed legal (secs. 4.2, 4.7); However, legal gears won't necessarily be allowed to fish. In particular, openings won't be allowed for any particular legal gear unless a second bycatch standard is also met. The nature and value of this second standard is left solely to the Director's discretion (sec 5.2). However, the Director may, at his discretion, allow an opening by waiving parts of these standards (sec. 5.2).

5.16.1 Bycatch standard for becoming a legal gear

For salmon and sturgeon gears, the standard to become a legal gear is that the gear must be capable of live release of the bycatch with no more than 15% mortality by numbers (sec 5.1). For salmon gear, only the bycatch of salmonids is considered and for sturgeon, only the bycatch of sturgeon is considered.

However, "mortality" as defined in I640 isn't what most people think it is. It is explicitly defined to be the sum of three terms (sec 6):

1. direct mortality in the gear;

2. mortality due to predation on fish while they are held in the gear; and
3. mortality following 12 hours in confinement.

The third term isn't mortality, it is survival. To be mortality, the word "following" would need to be replaced by "during".

Thus, their standard is that more than 85% of the bycatch must be taken live from the gear but die during the following 12 hours in confinement. That is what section 6 says; it is what the voters are voting on; and it will be the law if I-640 passes.

For foodfish other than salmon and sturgeon and for shellfish, the bycatch standard is different. It is that mortality (as defined in section 6) of the bycatch by live weight shall not exceed 15% of the live weight of the catch of the target species. As this standard depends upon the abundance of the bycaught and target species, gear authorization will obviously have to be limited to a specific location and date.

The bycatch standard to be eligible to become a legal gear (with its various parts) will affect both the sport and commercial fisheries. It will certainly affect a great deal more than just salmon gillnets. Clearly it will affect gill nets, purse seines, trawlers, traps, and other commercial gears, but it will probably also restrict sport anglers and it could easily substantially reduce recreational clam digging. Don't be fooled into thinking that only gill nets will be affected.

5.16.2 Possible consequences of "following"

If the initiative passes as it is, there would be several alternatives:

1. The Director could apply a 15% maximum mortality standard under the assumption that "following" was an error. However, I have written a newspaper article on this subject (Crittenden 1995, Citizen's News). Hence, at least a segment of the public was informed before they voted. With respect to them, "following" is the law, and to assume "during" would be counter to the expressed will of that segment of the public, but not the rest of the public. Hence the vote doesn't deliver a clear mandate.
2. The Director could apply the 85% minimum mortality standard literally, as the initiative states he must do. That would cause an uproar among the public, especially among the environmental community. It would probably quickly go to court. There would be a need for a ruling, as the explicit instructions for the measurement of mortality found in section 6 conflict with the common perception of the meaning of the statements of purpose given in sections 1 and 5.1.
3. The Director could apply either the 15% or 85% standard, or accept all gears. However, I doubt that this would happen and this is no guarantee that the issue wouldn't go to court.
4. The Director could take the issue directly to court for interpretation.
5. Laws or new initiatives could be introduced to modify the initiative.

Under most of these alternatives, the net result will probably be several years with substantial interruption to fishing and substantial expenses while the issue is in court. This might have the effect on fishing which the spotted owl controversy had on the timber industry.

5.16.3 Director's latitude for waivers or restrictions

The certification of a legal gear includes an operating procedure (sec 5.2) and is specific for the characteristic conditions (sec. 5.1) under which it is to be used.

The initiative grants the Director the broad authority:

1. He may require more specific studies if he deems fit (sec. 5.1);
2. He may determine the applicability of studies to other times, areas, and circumstances (sec 6). That is, a study may either be construed to apply widely or narrowly.

3. He may waive the operating procedure in cases where there is test fishing or the catch is monitored (Sec. 5.2). That means that He could impose the requirement that there be 100% coverage by observers or test fishing.

The practical effect would be to grant the Director arbitrary authority to determine whether any specific gear is eligible to be deemed "legal". Using one power or another, he could deny "legal" status to any gear regardless of whatever bycatch mortality it may cause. What this all comes to is that, whether you are a commercial or a sport fisher, you would only be allowed to fish at the Director's pleasure.

5.16.4 Bycatch standard to fish with legal gear

Suppose that you have overcome these hurdles and your gear is deemed legal. To be eligible for an opening your gear must also meet the second standard. That standard is that the gear shall not pose a significant threat to "bycaught, salmon, staled, other anadromous trout or char, sturgeon, sea birds, or other protected animals" (sec 5.2). I-640 doesn't specify what constitutes a "significant threat" but leaves the determination to the Director.

The Director could specify zero tolerance of bycatch. The initiative instructs him to do that, for certain species. Specifically it says (sec. 1.3), "Require coordination by the department with federal agencies to minimize potential impacts of fishing on seabirds and other protected animals."

Imposing a zero tolerance standard appears to be the intention of the group which drafted the initiative. On their 5-signature initiative form it says under "Reasons why you and four other registered voters in Washington state should sign this petition for I-640":

The Fishery Observer Program Report (Jan. 1995) states that in just 13 days (in August 1994) drift gill nets in the San Juan Islands area may have entangled as many as 5,971 seabirds and 15 harbor porpoises. Entangled seabirds drown 96.4 percent of the time. It's a federal crime to kill just one seabird or harbor porpoise.

5.16.5 The Director's pleasure

By using these two standards (the first to become a legal gear and the second to fish) and the various powers he is granted, one-way-or-another, the Director can arbitrarily prohibit or allow any specific gear. Few people believe that the current Director has the best interests of the citizens at heart and some individuals state explicitly that the opposite is the case.

For example, Larry Connif (who was the original lawyer for the state in the Boldt case and now represents the sea urchin and sea cucumber divers in the shellfish case) submitted a memorandum to Judge Rafadee stating that the all-citizens' fisher's interests aren't adequately represented by the state (Memorandum in support of a motion to intervene, March 23, 1995). It might be wise to assume that the Director would exploit the powers the initiative would grant him to the utmost.

The agenda of the political group which the Director and department serve is analyzed in detail by Dr. Robert Crittenden in his book "Salmon at risk: a study of public policy in Washington State" (available for \$14 from Crittenden Biometrical, 1001 Cooper Point Rd. SW, Suite 140-189, Olympia WA 98502 Phone (360) 705-3774). He basically agrees with Mr. Connif that the current Director isn't going to advance the public interest.

The bottom line is that if I-640 passes, under the current director or any other who is appointed by the governor, we should expect the worst.

One beam of hope, however, is that a bill passed the legislature during the third week in May 1995 which will create a fish and wildlife commission with the power to hire and fire the director and approve the department's budget. That bill is expected to quickly pass the house. Governor Lowry vowed to veto any bill which reduces his control over the department and the director. However, this bill creates a referendum which will be voted on by the people in November. As such, the governor can't veto it. Therefore, the people will have a choice in November both possibly on I-640, and on transferring the power over the director and the department to a citizen's committee. That will be an interesting election.

5.16.6 Maximizing economic benefits

The initiative mandates that the fisheries shall be managed to “Maximize economic benefits to the state and its citizens” (sec. 4.5). Of course, the “benefits to the state” is the revenue the state derives minus its management costs. This is a new introduction to the law. What it says is that the department can manage the fishery to maximize their own economic benefit.

Test fishing and observer coverage are management intensive and, therefore, expensive. Assume that the initiative is interpreted to mandate 100% observer or test fishing coverage. The cost of these programs could be used to justify the reduction or elimination of the small commercial fishers and individual sport fishers.

Save Our Sealife, clearly has this in mind. On their 5–signature initiative form they state: “According to the Washington Dept. of Revenue, 80% of the commercial fishers were exempt from Business and Occupation taxes in 1989 (the latest figures available) because they earned less than \$10,000 annually.” Decreasing the number of commercial fishers would decrease the expense of observer or test fishing coverage and probably would also increase the state’s revenue.

The same argument could be applied to individual sport fishers. It would probably increase the state’s revenue to change the pastime of the wealthy fishing from guided tours, fishing clubs’ preserves, or and charter boats.

Thus, it appears that Save Our Sealife’s vision for the future of fishing in Washington State consists of a few large commercial vessels, expensive charter boats on saltwater, and guided fishing trips or fishing club’s preserves on freshwater. Each commercial boat would have its observer or associated test fishing; charter boat captains and fishing guides could be licensed as observers; and private fishing clubs could have licensed wardens.

5.16.7 Funding for the department

I-640 fundamentally changes the funding basis for the Department of Fish and Wildlife. At the present time the department is primarily funded by licenses, fees, and miscellaneous other revenue sources. However, I-640 requires that the legislature appropriate funds to support the programs in I-640 (sec. 13). The extent of those programs could be construed broadly to include a large part of the department’s expenses for fish management.

Thus, I-640 will shift the expense of fisheries management onto the public’s shoulders. That is probably a good idea because the public will control the purse strings. However, it is to be noticed that the initiative would deny the public (or their representatives, the legislature) the ability to refuse funding. Also at the same time as the public will being forced to pay the bill, the initiative will transfer most of the benefits to a small group of people.

5.16.8 Marine Sanctuary

Alternatively, under the current cap on state spending, if there aren’t reductions in the all–citizen fishery or a fundamental restructuring which will reduce the demands for observers, test fishing, and studies; it is possible that the state wouldn’t be able to meet the department’s demands for funding. This could be used to justify the introduction of a Marine Sanctuary. The Federal Marine Sanctuary Act authorizes sanctuaries when local or state government can’t meet their responsibilities.

The Marine Sanctuary is a proposed preserve jointly operated by the state and federal government. Under one of its options, it would include the full area covered by I-640. It transfers all fisheries management to the federal government. It is possible that one consequence of I-640 would be to place all non-Indian fishers between a rock and a hard place. They might prefer federal management to management under I-640.

The Marine Sanctuary would do far more than just manage fisheries. Under Winter’s Doctrine (a legal doctrine affecting Indian treaties and Federal lands) the managers of the sanctuary would have the right to regulate land use, water, and water quality in the Puget Sound Basin. Thus, the sanctuary would place the regulation of many business and private activities in Western Washington under federal management.

That, of course, would suit the plans of those who promote big government and federalism. I-640 and the Marine Sanctuary fit together neatly for that purpose. Even the timing is correct. the initiative would be voted on in November 1995, if it passes, that will be when the troubles will come to a head for the fishing industry. The impact statement for the sanctuary will be presented, at the earliest, in December 1995. The sanctuary is likely to be presented as an alternative to state management under I-640. The legal process of establishing the sanctuary will take a while, and during this same period, gears will be trying to become legal before January 1997 when illegal

gears will be prohibited. The fishing community will be put in a real squeeze. I foresee this as the probable context during 1996 if I-640 passes.

5.16.9 Progressive reductions of all-citizen commercial fishing

The changes brought on by the initiative would abruptly reduce the all-citizen sport and commercial fisheries. However, I-640 also introduces processes which would more gradually eliminate much of the remaining all-citizen commercial salmon fisheries. One of these processes is the restriction of commercial salmon fishing to sockeye, chum, and pink salmon (sec 10) coupled with instructions for the Director to reduce intercepted Canadian salmon, which are mostly sockeye and pinks (secs. 9 and 2). Another of these processes is the restriction of commercial license applications for new gear types to holders of 1996 salmon fishing licenses. As the 1996 licensees retire from the fishery and gear types evolve, the all-citizen commercial salmon fishery will gradually be eliminated.

5.16.10 Beneficiaries

All these changes would greatly reduce the all-citizen fisheries. One likely result would be an increased surplus of fish reaching the hatcheries. The hatcheries are harvesters and the state uses or sells the surplus fish. Thus, increases in surpluses would increase the state's revenue.

More precisely, the surplus fish are sold at very low prices to a small closed list of buyers. These buyers make very large profits. Most people who have looked into this issues have found it difficult to obtain information on who owns these companies. There is the appearance here of impropriety.

Large fishing companies who can afford to have onboard observers would probably benefit from the changes the initiative would cause. So also would some charter boat operators, fishing guides, and manufacturers of expensive fishing gear. The brunt of the initiative would be born by the smaller commercial fisher and the individual sport fisher.

Recreational fishing generates far greater revenue to its associated industry than commercial fishing. Unfortunately, the recreational segment of the fishery has generally not received its due in allocations. This has created a strong antipathy between sport and commercial fishing groups. However, this initiative goes much further than just righting or reducing the inequity.

The Indians are another group which would benefit from the initiative. I-640 doesn't restrict their fisheries. We might anticipate that the Indians would become the predominant user group as a result of restrictions on the all-citizen fisheries. The "forgone opportunity principle" is that if one user group doesn't take its full allocation, other groups can take it in their place. This legal principle would transfer the uncaught portion of the all-citizen fisheries' allocation to the other resource users.

Hence, over the long-run, reduction of only the all-citizen fisheries can't be expected to reduce the total catch or improve the condition of the stocks. It will only change the allocation pattern. The supposition that it will help the salmon stocks (except temporarily) is unfounded.

Chapter 6

A Proposal for Restructuring Fish and Wildlife Management

As governments tend to grow and draw powers to themselves, it is necessary to occasionally prune them back. This is long overdue for the Department of Fish and Wildlife, but that also applies to several other departments of state government. At this time the state has drawn to itself many powers which could be better discharged at the county level, if they are needed at all.

In 1932, the management of fish and wildlife was switched from county to state government to get away from the waste and corruption which had grown at the county level. Now there is the same problem at the state level. It is time to switch the responsibilities back to the counties. The following is a proposal on how county-based management of fish and wildlife could be structured.

6.1 Accountability and Government Structure

One basic principle underlying the republican form of government is that all rights and powers come from the public. The practical interpretation of this principle is that where government actions are needed, they should be accomplished at the level of government which is as near as possible to the people. Only those duties should be transferred from the local government to the state which can't be effectively accomplished at the local level or through agreements among local governments; and only those duties should be transferred to the federal government which can't be effectively accomplished at the state level or through inter-state agreements. However, very few issues need to be handled at the federal level and the US Constitution specifies what those few issues are. By the tenth amendment, the federal government may address only those issues. All others are reserved to the states and the people.

The reason to use the most local level of government is that, generally, the more local the level, the more control the people have over it. For example contrast the state legislature against county government. The residents of any one county vote on only a handful of the state legislators. Consequently a local group which wishes to affect the legislature must not only influence their own representatives but must also influence other representatives. They can either rely on the influence of their own representative or attempt to influence other representatives by organizing statewide. In that case, they must gain the cooperation of people they have never met and who live a long distance away. In contrast the citizens of a county vote on all the elected county officials, other members of the public live nearby and they may know many of them or be known by them. Thus, county governments are potentially more directly accountable to the public.

Therefore, whenever there is an issue on which the state government has become unaccountable to the public and has acted contrary to the public interest, moving that issue to the county should be considered.

Appointed officials are even less accountable than elected officials. However, an official who is appointed for a single function (for example, for fish management) may be held responsible if that program fails. In contrast, a legislator might propose the most abusive fish management program and yet be elected on other issues. Therefore, it is desirable that appointed officials have clearly defined single functions.

Another advantage of the appointment process is that political candidates aren't necessarily the best qualified individuals to run government agencies. A qualified person from the field, who also holds politically acceptable views, and has personal integrity would usually be a better choice.

6.2 County Authority

The county or the people should retain all authority over the management of fish and wildlife not granted to the state. This should include the authority to tax for the support of the county fish and wildlife agency. It should also include the authority to license, construct, and operate hatcheries whether these are public, non-profit, or private.

6.3 Commission

The fish and wildlife commission should have authority over the the department's budget, should appoint the director, and should be accountable to the public. One way is to make them appointed by the governor and confirmed by the legislature. Another way is to have the counties appoint the commissioners, one from each county.

Commissioners shouldn't have a financial interest in the fisheries of the state and should absent themselves from voting on any issue in which they or their immediate relatives have a financial interest. Commissioners must make full public disclosure of their income and financial interests.

The department should have responsibility for regulating all mixed-stock salmonid fisheries and highly migratory species such as birds, while the counties should regulate wildlife, freshwater fisheries, saltwater fisheries for sessile organism in the nearshore area, and fisheries in terminal areas (that is, for example, areas within 500 yards of a river mouth or narrow passages through which salmon and steelhead must travel). Where several counties occupy the same watershed, those counties should form a joint management agreement.

The department should have responsibility for regulating all marine fisheries except those based on sessile organisms harvested in the nearshore area, for example inside of the 30 fathom line or 100 yards, whichever, is greater. Hence, shallow water shellfish, sport diving, and fishing from shore would be within the county jurisdiction.

The department should have responsibility for regulating the fish and wildlife in counties which don't regulate these resources themselves.

The commission should be responsible for enforcement of fisheries regulations within their jurisdiction, of violations which are inter-county, and of such inter-state and international fisheries violations as aren't within the federal jurisdiction.

The department should provide a professional education program to their employees and to county fish and wildlife employees. The department should conduct fundamental and applied research on the biology, dynamics, and management of fish and wildlife.

Open government being essential to accountability, commission meetings should be open to the public and records of all meetings of the commission and documents examined by them should be available to the public. Documents presented for their consideration should include all necessary data or references to where those data can be found, and adequate information to allow a qualified member of the public to repeat the analysis or to show how conclusions were reached. These documents should be held in a library or other repository accessible to the public.

Thus, the department would become a relatively small organization, which provides an official mechanisms for resolving inter-county issues over fish and wildlife management, manages non-county waters, and does research and education. The counties do the routine management.

6.4 Finances for Fish and Wildlife Agencies

If licenses and fishing rights are statewide or if some forms of fishing and hunting become legal for all state citizens (that is, it doesn't require licensing), the funding base supporting management should also become statewide. As it is also desirable to reduce or eliminate some types of license fees, taxation is implied.

A portion of that revenue should be transferred to the counties to support their management activities. Counties should also be allowed to levy taxes to support their management agencies. State funds should be distributed

according to a fixed formula, possibly based on the area of water, shoreline, and public land or the resources they contain.

A portion of those funds should also be used to compensate counties for the wages and benefits of county employees while they attend department-run professional educational programs.

The department, the commission, and county agencies should be prohibited from receiving funds from any source except as expressly permitted by the legislature. Control of the purse strings is an essential part of legislative oversight. For the same reason, counties should fund their own programs.

Alternatively, prior to 1932, counties were responsible for all aspects of the regulation of fish and wildlife, including issuing licenses or restricting fishing and hunting rights to county residents. An argument for this approach is that the citizens of a county could expect a return from investments in their county's fish and wildlife resources. It would also guarantee a continuation of this aspect of rural life.

6.5 Preservation of all stocks is inappropriate for wild salmon

The Endangered Species Act (ESA) is designed for species such as barnyard animals. These are familiar to us. However, the ESA is inappropriate for species which follow a different genetic strategy. In particular, it is inappropriate for colonizer species.

A colonizer species is a species whose genetic strategy is specialized for the rapid colonization and exploitation of new environments as they become available. The fruit fly provides an example. Genetics determine which digestive enzymes are present in a population of fruit flies. Consider a population of fruit flies living in a rotting banana. Those fruit flies will have digestive enzymes appropriate for that food supply. However, any one banana will soon rot away. Before that happens the fruit flies must colonize some new food supply. Their strategy is to rapidly produce many young. Many of them remain in the original banana, but others disperse. Those young have a random set of digestive enzymes, as determined by random reassortment. A few of those young will find and colonize some new food supply and by chance a few of them may be preadapted to it.

At first, the composition of a population in a new food supply will be determined by the rate of colonization. However, from then on as the better adapted individuals proliferate more rapidly, the population's genetic composition will change. Thus, a population's genetics is dynamic. It reflects both the colonization rates and selective pressures.

Colonizer species will usually have many weak or ephemeral populations because they try to colonize a broad range of habitats including many which won't support them, do so only poorly, or have a transitory existence. There also may be some more stable populations.

Many insect species follow the genetic strategy of a colonizer. However, the Pacific Salmon is also a colonizer species. Pacific salmon have colonized a broad range of habitats from Baja California to the Arctic and their juvenile migration patterns show remarkably differences from stock-to-stock. In their natural condition there are many strong salmon stocks but also many weak and ephemeral ones.

For the Pacific Salmon, the unique populations are called "stocks". Stocks are generally defined by their juvenile habitat. Salmon's juvenile migration patterns (which define their habitat use) have been shown to be genetically determined and unique for each stock. Their genetics control the direction and timing of their migrations from the time they hatch until they reach their adult feeding grounds in the North Pacific. In contrast, salmon's adult migration patterns, by which they return to their natal stream to breed, are learned. Salmon produce several thousand young per female and have straying rates (dispersal) which vary among their populations from less than one percent to over thirty percent.

The appropriate approach for the management of a colonizer species such as wild salmon is to maximize the species' habitat to the extent possible, to adopt a socially stable long-term harvesting pattern (that probably means one which is consistent with the local customs and economy), and to allow the species to adapt to those conditions. As weak and ephemeral populations should always be expected, they should be allowed to colonize and become extinct as they will. The preservation of every stock, as the ESA and current management practices would dictate, is inconsistent with the genetic strategy of a colonizer species.

6.6 Mixed-stock versus single-stock management of salmon

In 1935 the citizens of Washington State passed initiative 77, banning salmon fishing with traps and wheels. Use of those fishing methods had given effectively all the salmon to only a few individuals. Wider distribution of the benefits of salmon was delayed until after World War II. Then, large troll and gillnet fleets developed, together with a supporting infrastructure. These were primarily owner-operators and small businesses. They supported on-the-order of tens of thousands of families.

The independent fishermen were mostly driven out of business during the late 1970's and early 1980's as a result of the fishery's collapse. Today most of the supporting infrastructure is also gone. Initiative 640, which will be before the voters this November (1995), will end most of the remaining gillnetting and trolling but allow the reintroduction of traps, wheels and commercial fishing in freshwater or river mouths. A similar bill (SB 5612) was introduced by Senator Owen during the 1995 session. Had it passed, it would have authorized commercial fishing in Hood Canal with fish traps, beach seines, and purse seines while specifically banning gillnets, trolling, and trawl gears. Furthermore, most people don't realize that fish traps are already widely used today. Hatcheries use them and their total catch is substantial. The salmon they catch enter the domestic market for human consumption through the state's surplusing program. Thus, Washington's salmon fishery is rapidly returning to the conditions of the early 1930's.

The effects of these changes in the salmon fishery over the last six decades aren't only social and economic. They also affect the biology and management of salmon.

On one side are the single-stock terminal area fisheries. These gears are capable of taking all the salmon of a specific stock except those deliberately released for spawning. The contemporary trend is to promote these single-stock fishing methods in order to protect weak stocks and also so each stock can be managed to obtain optimum production.

On the other side are the mixed-stock fisheries. Mixed-stock fisheries apply a more uniform mortality pressure over a broad range of stocks but may cause some weak stocks to go extinct. However, salmon are a colonizer species. Salmon will probably always have some strong stocks, some weak stocks, and a nonzero extinction rate for stocks. However, they will also have a non-zero colonization rate of new stocks. By allowing extinctions and colonizations, a mixed-stock fishery is more consistent with the biology of salmon. If the fishing pressure from the mixed-stock fishery is relatively constant from year-to-year in terms of its timing and location, salmon will adapt to it. However, there is no obvious way to regulate a mixed stock fishery so as to achieve maximum production from every stock.

A middle-of-the-road solution, involving both a terminal area fishery targeted on only the major stocks and a mixed-stock fishery could combine the ease of management and high productivity of the first with the social and economic advantages of the second while maintaining a relatively natural situation for the salmon.

Furthermore, such regulation could be done in a manner fully consistent with the Indian treaties as interpreted in the *Boldt and Sohappay v. Smith* cases. The decisions included clear statements that the biological needs of salmon had precedence over all types of fishing, both Indian and all-citizen and that the state had the right to regulate those fisheries for the purposes of conservation. Conservation isn't merely the preservation of the last fish, conservation could include management to achieve maximum productivity from the resources.

6.7 Management of Colonizer species

Because colonizer species rapidly differentiate new stocks to exploit all available habitats, they will usually include some weak and ephemeral stocks, especially those which occupy marginal habitats. Hence, the preservation and enhancement of all the stocks of a colonizer species is a misuse of the laws for the preservation of species.

For a colonizer species which has declined in abundance, it is necessary to determine which semi-distinct genetic units should be protected. In general, only the largest and most consistently abundant of its stocks and the species abundance as a whole should be considered. Weak and ephemeral stocks should be allowed to take their course of colonization and extinction.

The natural and evolutionary forces which are established by nature in combination with the fishing pressures exerted by mankind should define those stocks of a colonizer species which should be preserved. That is, the colonizer species should be allowed to adapt to pressures of the customs, cultures, and local economy. In particular, as it is expected that under most conditions there will be some weak stocks, fishing should not be curtailed, nor the structure

of the fishery altered, to preserve or enhance those stocks. However, the fishery should exert a relatively consistent fishing pressure year-after-year. To assure that, there should be regulations to restrict areas, times, and total fishing pressure.

6.8 Management objectives:

The resources should be managed for the maximum benefit of the citizens of the State of Washington, in a manner consistent with their customs, culture, and local economy. The nature of the local customs, culture, and economies require, in my opinion, that the primary use of the fisheries and wildlife resources of the state be subsistence (that is, personal use). The secondary use for fisheries resources should be commercial fishing by local user-owned small businesses. The secondary use of wildlife resources is recreational hunting. The tertiary use should be recreational fishing by residents. The quaternary use should be fishing by mid-sized and large fishing companies and fishing by non-residents. The objective is to set a higher priority on those uses which most directly benefit the citizens and the local economies.

Subsistence fishing and hunting is fishing and hunting by individual citizens where the catch of the target species is consumed by themselves and by such relatives and guests as they would normally entertain without fee or remuneration. Unlike recreational fishing and hunting where the management objective is to maximize the expense per fish caught or animal shot and where satisfaction is gained from the experience, the management objective for subsistence fishing and hunting is to minimize the expense per dressed weight of the catch.

The difference between a recreational fisherman or hunter and a subsistence fisherman or hunter lies in what they do with their catch, why they caught it, and how much it cost them to catch it. These variables are difficult to measure in the field and, therefore, are difficult to enforce. The approach taken in Alaska is to set an income ceiling above which fishing and hunting are assumed to be recreational. The approach is taken in some of the Southern states is that any state citizen may fish without a license provided he or she doesn't use modern tackle.

The application of the corresponding approach to hunting raises some intriguing possibilities: for example, should hunting for a fixed annual bag limit or within a limited season be legal with the modern military-style rifles which every citizen is expected to purchase and maintain at their own expense, this being part of their civic duty (an armed citizenry being necessary for the defense of liberty and the republican form of government).

In the case of tourists who come to Washington in order to fish. They should pay a substantial license fee and their fishing should only be allowed after the other resource users needs have been met.

Licensing implies state control and regulation of an activity. A license is a permit granted by a competent authority to do something which is otherwise illegal. Hence, the first step towards licensing an activity is to declare it illegal, unless licensed. Conversely the way to open an activity to the public and to guarantee its precedence is to declare it legal. That would move it out of the jurisdiction of the department and state and would assure public access to the resource. This approach could be used to obtain public access to a narrowly defined subsistence fishery and possibly also a very narrowly defined mixed-stock owner-operated commercial fishery.

such a declaration, properly defined and limited, it could permanently resolve the problem of government confiscation of these publicly owned natural resources which has left little-or-no fishery resources to the citizens of the state. It is also possible to operate such an unlicensed fishery on an escapement-first basis — In that case, the limitation is that fishing is legal after weekly escapement goals have been met.

Small business fishing is historically an important income for local economies. Mixed-stock owner-operated salmon fisheries grew up immediately following World War II. They became possible when fish traps were declared illegal in 1934, but the growth of the industry was delayed by the war. This industry supported tens of thousands of families inhabiting the coastal communities.

A substantial proportion of the total catch should be allocated to mixed-stock salmon and steelhead fisheries because of its desirable effect upon local economies and also because this creates an economically independent middle class. Their economic independence allows their political independence and, thereby, supports the republican form of government and the liberty and freedom of all the citizens of the state.

Mixed stock fisheries for salmon also can yield the highest quality product, and are, therefore, an efficient commercial use of the resource, in the sense of obtaining the largest total revenue to the local economy. The problem with terminal area fisheries is that as the salmon approach their spawning grounds they convert all their food reserves into eggs and sperm. This includes body fats, digestive organs, and even muscle tissue. The flesh of a salmon which

is ready to spawn is an unattractive and low quality product. Catching the salmon earlier means catching them in a mixed stock fishery.

There are several exceptions to this rule. One exception is fisheries for roe. Another is fisheries for Sockeye and the early runs of chinook and coho. These fish remain in freshwater for a protracted period before spawning.

However, mixed stock fisheries are difficult to regulate to achieve optimum spawning escapement. Terminal area fisheries are potentially easier to regulate. Therefore, ideally, the mixed stock fishery should be sufficiently restricted to allow surplus escapement of the major runs of salmon and steelhead. A terminal area fishery, based on that surplus, can be tightly regulated on an escapement-first basis.

6.9 Individual Transferable Quotas (ITQ's)

ITQ's are a contemporary issue. An ITQ is a title to fish as property. However, fish and wildlife are publicly owned — that is our legal heritage. The ITQ is one step in the transfer of public property to private individuals. In particular to very wealthy individuals.

In a greenpeace meeting a lawyer who works for the Indians and the environmentalists said that he likes the Idea of the ITQ because eventually the ownership of the resource will accumulate in the hands of the very wealthy and large corporations. ITQ's are consistently supported by the Green movement.

What we have witnessed over the last two decades is a pattern of the Federal government taking over the management of fisheries and then transferring them to private parties. One example is the halibut fishery. At some point the federal government assumed management of that fishery and by late 1994 and 1995, they had transferred it to ITQ's. Mismanagement can then keep the allocations low for several years, driving the small independent fishermen to sell their ITQ's. Another example is the Indian fisheries rights issue. The Federal government first granted half of the fishing rights to the Indians. Next the Indians assumed management of the fishery. Then the fishery collapsed driving the remaining non-Indians out of the fishery.

We don't know yet what the final step may be. One possible ending is for the Federal Government to abrogate the fishing rights portions of the treaties and then transfer them to private ownership (ITQ's). These will eventually accumulate in the hands of a few large corporations.

A possible alternative ending to this scenario is for the Indians and the state (the state is a major harvester through their hatchery surplusing program) to retain their fishing rights and continue their catching operations, but the tribes and state will sell only to planned and controlled markets. That is, they will sell only to a restricted number of wholesalers at controlled prices. This is close to what they are currently doing.

It is also possible that the public may become sufficiently annoyed to put an end to these problems, possibly by means like those I suggest here.

6.10 Japanese Ownership of American Fisheries in the Pacific

Historically, the fishery in the North East Pacific was largely Japanese. However, the Magnuson Act ended that. The Japanese response was first to enter into joint ventures then to buy the American fishing companies. What I expect is that the Japanese together with other big concerns will buy all or most of the ITQ's.

To put this in the proper perspective, it is necessary to understand the Japanese legal and cultural heritage with respect to the natural resources. During their middle ages, they fought civil wars over the ownership of natural resources: that is minerals, timber, and fish. In Japan, these are property rights. someone owns the right to fish on some particular stock. However, their property rights (according to their heritage) aren't restricted to just the natural resources of Japan. They include all the natural resources of the world. There is some Japanese person or corporation who holds the title to the fish stocks of Washington state. From this viewpoint we have stolen their property and they, by buying the ITQ's, are just clarifying their title to what they already rightfully own.

6.11 Individual Transferable Quotas for Local Owner Operators

What we need to do is to create a process so that the fishing rights return to the citizens and the small-business sector of the state.

One of the first things to do is to assert public ownership of all fish and wildlife — There was a citizens initiative, I304, which did this. It was vehemently opposed. It did everything the the opposition wanted except for that one issue: it asserted public ownership. That is a key issue.

The wild fish and wildlife resources within the state of Washington and all anadromous fish which hatched within the waters of the state should be declared the common property of all the citizens of the state.

There are several ways for the state to reacquire the ITQ's on behalf of the public. One way is to tax ITQ's, just as other personal property may be taxed. The funds from the above taxes could go into a trust fund dedicated to buy back the ITQ's. The current owners of the ITQ's need to be justly compensated for them, if they are found to be rightful owners. Even if they aren't it may, nevertheless, be expedient to pay them off. Reacquisition doesn't have to be done immediately, it could wait until the ITQ's are sold as the owners age. However, where the ITQ's are held by corporations, trusts, or other perpetual entities, right of eminent domain should be used to force sale.

Once the ITQ's have been bought back they should be managed to assure they are mostly in the hands of small businessmen within the state. In order to promote owner-operated commercial fisheries, the state could grant ITQ's for a fixed duration based upon a lottery. Any citizen of the state, may enter the lottery. The ITQ's should be granted without a fee. On expiration, the ITQ reverts to the state. Initially the ITQ's are either phased in or issued for a range of durations. So that there are reversions and lotteries every year. This plan creates a social process which ensures the perpetuation of commercial fishing as local small businesses.

6.12 Maximum Sustainable Yield

The management objective should be maximum sustainable yield (MSY): that is, the maximum total catch in numbers or dressed pounds which can be taken every year on a sustained basis so that the resource is truly self-replenishing.

If MSY and catch are known exactly, MSY should be the catch limit but in the event of uncertainty as to the MSY, the catch limit should be reduced.

The terminal fisheries on major salmon and steelhead stocks should be managed on an escapement-first basis: that is, escapement goals for any time period shall be achieved before any catch is allowed. Where achievable, an escapement-first approach shall also be applied to non-salmonid species.

Minor salmon and steelhead stocks should be closed to fishing in terminal areas. The reason for this is that salmonids are colonizer species. They naturally have many small or ephemeral stocks. These are expected to have a non-zero extinction rate, but also a non-zero colonization rate. That is part of salmon genetics. These stocks will be harvested in the mixed-stock fishery but should, otherwise, will be allowed to come and go as they will. Counties may also wish to close spawning areas to fishing or to form game or fish preserves.

For salmon and steelhead, data shall be collected to allow the escapement, number of smolts, catch, and stock composition to be estimated.

Estimates for escapement should be the best available. This requirement can be defined explicitly: Specifically, they should be minimum variance unbiased unless either

1. a minimum variance unbiased estimator is unknown or can be proven not to exist; or
2. another estimator can be proven to have both a smaller mean squared error and a smaller Bayesian risk. Two risk functions shall be used. The measure of cost is the reduced catch in pounds or numbers of fish, whichever is more appropriate, over both a one year period with no discounting and perpetually with a three percent discount rate.

If the minimum variance unbiased estimator is unknown, the managing authority shall use whatever estimator they consider most reliable. However, they are required to expend what they consider a reasonable effort to improve their estimation procedure every year until they have met the above criteria.

6.13 Gear limitations:

The reduction of bycatch and preservation of habitat are legitimate objectives of fisheries management. However, these objectives aren't superior to the other objectives.

The department, may reasonably research, limitations on gear or changes to gear which will reduce the catch of non-target species or preserve habitat. Counties should have the authority to establish any gear regulation they prefer for the regions they regulate, and state only for the regions it regulates.

6.14 Public Access and presence:

Safe, affordable, and convenient access to the publicly owned waterways and land of the state being essential to the continuation of fishing and hunting and these being part of the customs, culture, and local economy; the department and the counties should adopt a policy to establish and maintain free access to all public lands and navigable waters.

The presence of the citizens of the state on all the waters and publicly owned land of the state, is in the public interest as it provides for the detection of abuses and crimes which might otherwise occur there.

Preservation of habitat or species should be subordinate to the right of public access.

Chapter 7

The PFMC

This chapter examines fisheries management by the federal government.

7.1 The Magnuson Fisheries Act

The mechanism for the regulation of the US fisheries was established by the Fisheries Conservation and Management Act of 1976 (that is Public Law 94-265). It was sponsored by Warren G. Magnuson (D, Washington); it is often referred to as the FCMA; and it is summarized in the US Congressional and Administrative News 1976-36.

The purpose of the FCMA was to provide for the management of the US fisheries. It also provides for their preservation, conservation, and enhancement both as biological resources and as human and business activities.

Prior to 1976, the US, together with most other nations, had claimed 3-mile territorial waters and a 12-mile exclusive fisheries zone.

Prior to 1976, fisheries management, internal to the US, was done by the states and the federal government. Every state had jurisdiction over fisheries management in its adjoining (3-mile) territorial waters while the federal government had jurisdiction over the waters from 3 to 12 miles. This often made management awkward because a single stock of fish might be under the jurisdiction of several states and the federal government.

Internationally, the fisheries were unregulated. For many centuries the International Law of the Sea had included freedom of fishing on the high seas. This has been the custom long before there was any formal agreement. For example, in Jean Froissart's (1337-1410) account of France's planned invasion of England in 1383 he wrote (Brereton (translator) 1968)

Sir Simon Burley was the governor of Dover Castle, so he often received information about France from men of Calais and English fishermen who continued going to sea in their usual way. To get good catches they often go fishing off Boulogne and outside the harbor of Wissant. They brought news to Sir Simon as he asked them to, for when they met French fishermen these told them all they knew, and sometimes more. Whether France and England are at war or not, fishermen at sea would never hurt each other, but are friends among themselves and helpful when necessary. They buy and sell their fish between them at sea, when some have a better catch than the others. If they fought each other there would be no sea-fish landed and no one would dare to go fishing without an armed escort.

Nations only claimed jurisdiction over the narrow strips along their coasts. During the 1960's this was found, in many cases, to be inadequate for the preservation and management of the fisheries resources. The problem was that the advent of sonar, which allowed the fish to be located, and the use of large and powerful ships for fishing had increased the fishing power so much that the oceans were no longer an inexhaustible resource.

To resolve these international issues the UN had called Law of the Sea conferences in 1958, 1960, and 1974. At that time, it was clear that a number of years would elapse before a new Law of the Sea was agreed upon. The FCMA was intended to fill that gap. The new Law of the Sea Treaty was finally signed into US law two decades later, by President Clinton in 1994.

The FCMA extends the territorial waters of the US to 12 miles and the exclusive fisheries zone to 200 miles. It also establishes seven regional councils which are responsible for the regulation and conservation of the fisheries. The regional council which deals with the salmon is the Pacific Fisheries Management Council (PFMC).

7.2 Law of the Sea

The source is (Anon. 1983).

Article 66

1. States in whose rivers anadromous stocks originate shall have the primary interest in and responsibility for such stocks.
2. The State of origin of anadromous stocks shall ensure their conservation by the establishment of appropriate regulatory measures for fishing in all waters landward of the outer limits of its exclusive economic zone and for fishing provided for in paragraph 3(b). The State of origin may, after consultations with the other States referred to in paragraphs 3 and 4 fishing these stocks, establish total allowable catches for stocks originating in its rivers.
3. -
 - (a) Fisheries for anadromous stocks shall be conducted only in waters landward of the outer limits of exclusive economic zoners, except in cases where this provision would result in economic dislocation for a State other than the State of origin. With respect to such fishing beyond the outer limits of the exclusive economic zone, States concerned shall maintain consultations with a view to achieving agreement on terms and conditions of such fishing giving due regard to the conservation requirements and the needs of the State of origin in respect to these stocks.
 - (b) The State of origin shall co-operate in minimizing the economic dislocation in such other States fishing these stocks, taking into account the normal catch and the mode of operations of such States, and all the area in which such fishing has occurred.
 - (c) States referred to in subsection (b), participating by agreement with the State of origin in measures to renew anadromous stocks, particularly by expenditures for that purpose, shall be given special consideration by the State of origin in the harvesting of stocks originating in its rivers.
 - (d) Enforcement of regulations regarding anadromous stocks beyond the exclusive economic zone shall be by agreement between the State of origin and the other States concerned.
4. In cases where anadromous stocks migrate into or through the waters landward of the outer limits of the exclusive economic zone of a State other than the State of origin, such State shall co-operate with the State of origin with regard to the conservation and management of such stocks.
5. The State of origin of anadromous stocks and other States fishing these stocks shall make arrangements for the implementation of the provisions of this article, where appropriate, through regional organizations.

7.3 The underlying principle of the FCMA

The FCMA establishes that the fisheries shall be managed to obtain optimum sustainable yield on a continuing basis, shall be non-discriminatory among the fishermen from the various states, and shall be based on the best available data and the best scientific knowledge (FCMA section 302c).

Maximum sustainable yield (MSY) is the catch which can be taken every year without diminishing the stock. MSY preserves the biological wellbeing of the stock.

The **optimum sustainable yield** of any given fishery or region will be carefully defined. It begins with the MSY but also takes into consideration the economic wellbeing of the commercial fishermen, the interests of recreational

fishermen, and the welfare of the nation and its consumers. The optimum sustainable yield is defined by the regional management council for each stock.

The regional councils are required to develop fisheries management plans. These councils have various committees to assist them. Plans and advice might also be obtained from state or federal government or from other parties.

The FCMA establishes a process which includes a series of public hearings and a review procedure. The approved plans are applied by state and federal agencies.

7.4 Structural problems

7.4.1 Optimum sustainable yield

For many years, MSY had been the objective used to manage fisheries. That approach maximizes the catch in number of fish or pounds of fish.

However, during the 1970's the alternative approach of managing to maximize the economic gain from the fishery (that is, optimum sustainable yield) had considerable popularity. In 1977 Dr. Peter Larkin even declared the MSY approach dead and wrote an article entitled "An epitaph for the concept of maximum sustained yield" (Larkin 1977). Since that time there has been considerable research into economic models for fisheries management (review by Clark 1985).

The FCMA was written during the 1970's and is based upon the objective which was popular at that time. However, as people began to try to use the economic approach, they became aware of its weaknesses:

1. The catch (in number or pounds of fish) which optimizes the economic gain for one segment of the fishery is usually not the optimum catch for other segments. Hence, the political question is introduced of which segment of the fishery will be favored.
2. Unless the economic model is carefully constructed, its use doesn't guaranty improvement. Economic models have to be developed and data for them have to be collected. The uncertainties in the economic models and random errors in the economic data introduce additional uncertainty into predictions of the optimum. Hence, in practice, optimum sustainable yield will not necessarily out-perform MSY.
3. A quantitative approach often isn't taken in determining the optimum sustainable yield. The concept of optimum sustainable yield often only provides a pretext for additional flexibility in setting the catch limits. This allows departures from the optimum in order to obtain short term gains or political objectives.

Thus, although carefully constructed and reasonable economic models which equitably consider all parts of the fishing industry can often be advantageously employed in fisheries management, this doesn't usually happen in practice. The principle change which resulted from adopting optimum sustainable yield instead of using MSY may be that it gave greater latitude, discretion and, hence, power to the regional councils.

That increased power wouldn't be a problem if the councils were constructed so that they were impartial and not subject to politics, but the selection procedure set down in the FCMA virtually guarantees the opposite.

7.4.2 The appointment process

The FCMA specifies that the first four members are heads of departments of government. The next six members are individuals who represent commercial interests and they are selected from a list made up by the first four. The last two members come from special interest groups and are selected from a list made up by the first four. Thus, the selection procedure specifically selects members who represent political, economic, and special interests. By design, the council contains no impartial members. The council members aren't asked to absent themselves from voting on an issue where there is a conflict of interest.

Specifically, each regional council contains

- the Executive Director of the Marine Fisheries Commission for the geographic region.
- one member appointed by the Governor for each state in the region.

- the Regional Director of the National Marine Fisheries Service.
- the Regional Director for the US Fish and Wildlife Service.
- six members having knowledge and experience in commercial and recreational fishing are appointed by the Secretary from a list of nominees drawn up by the above appointed members. Such appointments are required to reflect the degree to which commercial and recreational fishermen participate in the fisheries in the geographic area concerned, the numbers of fishermen, vessels, shore-support employees, and economic contribution. None of them should be employees of State or Federal Government.
- two members nominated and appointed as describe above. They are expected to include, conservationists, ecologists, and representatives of the scientific community.

7.4.3 Public input

The processes set down in the FCMA allow public hearings and allow opposing opinions to be heard. However, that process is ineffective in conveying to the public the information which the public needs in order to make informed decisions. The Pacific Fisheries Management Council sends some information. However, in order to properly assess each issue, more information is needed than is currently provided.

A library in each region, open to the public, where all the materials are held would be a great help. At the moment much of the material which exists is unobtainable in practice.

Due to a lack of adequate information, the public input can't be substantive. It often consists of groups of citizens raising objections based on a general feeling that something is wrong somewhere. Such objections are easily dismissed. This leaves the door open for political manipulation.

7.4.4 Conclusion on weaknesses

Considering the power of the regional councils, the lack of restrictions to prevent their voting on issues where they have a financial interest, the flexibility of the management objective, the composition of the council, and the absence of effective public review, it is remarkable that the fisheries haven't collapsed more quickly than they did.

Bevan et al. (1993) also criticized the Pacific Fisheries Management Council for the partiality of its composition — it is composed entirely of representatives of interest groups.

Recall the type of government organization the Northwest Renewable Resources Center was trying to create: that is one which has broad powers, a vague mandate, and is under the direction of individuals from special interests. The Pacific Fisheries Management Council seems tailor-made to their specifications.

This also serves to illustrate that this model for government didn't originate with the Northwest Renewable Resources Center. It had been advanced in the Federal government eight years before the Northwest Renewable Resources Center was formed. The US Congress had been under the leadership of legislators from Washington State for a long time, because they had seniority. In particular, this includes Warren Magnuson (deceased), Skoop Jackson, and Tom Foley. Fortunately, none of them are in office any longer.

7.5 Reauthorizing Federal Regulation of Fisheries

Can federal fisheries regulation be structured in a manner consistent with the US Constitution, the Law of the Sea, retain significant local control, and restore the small business nature of the fishing industry? Of course it can.

7.6 Proposal

To be consistent with the approach in the Law of the Sea, anadromous fish (those which breed in freshwater) should be the possession of the state in whose waters they breed and they should be regulated by that state. That argument might be extended to transfer the possession and regulatory authority of specific stocks to county, municipal, tribal, or other local government. However, that is best left to the discretion of each state to do as each feels best suits their state's customs, culture, economy, and legal or political heritage.

Each state has the authority to regulate the marine and freshwater species which occur exclusively in its waters (U.S. Constitution tenth Amendment).

The federal government has authority to regulate fisheries in federal waters, that is, in the waters adjoining U.S. possessions (U.S. Constitution Article 4 section 3). They also have authority for regulation in international waters where they acquired those responsibilities through treaties (3 to 200 miles offshore).

For fish species which migrate across state boundaries or go more than 3 miles offshore, the fisheries on those species are partly an interstate or international commerce issue. The federal government has authority to regulate interstate and international commerce (U.S. Constitution Article 1 section 8). Regulation of fisheries within the exclusive economic zone (that is waters from 12 to 200 miles offshore) is also a treaty obligation (International Law of the Sea).

The extent and limits on the federal authority to regulate fisheries isn't clear. Specifically if a fish stock or part of it migrates across state or international borders does the federal government have the right to regulate commercial fishing which occurs wholly within state waters? If so, to what extent? Is that power limited to total catch or does it also include licensing, gear, seasons, bycatch, habitat preservation, safety standards, workman protection laws, hiring quotas, landing sites, processing plants, supporting infrastructure, retailing, . . . Hence, the federal power needs to be suitably limited by law.

To see where unbridled federal regulation leads, consider one of the most extreme examples of federal regulation, the International Halibut Commission. They regulate catch limits, gear, seasons, licenses, and in late 1994 or early 1995 transferred that previously public resource to private ownership (individually transferable quotas) and then instituted regulations which induce the smaller fishermen to sell out. The large corporations which are buying the ITQ's are largely international or interstate. In terms of the loss of the resource and its revenue to the citizens of the state, it would not be much worse if the halibut had been exterminated. The people who should be harvesting the resource as owner-operators are today only employees or in some other business.

With regard to that particular fishery. ITQ's and halibut are property and property can be taxed. This provides a vehicle to recover the ownership of the resource and return it to the citizens of the state.

The legitimate extent of federal authority is probably to provide for equitable allocation among the states, insure that the resource is managed according to a reasonable objective, provide interstate enforcement, and regulate federal and international waters. Appropriate safeguards need to be set in place to prevent the federal government's extending its authority beyond its legitimate role.

There are many ways to do this. One way to insure state rights is to grant the states administrative authority over the federal body responsible for fisheries regulation.

This can be done by creating a commission composed of one representative from each state and one from the federal government. Each state and the federal government should determine for itself how their representative is to be selected.

It is also necessary to assure against undue local interest or the influences of vested interests. On this account, commissioners should be required to abstain from voting on issues where they have a personal financial interest. That principle might also be extended to voting on any issue which affects the government body they represent. Issues might be examined by the full commission or by a jury selected from them by lot.

The duties of the commission would be to reach a determination on any interstate conflicts, to appoint the director of the federal fisheries regulatory agency, and to administer their budget.

The objective for fisheries regulation under their authority should be to obtain and maintain maximum sustainable yield.

Another regulation issue is bycatch and habitat degradation. Generally, it is advantageous to reduce or avoid bycatch and habitat degradation. Fishing gear limitations are a related issue affecting both. These are issues for each state to determine where it affects only itself but for the commission to determine where several states or the federal government are involved. However, bycatch is usually unavoidable, and non-target species caught as bycatch might always include some fish which are under federal management. Therefore it is necessary to limit the federal authority to impose gear restrictions. This probably should be limited to fisheries which target federally regulated species.

These limitations are important as fishing gear restrictions can greatly affect the economics of the fishery and, thereby, impact the customs, culture, and local economy within the states. Furthermore, gear restriction for fisheries on federally regulated species should be required to consider the local customs, culture, and heritage as a relatively

high priority. Local governments need to be included in making these determinations.

A governing principle for the allocation of marine species among the states is that, after reserving the amount needed for breeding, the proportion of the surplus fish biomass allocated to each of the states and the federal government should be equal to the proportion of the biomass produced within each party's jurisdiction. That is a concrete measurable standard. It also gives each state a financial interest in the productivity of its waters.

Since most commercially fished species are currently depressed, restoration plans are needed. These plans need to restore the stocks to maximum sustainable yield without devastating the fishing industry and the infrastructure and local economy based upon it.

At the time of the Magnuson Act (according to its findings) over 90 percent of the fishing industry and its supporting infrastructure were small businesses and most of the remainder were medium-sized businesses. There were very few large businesses. Small business is also the American tradition and is conducive to personal liberty. Therefore, the large business segments of the fisheries which have arisen during the past 20 years due to the inequities of the Magnuson Act have little claim to protection as part of the local customs and culture. Presumably their fishing can be closed to restore the fishery and to protect the incomes of small businessmen, local economies, and help restore the way-of-life in fishing communities.

This section shows that the necessary regulatory body can be constructed in a reasonably straight-forward fashion within our constitutional system of government. There is no need to reauthorize a Magnuson-style Act. Nevertheless, federalism is probably what we will get. When the people regain control over the federal government, that will be the time to dismantle whatever they foist upon us today.

7.7 Misregulation by Federal Government

7.7.1 Under-escapement

In 1991, the Pacific Fisheries Management Council concluded that over the preceding years, the escapement (that is, the number of breeding fish) had been over-estimated and that as a result escapement goals hadn't been reached in 19 out of the last 20 years. In 1992 Oregon Department of Fish and Wildlife reached the same conclusion (John Bragg, 1994)

The council concluded that this was the primary factor leading to the long-term decline of Oregon's and Washington's coho salmon.

There must be enough adult fish which escape the fishery and spawn to provide enough eggs for the next generation. If there aren't enough spawning adults, there won't be enough eggs and the run in the generation which hatches from those eggs will be small (except for random variation). This scenario is consistent with the observation that there is unutilized spawning habitat in many streams.

In 1991 the Pacific Fisheries Management Council recognized under-escapement as a problem, and took actions which might have reduced the total catch. However, these actions may only changed the allocation of the catch rather than improving escapement. Also, another factor intervened so that their program wasn't continued beyond the first year.

The actions which the Pacific Fisheries Management Council took were to reduce both US sport and Canadian commercial catch limits. If the Washington commercial catch was also adequately reduced, their policy would have resulted in improved runs in the next generation: specifically, the next generation is 1994's run. It was better than expected.

The larger returns in 1991 may or may not have meant that the escapement increased. That depends upon how many fish escaped Washington's combined commercial catch. The policies in 1991 may have only resulted in a larger Washington combined commercial catch. I don't know whether Washington Department of Fisheries instituted a program which would measure escapement. In light of their 1995 statement (fiscal report on HB2021) that their data and projections have too low precision/accuracy to estimate escapement to scientific standards of accuracy, their numbers clearly shouldn't be relied upon.

7.7.2 Unreliable estimates

Without reliable estimates of escapement and the number of smolts it is probably impossible to determine what actually happened. Certain basic data are needed to manage fish stocks. If these data aren't collected or only inaccurate or flawed methods are used, decline is the predicted consequence (proof presented by Crittenden 1994).

Good estimation methods are available and are used in British Columbia (BC) and Alaska: in particular, BC uses a mark-recapture method to estimate escapement and Alaska uses tower-counts and Doppler sonar. BC's method is quite acceptably accurate, and Alaska's methods are effectively exact.

Also highly effective smolt traps are used to estimate the number of smolts on various rivers in BC and Alaska. Washington should be using similar methods.

There is an excellent paper by Dr. Eggers (1992) in which he shows that the Bristol Bay sockeye catch was *doubled* by using accurate estimation methods. In that case, the average run size increased because they routinely got closer to the optimum number of fish on the spawning grounds. BC's program isn't so aggressively quantitative, but they use reliable methods and can claim that no major run is in poor condition. Washington uses unreliable methods or no methods at all and their fishery has collapsed.

Of course the parties who want the fishery to collapse wouldn't be expected to use good estimation methods. Those parties might include Washington Department of Fisheries and the Indian authorities. They are the parties that are responsible to make estimates. Furthermore, the change in policies in 1991 seems to have had the sole effect of transferring a larger proportion of the catch to vested interests who are part of the coalition (that is the commercial fishermen and the Indians).

7.7.3 Too high a catch

On years with low runs, the Pacific Fisheries Management Council has often set the catch limits too high in order to "protect the income of the fishermen" (see the Pacific Fisheries Management Council annual reports). The supposition is that catches won't be increased during some future year when runs are higher than average. However, that restraint doesn't happen in practice. The observation is that escapement goals weren't met, as stated above, in 19 out of the last 20 years.

The basic problem is that for a fisherman, income *today* is of greater value than the long-term average income of the fishery. This is because under the present social and political climate, the fishermen today may not be in the fishery a number of years in the future. Furthermore, their children usually don't go into the fishing industry, because they perceive its uncertain future. Hence, the fishermen obtain no concrete benefit from conserving the stocks.

For each fisherman, there is a tradeoff between income today and the net future value he will receive from the fishery. What the fisherman is doing is equivalent to discounting the expected income in the future to reflect the probability that he won't receive it. As the future becomes less certain, the discount rate becomes higher, and the optimum strategy for the individual fisherman shifts towards short-term gain.

Other countries use discount rates and examine long-term optimum management solutions. For example, the Canadian government sets a fixed rate and computes the long-term value for natural resources. This is rarely done in the US. There isn't much point to doing those computations if the regional management councils make decisions based on the short-term gain for the industry.

The fishermen are represented by a substantial proportion of the members on the Pacific Fisheries Management Council. The duty of those council members is to manage to obtain optimum sustainable yield, presumably for the group they represent. For that group the optimum is gain over a relatively short-term.

This is one of the structural problems in the Pacific Fisheries Management Council: a tendency to set the catch limits too high is inherent to its structure. Thus the Pacific Fisheries Management Council's decisions often aren't the best for the public nor for the long-term survival of the fishery.

7.7.4 El Nino

This is a condition of warmer surface water and causes reduced upwelling. Upwelling brings nutrients to the surface and results in increased growth of phytoplankton, zooplankton, and, hence, salmon. Over the last few years, we have had el nino. The Pacific Fisheries Management Council overfishing review concluded that there had been a 15 year trend of unfavorable ocean conditions.

This is a natural condition, it happens, but it will eventually go away. Nevertheless, on el nino years, reduced harvest is necessary. However, they state that throughout much of that period the harvest was maintained at as high a level as possible to satisfy the fishermen. This consistent overfishing is a contributing factor to the decline of many stocks.

7.7.5 Conflict of interest

The Pacific Fisheries Management Council members represent user groups, but they also aren't prohibited from representing other vested interests. Presumably, large interests such as Weyerhaeuser or the Northwest Renewable Resources Center are free to seek their cooperation.

One example of the influence of special interests is provided by the sea-ranching issue: in particular, Weyerhaeuser runs a very large salmon sea-ranching operation at Newport, Oregon. During the 1980's the Pacific Fisheries Management Council restricted the fishing season in Coastal Washington. These closures occurred even though the other runs of salmon were not so depressed as to justify the closure.

This year, the Pacific Fisheries Management Council, provided another example of their partisan nature. In their mailed announcements, they suggested only various options in catch regulation which benefit the tribal and commercial fishermen and they didn't give adequate notice to some of the public meetings.

Only the tribes and commercial fishermen came to the Kelso meeting, except for a few citizens who had inside information. For example, I'm on the Pacific Fisheries Management Council's mailing list and my notice was postmarked March 16 for a meeting on March 17 and 18. I got the notice about noon on the 18th.

They also asserted in the meeting announcement that the decline of salmon was due to habitat limitation. This is inconsistent with their previous statement in their overfishing review that the decline was caused by setting catch limits too high and by estimation errors.

7.8 Conclusion

The Magnuson FCMA of 1976 established the philosophy and method by which the US manages its fish stocks, including Pacific salmon. That act established the Pacific Fisheries Management Council which manages the salmon fishery.

However, rather than ensuring the council's impartiality, the Magnuson Act explicitly represented interested parties as its members. A grave error in that Act (that is, the use of optimum sustainable yield) granted them broad powers. Predictably, they have used that power to advance their own interests rather than the long-term survival of the fishery or the public interest.

This is an absurd way to regulate a public resource. There is no reason why it has to be done this way.

Chapter 8

The scientific community

8.1 Salmon treaty

By the Law of the Sea anadromous fish, such as Pacific salmon, belong to the nation in whose waters they hatch (Anon 1983). Some of the Fraser River (Canadian) fish return via the Straits of Juan de Fuca and through the San Jaun Islands. These fish are intercepted by the American fishermen. On the otherhand, some of the American salmon from the Puget Sound return via Johnson Strait (that is, they come down behind Vancouver Island) and are intercepted by the Canadians. The remaining Washington salmon together with and Columbia River fish are subject to interception on the West side of Vancouver Island.

The Canadian–American salmon treaty is a tradeoff between these two interceptions and when it was in force the Canadians opened and closed their seasons to protect some American stocks. One of the particular objectives of the last treaty was to protect and enhance Washington’s coho and chinook stocks.

The history of the fishery also affects the treaty: specifically, groups which have historically fished some area are generally allowed to continue doing so.

A complication in the treaty is the Nass and Skenna River stocks. These are Canadian fish which cross the Alaskan panhandle on route to the ocean. The previous treaty had traded some American interception of Fraser River fish for Nass and Skenna fish taken by Alaska.

The basis for this allocation was that there were some historical catch records which purported to show that there had been an American commercial fishery on those fish. However, those records may have been fabricated. A management–level employee of Alaska Department of Fish and Game told about having fabricated those documents and having instructed employees to help do it (personal communication, during the reception of the 1989 American Fisheries Society Meeting in Anchorage).

8.2 Alaskan Interception

In 1991, the Northward currents in the ocean were stronger than usual and, consequently, the Fraser River and Washington salmon were carried further north than usual, they made landfall in Southern Alaska (Thomson et al. 1992). The Southern Alaskan fishermen caught those fish.

Alaska Department of Fish and Game knew that those fish belonged to BC and Washington because Alaska manages their fishery using genetic stock identification (this has similarities to genetic fingerprinting which is more familiar to the public — the group doing this is headed by Dr. Jerome Pella). However, those high–tech methods aren’t necessary to identify many of the Fraser River sockeye, because many of them have a distinctive appearance. Hence, many of the fishermen were probably aware of whose fish they were catching and I heard, at that time, through the grapevine, that some of the fishermen had specifically asked if they should catch those fish.

Not only was there no possible doubt about the origin of those fish, but Alaska Department of Fish and Game was fully aware of the treaty obligations. Specifically, Dr. Norma J. Sands was both the manager in charge of the Southern Alaskan fishery which intercepted the Fraser River Sockeye and had taken part in the negotiation of the treaty for Alaska. The interception was no mistake, they must have been fully aware of what they were doing.

The Southern Alaskan catch of BC sockeye in 1991 was more than the combined American allocation for that year and the following year. Consequently, the Canadians said the Americans had already taken their fish and didn't allow any catch by Washington fishermen. This resulted in the Americans withdrawing from the treaty.

A fishing war ensued in 1992. Both sides fished heavily to force the other side back to the negotiating table on more favorable terms. Of course it may be anticipated that Washington salmon suffered badly: the numbers of adults reaching the streams to spawn were probably severely reduced.

Remember that the Orrick decision only comes into effect if the salmon abundance is severely depressed. For the preceding decade, the coalition had undoubtedly been looking for a convenient way to cause their decline. They were quick to exploit the opportunity the stronger currents provided.

Two individuals from the University of Washington's College of Ocean and Fisheries Sciences (UW-COFS) group are responsible for the management decision to allow the Alaskan interception. Evidence in the following sections shows that University of Washington's College of Ocean and Fisheries Science is centrally involved with the coalition and must have been from the start.

The first individual is Dr. Pella (National Marine Fisheries Service, Auk Bay Lab, Juneau). He was a graduate from biostatistics at University of Washington. He is an older established scientist and works on genetic stock identification. I also work on that topic and have had contact with him. From the nature of that contact I conclude that Dr. Pella is beyond any doubt an active participant in the University of Washington group.

The second individual is Norma Jean Sands. She is a graduate of the University of Washington from the Center for Quantitative Sciences in Fisheries and Forestry (CQS). She has close ties with the office of the dean of the University of Washington College of Ocean and Fisheries Sciences.

8.2.1 Commercial fishermen in Southeastern Alaska

There are several different groups of fishermen in Southeastern Alaska. Among the smaller and generally owner-operated boats are the gillnetters, seiners, and trollers. There are also large factory trawlers. These larger ships represent big money and as a group are politically distinct from the smaller operators. There is some conflict between these two groups as well as among the smaller operators.

One consequence of the Alaskan interception may be to contribute to the remove of the smaller operators from the fishery. They are ostensibly the party who caught BC's sockeye. However, the responsible party is really the managers who told them they could do it.

In consideration the Alaskan manager's known relationships to UW-COFS and UW-COFS's know longterm relationships to large business and the federal government; the politics involved in this conflict are entirely consistent with what we know about these groups. That is, their objective may have been to advance federalism and the interests of large business. Whatever their motive may have been, it is certain that the interception didn't happen by mistake.

8.2.2 Returning adults for 1994

Coho have predominately a three-year life cycle. King salmon have a more variable length life cycle. It varies from 3 to 6 years. However, three-year and especially four-year kings are found in Washington. Washington sockeye have a four-year life cycle.

The Alaskan interception and the modified catch allocations for BC occurred in 1991 and the fishing war was in 1992. Hence, we would expect to see the effects of the Alaskan interception and the modified catch allocations on coho and the three-year kings this year 1994 and the fishing war in 1995. The four-year kings and the sockeye will show these effects a year later.

The Pacific Fisheries Management Council says that hatchery escapement goals were met in 1991, but they thought that wild escapement goals weren't met due to the catch of adults in the rivers (due to sport and Indian fishing).

Thus, it appears that 1994 returns of Washington coho and kings will be relatively good. However, a moderating factor for the 1994 run is that the returning Washington adults were being caught in Canada that year.

Unfortunately, wild smolt production isn't measured in Washington. Nevertheless, hatchery smolt production, Alaskan catch, and Canadian catch should be known, so it seems that data may exist with which to assess the cause

for the return rates in 1994. However, it seems unlikely that our government will do this in a timely fashion or that we could rely on their assessment if they provided it as they have an interest in the outcome.

What appears to have happened with the 1994 run was that many stocks did relatively well. From this I draw the inference, that the escapement in 1991 must have been relatively good. However, this wasn't the case for all stocks. That is predictable, since some of the rivers were undoubtedly gillnetted by Indian fishermen more effectively than others.

Thus, the problems in 1994 were relatively minor. The real problem will be in 1995 when we see the effects of the fishing war. Then we can expect many stocks to go extinct or be endangered for that year-class. In fact, the Canadians curtailed their catch during 1995. As a result although the run was very weak the returns were better than expected.

Thus, the run sizes were much as expected, based on what was known about the amount of escapement.

8.2.3 Current developments

The Canadian-American treaty has not been renegotiated. The obstacle is that Alaska can't be brought to an agreement about interception. However, in 1993 an ad hoc agreement was reached between the US and Canada,

During, 1994, there was no agreement and Canada acted unilaterally because America can't or won't reach a unified position. This is because of Alaska's obstruction of the process.

The Washington commercial fishermen, and certain legislators (US Congressman Norm Dicks and Congresswomen Jolene Unsoeld, and Patty Murry) were crying that this was a "fishing war". These legislators appear to be coalition members and would undoubtedly like an opportunity to blame Canada for the decline of the salmon.

Another part of the Canadian unilateral action is that they were imposing a fee on US commercial fishing boats which travel through Canadian waters when they travel from Washington to Alaska. This is a just policy because it burdens one of the parties who caught their fish. The Canadians may be well informed. During late July, 1994, the US legislature passed a bill which would compensate the Washington fishermen for the fees they paid Canada.

Predictably, Jolene Unsoeld (D), Norm Dicks (D), and Patty Murry (D) were loudly critical of the fee. In contrast, Slade Gorton (R) and Jennifer Dunn (R) were relatively quiet on this issue. From the response of these legislators, this appears to be a partisan issue.

The various groups associated with the coalition have been calling for intervention from the White House and Joelene Unsoeld said at the townhall meeting in Westport that she was routinely meeting with the White House to discuss the salmon issue. There was an obvious attempt to justify calling for federal intervention.

Later, during July, 1994, the news media was reporting daily that the White House was negotiating a new salmon agreement with Canada. However, about the end of July the negotiations were terminated without a new agreement.

A call for federal intervention has been a consistent theme among liberals and federalists. For example, Billy Frank, the director of Northwest Indian Fisheries Commission, called for intervention during his speech at the Greenpeace Meeting in Seattle on July 30, 1994. However, it wasn't clear whether he meant Federal or UN intervention. Similarly, throughout 1994 and 1995 there have been repeated calls for federal intervention by Dr. Peter Larkin (Dept of Statistics, University of British Columbia but educated at University of Washington Department of Biostatistics, and a player in US fish management issues).

8.3 UW-COFS

The University of Washington had been quite political for a long time. Some of it is just the usual "networking" and petty politics among groups of professors. For example, in the 1970's a group of professors in the Departments of Zoology and Oceanography at University of Washington got such a strangle-hold on one of the major journals (*Limnology and Oceanography*) that scholars all across the country got together and formed a new journal (*Journal of Coastal and Estuarine Marine Science*) so that they, too, could publish.

Of course these networks of professors also sewed-up the funding agencies. For example, Washington Sea Grant is supposed to fund science: that is, they request proposals and then are supposed to select the best and fund them. However, Sea Grant is effectively the property of a group of professors in University of Washington's College of Ocean and Fisheries Science. Quite a few years ago I submitted a proposal to them, but from their comments it was evident that they hadn't even read my proposal. It was a good proposal and I subsequently published the research, but I

had to do the work without funding. I was forced to work for one of the professors who got funding from Sea Grant. He told me that his funding was a forgone conclusion: the proposal process was a fake.

These kinds of abuses have been going on for ages at Universities. The popular perception is that professors in their herring-bone suits are harmless fuddy-duddies. That is naive.

Arthor Connan Doyle (the author of the Sherlock Holmes stories) was a scientist. He knew about academia and he also knew something about human nature. He cast his arch villian, Moriarty, as a professor of mathematics.

Mr Doyle had close ties to Oxford and Cambridge. Oxford University during Mr Doyle's era was a training ground for Fabian socialism and a center controlling international politics. Out of that mill came Lord Alfred Milner who oversaw the Bolshevik Revolution, and Cecil John Rhodes who orchestrated the Boar War and who, together with Lord Milner, formed the Round Tables for the purpose of promoting one-world socialism. Mr. Doyle probably drew some of his material from what he saw around him.

Nor has Oxford entirely changed its tone during more recent years. Out of that same mill came a host of contemporary figures whose names are relatively widely known and are associated with international socialism, espionage, or treason: these include, Guy Burgess, Kim Philby, Donald McClean, and Irwin Sual (Coleman 1994).

This problem isn't just confined to Oxford. It is probably also a problem in many of the leading universities worldwide. Since, at least the 1870's British and American Universities have been targeted for this type of activity.

The professors at Universities may have an innocuous outer appearance, but their position is one of wealth and power. Professors are among the most highly paid of public employees; they make or break the lives of their students; they choose which students will become the leaders in government and science; and, as many issues hang on their expert testimony or scientific research, they have considerable influence over public policy. Theirs is a position of substantial power over individual lives, the course of society, but also one of impunity from the consequences of their actions. That is a position which attracts the worst of mankind and which has been exploited by the internationalist political movement.

So (to use Arthor Connan Doyle's metaphore) if you seek the organizing intellegence which sits at the center of its web and pulls the strands which influence a thousand smaller people and events, you should look not only among corporate board rooms but also among the professors and administrators of the major universities.

The University of Washington is pre-eminent in fisheries sciences. It has trained a large proportion of the fisheries scientists in the US. It is also one of the few US universities which trains biometricians (that is, mathematicians and statisticians who work on biological topics). Thus, from the point of view of fisheries and other natural resource management issues, the University of Washington is a natural focal point. In fisheries it is clearly pre-eminent.

The University of Washington has been involved in politics since the early part of this century and it has been deeply involved in the politics of fisheries and land use at least since the early 1970's. From 1970 through 1974 the University of Washington's School of Law and the Washington Cooperative Fisheries Research Unit in its College of Fisheries were involved in planning the federal government's position in the Boldt case (US versus Washington). In 1977, a fisheries professor, Dixy Lee Ray was elected governor of the state. She came from the atomic physics group in the College of Fisheries.

Towards the end of Governor Ray's term in office, a plan was developed and funds were allocated to form the College of Ocean and Fisheries Sciences (COFS) out of the College of Fisheries, the College of Oceanography, and various other entities. However, that new college wasn't actually formed until September 1981, which was the end of the first year of Governor Spellman's term.

That new college (COFS) has six major units:

1. The School of Oceanography teaches oceanography.
2. The School of Fisheries teaches fisheries biology.
3. The Center for Quantitative Sciences in Fisheries and Forestry. This unit is interdepartmental between Fisheries, Forestry, and Biostatistics but also has ties to various other parts of the university. It teaches fisheries biometry and quantitative ecology. Although this program is central to COFS and it is definitely a functional part of the college, it may not be a part of the college in a strict sense.
4. the Office of Marine Environmental and Resource Programs. This is the Sea Grant Office, a source of federal funding.

5. Marine Affairs was established in 1972 (at the time the Boldt decision was being planned) The UW catalogue says, "It is interested in policy and institutional problems of the ocean. It combines natural science and engineering with law, economics, international affairs and public administration."
6. Applied Physics Laboratory which says it is a research unit concerned with marine technology, but since the time of its establishment in 1943 it has been a military laboratory.

Dean G. Ross Heath was appointed the Dean of COFS. His offices are on the fifth floor of Henderson Hall. That is the Applied Physics Laboratory's building. It is "bomb proof" and has no outside windows on its first four floors, because of its bomb shield. Just inside its the front door you pass by the security desk, although in the late 1980's it was less strict than it used to be. The building housing the Center for Quantitative Sciences is another very secure building.

According to the UW catalogue, in 1993 UW-COFS had 158 faculty members and a budget of \$52 million dollars. That is ten million dollars more than the estimated annual total value of the salmon catch from the Columbia River.

With Dean Heath came central planning and direction. For more than a decade he appears to have had been working toward certain specific objectives. These included using techniques similar to those of the Northwest Renewable Resources Center to create a monopoly in the education and science of natural resource management.

They are in a position to do that because University of Washington's College of Ocean and Fisheries Science and its allied programs are the primary source of fisheries scientists and especially fisheries biometricians in the USA. Therefore, control of the educational process at University of Washington will eventually give them dominance over the government agencies which do fisheries management in this region.

8.3.1 Closed society

In creating this closed scientific community University of Washington's College of Ocean and Fisheries Science

- selected new professors and advanced individuals who wouldn't have much natural allegiance to the American majority: that is, individuals who either recognize themselves as members of minorities, are foreigners, or have a elitist orientation. Many of those individuals are in more than one of these categories. Specifically, during the period from 1980 to 1990 only women, minorities (including especially religious minorities and individuals who marry into minorities, but not including any Negroes), and foreigners were hired as professors in the school of fisheries or advanced to administrative positions.
- placed those people in jobs which are above the level to which they might naturally rise on account of their qualifications. Some of those professors are poorly qualified. That is, they generally had very few or no publications or their publications are of poor quality.
- paid about 50% more than would be normal for those positions. Their salaries are extraordinarily high: for example, one new professor got 68 thousand dollars. This is high enough that it elicited from a UBC professor the question, "Why are they paid so much?". (35-45 thousand dollars would be more usual.)
- fired, somehow displaced, or cowed everyone who aren't a member of their team.

This creates a group of people who will be his willing tools or accomplices. Since about 1991, that group of people have held every position of power in the school: in particular, the director of the department of fisheries and the all heads of each of its divisions.

It is worthwhile to consider a few of these individuals and the people they replaced.

1. Christine Grue was hired to be the head of the US Fish and Wildlife Cooperative Research Unit. David Ford was the head of the hiring committee. When the graduate students strongly objected because the selection procedure didn't appear to consider the academic or scientific ability of the candidates, he stated that that was the case. Christine Grue replaced Gilbert Stickney who had 45 publications of good quality, and Gary Thomas was displaced and dismissed without his qualifications being examined.
2. Robert Francis was hired to be the head of the Fisheries Research Institute. Dr. Gary Thomas said that he had only a single publication when he was hired (personal communication). From that time onwards the professors

curriculum vitas (resumes) were no longer available to the students. Ole Mathisen would probably have gotten that position if a fair selection process had been used. He is a highly respected established scientist.

3. Marsha Lanholdt was appointed to be the director of the department of fisheries (UW). She had worked in the Dean's office for a period of time before her appointment, and she appears in the razor clam issue given in a later chapter. She replaced Robert Stickney who is an established and respected scientist.
4. David Ford was hired to be the head of the center for the quantitative sciences. He is also now the graduate program advisor. He has published a few nice papers as a forestry biometrician but he is primarily an administrator and is politically accomplished. He replaces Douglas G Chapman who is biometrician and statistician of world-wide stature. Dr. Chapman was paid a large sum to retire from his position. Several months later there was a murder attempt on him which left him crippled.
5. Dr. Ken Chew was the only program director who was left in place. He was already a player on their team.

These don't look like highly qualified academics who should be the leaders of academic programs but there were highly qualified people available who were not chosen for those positions.

8.3.2 Academic programs

University of Washington's department of fisheries has also closed some programs and in some cases has later opened new programs which duplicate them. This advances their interests and the new programs were taught by the faculty they choose. To dismiss a tenured professor or to close a program requires a considerable amount of political maneuvering. Each closure or dismissal involved a protracted fight. In at least one case a class-action suit resulted.

One example is the aquatic program in fisheries which was closed. Streamside studies was subsequently opened in forestry. These two programs covered the same topic: in particular, habitat issues and fish-forestry interactions. These changes occurred in the early 1980's and are certainly consistent with the Northwest Renewable Resources Center's plans as they eliminate scientists who might raise embarrassing questions. The Northwest Renewable Resources Center presence in the streamside studies program is quite evident. Terry Williams is a tribal leader, a board member for the Puget Sound Water Quality Authority, and an adjunct professor in that program. Another professor in the Streamside studies program is from Center for Quantitative Sciences and is currently working in the Dean's office.

The Departments of Fisheries and Forestry have had close links for a long time. For example Center for Quantitative Sciences is a joint program. Furthermore, the coalition's concern are both fish and forestry. Another program which was closed in the early 1980's was the wildlife program in Forestry and during the late 1980's the cooperative Fish and Wildlife program in Fisheries was also restructured.

Yet another program which was closed was the fisheries acoustics program. Acoustics provides the single most accurate method for determining the abundance of fish. University of Washington had been the leader in this field, but now that program is entirely eliminated. This is grossly inconsistent with the objective of training good fisheries scientists. It appears that fisheries may open a new acoustics program soon, with different professors.

A different type of change was that they down-graded the fisheries biologist PhD requirements. The new fisheries program has few quantitative requirements. At the same time they created a new program, Quantitative Ecology and Resource Management, which trains biometricians. Quantitative Ecology and Resource Management is given by the Center for Quantitative Sciences, which is closely involved with their activities. That program is closely linked to the biostatistics programs. Previously, individuals who took essentially that program would either get a Fisheries degree or a Biostatistics degree. However, today, their fisheries biologist program doesn't give the mathematical keys which really open the doors to the ability to solve biological problems. This training is only given to a select group, the biometricians. University of Washington is one of the few universities which trains biometricians. Thus, University of Washington gains considerable control over fisheries science.

Their programs have been going on for at least since 1981. Consequently, some of the government agencies in the Northwest are now almost exclusively filled with the people they selected and trained. One example, is the halibut commission which has two biometricians, both graduates of their programs. Another example is Alaska Department of Fish and Game: all hiring of biometricians at Alaska Department of Fish and Game was done by Norma J. Sands.

8.3.3 Control over the scientific press

They have also gained considerable control over several scientific journals. Their influence over the *Northwest Environmental Journal* was discussed in Chapter three; during the late 1980's the Indians also obtained some editorial powers over the journals published by the American Fisheries Society; and of course, *Limnology and Oceanography* still exhibits relatively restricted authorship.

Another journal which they have substantial influence over is *The Canadian Journal of Fisheries and Aquatic Sciences*. I have been repeatedly plagiarized by the referees for that journal. I will give an example of how this is done.

Scientific articles are "peer reviewed": that means that a manuscript which is submitted to the journal to be considered for publication is sent to other scientists in the field to be reviewed. I sent a manuscript to the *Canadian Journal of Fisheries and Aquatic Sciences* on genetic stock identification. It was reviewed by Dr. Pella. He recommended that it not be accepted. However, he obviously liked that manuscript because he later presented my method at a meeting in Vancouver BC. He attributed it to Xu, Kobak, and Smouse. The four of them subsequently submitted a grant proposal to New Jersey Sea Grant to fund the repetition of the research I had done. Although, I was able to get the method published first (Wirgin et al 1993) but Xu, Kobak, and Smouse (1994) published it anyway, claiming its original development. Examination of those two papers will show that both present the same method.

I repeat this example because at every stage of the process there is abundant documentation, so the chain of events can be verified. Thus, the credit for the development of this method was taken from me. That theft of my intellectual property seriously affects my livelihood and professional reputation. This isn't a minor issue. Furthermore, the above incident is only one of five instances of the same type of abuse. It seems likely that similar things have also been done to others besides myself.

The US constitution recognizes the importance of securing to author's and inventors the credit for and proceeds from their writings and inventions. Specifically, the powers of Congress include (Article 1, section 8) "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."

During the process of the above incident, I tried on three occasions to get the police to stop what was transpiring. On each occasion they told me that this is a civil matter not a criminal matter, and they would not investigate it nor take any action to stop what was happening. I then contacted four different legal firms. From each their assessment was essentially the same: that it would cost me approximately \$50,000, and that all I might recover is about \$150,000 after about ten years in court. However, if the other parties could use federal or state lawyers (because of their government employment) then the case would be hopeless despite all the documentary proof. Furthermore, the interstate and international aspects of this greatly increase the expense. Thus, although plagiarism and the theft of intellectual property are crimes, violate the constitutional rights of individuals, and are contrary to the public welfare, in practice there is no legal recourse. They appear to know this as they act blatantly.

By using these and other approaches University of Washington's College of Ocean and Fisheries Science has been largely successful in controlling the scientific journals on natural resource topics. Although it may be surprising that a group could succeed at doing this, one of the reasons for their success is that there are relatively few active scientists in any specific field of study.

In conclusion, the group at University of Washington's College of Ocean and Fisheries Science is actively engaged in creating a monopoly over natural resource biometrics and, thereby, over natural resource science.

8.4 Friends of Ralph Yorque

The Ralph Yorque Room is the lecture hall for the Department of Ecology at the University of British Columbia. To "Ralph and Yorque" is British or Canadian slang for vomiting. The name, Ralph Yorgue, has been used as a pseudonym for various anonymous letters to the editor and short communications in fisheries journals.

If we look at the origin of optimum sustainable yield, which is one of the main defects in the Magnuson Act, we find that much of the research was done in the departments of math and ecology at the University of British Columbia (for example, Clark 1985 and Larkin 1976).

The defect with that method isn't that it is wrong when strictly applied, but that it allows too much latitude when politicians apply it in practice.

Now that the Magnuson Act is up for reauthorization, we see proposals (for example in HR4404) to introduce "risk adverse management". This method is being promoted by the Marine Conservation Network, which includes the National Audubon Society and Greenpeace.

The second R. Yorque Workshop on Resource Management took place in Ashland, OR, on July 23–25. Half of the papers in that publication address risk adverse management.

Just like optimal sustainable yield, risk adverse management is the product of professors from the Department of Ecology at the University of British Columbia and of individuals who have close ties to them.

The University of British Columbia and the College of Ocean and Fisheries Sciences at the University of Washington have close ties. A number of professors at each were trained at the other. As far as I know, all these individuals were originally Americans.

The professors from the University of Washington who were at the workshop are members of the clique who are currently in power there. Greenpeace also appears have some ties to the Department of Ecology at the University of British Columbia: specifically, one of their leaders had been a graduate student there; some of the professors in that department originally came to Canada to avoid the draft, just as the founders of Greenpeace did; and Greenpeace members occasionally came to lectures at the University of Washington and harassed the speakers during the period when the clique who is currently in power were struggling to gain control.

Thus, the Friends of Ralph Yorque appear to be members of the same good-old-boy club or network as I described at the College of Ocean and Fisheries Sciences at the University of Washington. They also appear to have some ties to the environmental groups who are promoting their work.

This is the group who is presenting the research on risk adverse management.

8.5 Risk adverse methods

Risk minimizing methods are Bayesian methods from statistics. Many fisheries biologists are ignorant of these methods and simply call a method "risk adverse" if it is conservative in the sense that it is likely to not give an undesirable outcome. However, among fisheries scientists there is also a group who aren't ignorant of the broader meaning.

A Bayesian method uses a risk function. The risk function could be, for example, the long-term economic loss relative to the optimum. In that case, the "risk adverse" method is to use the optimum sustainable yield.

However, a risk function is a broader concept than economic loss. It isn't restricted to economic value. It can be based on cultural value, aesthetic value, or whatever kind of value tickles your fancy.

When a politician applies this approach in practice, it will soon be found that it is a mandate to do whatever he or she pleases. It would even allow management decisions to be based on Indian tribal customs or new age religious beliefs.

If the problem with optimum sustainable yield was that it wasn't adequately concrete and restricted, this will be worse. This reveals "risk adverse management" as an excellent example of Orwellian double-speak, it is very risky management.

It is important that if the Magnuson Act is re-authorized (which I oppose) that the management objective be tightly limited and as concrete as possible.

Chapter 9

Biology of Salmon

9.1 Characteristic salmon life history

The best available review of salmon biology is by Groot and Margolis (1991). It is a comprehensive review of the scientific literature and is relatively recent.

The characteristic life history for Pacific salmon is that the adults lay their eggs in gravelly stream beds during autumn. The eggs develop over their first winter and hatch the following Spring. At first the young fish are called "alvins". They remain in the gravel, but when they get larger they emerge and usually migrate to a nursery area. The nursery area may be a lake, stream, estuary, or the ocean depending on the stock and species. After a period in the nursery area they again migrate, this time to salt water. This is called the "smolt migration". The smolts of some stocks spend a period in the brackish estuary before going into the sea. Once the smolts are in saltwater, they migrate to their adult feeding grounds. For some stocks that is coastal, whereas others migrate half-way across the North Pacific. The adult fish spend a few months to several years in the ocean. They return to their natal stream to spawn and die.

Most Pacific salmon (sockeye, chum, pink, chinook, and coho) are semelparous. That is, they die after they breed. In contrast steelhead and cutthroat are iteroparous. That is, they can spawn several times.

Pacific salmon are the genus *Onchorhynchus*. There are also two Asian species of Pacific salmon. These are the amago and masu salmon. The spawning distribution of the amago is limited to Japan. The spawning distribution of masu is from Korea and Japan to the Kamchatka Peninsula.

Pacific salmon exhibit considerable stock-to-stock variation in their life histories. For example, although most Sockeye salmon spend at least one year in a nursery lake, the Harrison River (British Columbia) stock migrates directly to saltwater and may spend a year or more in the salt marshes at the Mouth of the Fraser River. The salmon have adapted to a wide range of different environments and exhibit a corresponding variety in their migration patterns and life histories.

Most of the Pacific salmon species include both a sea-run and a landlocked form. The sea-run form is much larger than the corresponding freshwater form of the same age. Both forms generally go by the same name, but the freshwater form of sockeye is called "Kokanee" and the freshwater form of steelhead is called "rainbow trout".

The Pacific salmon species also produce "jacks" and more rarely "jills". These are fish which return to freshwater to breed after less than a year of residence in saltwater. That is they go to sea in the spring and return to breed during the fall of the same year. These fish are very much smaller and have reduced reproductive potential. However, they get through the gillnets so their abundance has been increasing substantially in recent years.

Most Pacific salmon species have genetically controlled juvenile migration patterns. If they are retained in the hatchery until after their normal period of migration is over, they may not migrate to any substantial extent. Hence, it may be possible to produce fish which will remain in the local area. This is currently done with coho in South Puget Sound.

characteristic life histories for Washington's salmon:

Common Name	Sci. Name	Dominant Life Cycle	Juvenile Habitat
Sockeye	<i>Oncorhynchus nerka</i>	4 yr.	lake
Pink	<i>Oncorhynchus garbuscha</i>	2 yr.	ocean
Chum	<i>Oncorhynchus keta</i>	3 or 4 yr.	estuary, shoreline
Chinook	<i>Oncorhynchus tshawytscha</i>	4 yr.	stream, estuary, shoreline
Coho	<i>Oncorhynchus kisutch</i>	3 yr.	streams
Steelhead	<i>Oncorhynchus mykiss</i>	iteroparous	streams, lakes
Cutthroat	<i>Oncorhynchus clarki</i>	iteroparous	streams, lakes

9.2 Pink salmon, humpys

Pink salmon are very widely distributed. In North America they spawn from the Sacramento River in California to the Mackenzie River in Canada on the Arctic Ocean. In Asia they spawn from Northern Korea to the Lena River in the USSR on the Arctic Ocean.

Pink salmon are the most abundant of the salmon species. They make up 40% by weight of the salmon in the North Pacific.

Pink salmon generally spawn in the downstream portions of the river systems or even in the estuaries. After hatching Pink salmon fry migrate directly to the sea. This migration is relatively passive floating. They don't feed until they reach the saltwater.

Pink salmon have a two year life cycle. The odd and even year stocks breeding at the same location have a high degree of separation and are best treated a separate stocks. The stocks which breed on odd numbered years are far more abundant in the region of Washington, but further north, in Alaska, the even year stocks predominate.

The pink salmon diet is primarily the large zooplankton. That is, small fish, pteropods, euphausiids, planktonic amphipods, copepods, and a variety of other small organisms. Hence their flesh has a bright red color.

However, their flesh isn't highly valued. Pink salmon are a low-valued item and are generally sold at a retail price around one dollar a pound. The quality of salmon also deteriorates as they mature. This is because salmon convert most of their body tissue into eggs or sperm before spawning. Hence, by the time salmon are ready to spawn, their flesh is depleted of oils, fats, and much of its protein. As a result it is of poor quality.

Pink salmon are generally netted. The purse seines catch the largest portion of them, gill nets the second largest. However, they can also be caught on hook-and-line.

9.3 Chum salmon, dog salmon

Chum salmon have the widest distribution of the Pacific salmon species. They breed in North America from Monterey, California, to the MacKenzie (Canada) on the Arctic Ocean and in Asia from Korea to the Lena River (USSR) on the Arctic Ocean.

Chum salmon are relatively large fish, second only to chinook salmon.

The freshwater residence of chum salmon is longer than that of the pink salmon. This is partly because they spawn further upstream. However, they are primarily utilizing lowland habitats. They aren't strong jumpers and generally won't pass any difficult barrier in the form of a small waterfall or fast rapid. There are two groups of chum, early (summer) and late (autumn) runs. The early run spawns in main stems of rivers, while the late run often spawns in springs which have warmer winter water temperatures.

Chum salmon fry migrate directly to the ocean after they come out of the gravel in the spring. They feed as they move downstream. They feed primarily on insect larvae.

Juvenile chum salmon reside in estuaries or along shorelines for an extended period. Marsh or eel grass habitats are particularly utilized by them. This appears to be a period of relatively high mortality due to predation. However, the complex habitats they utilize may provide them some protection once they have found a place to occupy. During that period they are primarily benthic feeders (that is they feed on the bottom).

In June or July the juvenile chum salmon move from their shore habitats into shallow waters (on the order of 20 to 40 m depth). At that time they feed on small fish and larger plankton. They tend to select the larger food items.

The chum move offshore during their first winter after hatching. They become widely distributed in the Gulf of Alaska. They feed on pteropods, euphausiids, copepods and other larger planktonic organisms. They mature at

various ages, from 2 to 6 years. They are predominately 3 or 4 year olds. The dominant age varies from year-to-year and from stock-to-stock.

Chum salmon are called "dog salmon" because their flesh was previously used primarily for dog food. It is often not the highest quality. Nevertheless, brights (that is salmon which haven't matured yet) also enter freshwater, and these are of reasonably good quality. Chum would also probably have a higher average quality if they were caught offshore rather than in the terminal areas.

Nevertheless, their roe can obtain a high price. Therefore, it occasionally transpires that fishermen seek mature chum salmon, take the eggs, and discard the carcasses and the males.

9.4 Chinook, king salmon

Chinook salmon is the largest of the Pacific salmon. It receives its common name, "king salmon", from its large size.

Chinook breed in North America from the Sacramento-San Joaquin River System of Central California to Kotzebue Sound in Alaska and in Asia from Japan to the Anadyr River.

King salmon has quite variable life histories. There are two distinct life history types, a "stream type" and an "ocean type".

Generally the stream type spends one or more years in a stream before migrating to saltwater. These fish generally breed far inland at the headwaters of rivers. They characteristically enter freshwater as adults during the spring or early summer. Therefore they are also called "spring chinook". During their marine phase, the spring chinook may migrate long distances. They are found distributed throughout the Alaska gyre.

The ocean type chinook migrate to saltwater during their first year of life. Some of these stocks spend a period in estuaries or shallow water habitat before migrating offshore. During their marine life, the ocean type chinook tend to remain coastal rather than making long migrations. The adults return to freshwater only a few days or weeks before they spawn. They generally spawn in lowland habitat or, at least, not far inland.

Chinook mature in 2 to 6 years. Generally in Washington the largest age class is 4-year-olds, but there are non-negligible numbers of 3 and 5 year olds, as well as jacks (generally two-year-olds).

Chinook are decidedly piscivorous as adults, but they also eat pelagic amphipods and crab megalope larvae. Because of their aggressive predatory habits, chinook are accessible to a hook-and-line fishery.

Chinook, especially the spring-type caught in the terminal areas or fall-type caught either early in the run or offshore, can be a high quality fish product. Hook-caught; immediately bleed, gutted, and iced; and flow fresh to the market a large chinook can have a retail value of several hundred dollars.

In Monterey Bay and Tomales Bay, California, fall-type chinook are raised in net pens in saltwater. They are released at the age they would normally move into open water. Fall chinook generally don't make long ocean migrations and the stocks they raise follow this rule and stay in the general vicinity. This has created a successful commercial and sport fishery in the ocean off Central California. Much the same thing could be done to enhance the fishery off Washington's coast.

9.5 Coho, silver salmon

Coho spawn in North America from Baja California streams to Kotzebue Sound in Alaska. In Asia they spawn from northern Japan to the Anadyr River on the Bering Sea. They are most abundant at the center of their range. In California they may be mainly limited by the availability of cool freshwater habitat during the summer (Crittenden 1978). However, in Washington the problem appears to be mismanagement.

Coho spawn primarily in small streams and the headwaters of river systems. They have the potential to occupy a wide range of small streams and pools which are unused by other Pacific salmon species. They migrate further upstream than pinks or chum but not as far as sockeye or chinook. The juveniles remain in the streams for usually one year. They establish territories in the streams which they actively defend. During that life history phase they often feed on drift insects.

At one year of age they migrate to the ocean where they maintain an essentially coastal distribution. They may establish some schooling behavior during their seaward migration and during marine life. During marine life, they

feed primarily on fish. However, their feeding behavior is partly controlled by availability of prey. They mature and return to breed generally as three-year-olds.

Coho are a favorite sport fish and are readily taken by hook-and-line. Coho may enter streams in either a ripe or not-yet-mature state. Generally early arrivals will take longer to spawn than later arrivals. If properly handled, they can be a high quality product.

Coho are also caught by the commercial troll fleet. However, coho tend to migrate along Canada. As a result there is considerable interception.

9.6 Steelhead and Cutthroat

Steelhead spawn from Central California north through Bristol Bay Alaska and also on the Aleutian Islands. They spawn in gravel in main stems and tributaries.

The juveniles generally remain the freshwater for two or three years (the range being one to four years). They mature after 2 or 3 ocean years. Some return to spawn a second or third time.

In the ocean steelhead appear to make extensive migrations. They feed primarily on fish but also on various crustaceans. They appear to feed near the surface. Adult steelhead may enter rivers during the spawning of other species, to eat their eggs. Therefore, they may be found in freshwater at times and in locations other than where they spawn.

Because these fish are multiple spawners, their flesh doesn't lose its quality as the fish matures, as the Pacific salmon do. Another effect of their being multiple spawners is that their populations are potentially more stable from year-to-year.

Essentially, steelhead live until something kills them. If they survive several years past sexual maturity, they may spawn several times. This stabilizes their population dynamics. Adult mortality rates for steelhead (excepting fish and predation by marine mammals) are relatively small. This is because they are large fish and relatively few things prey upon them.

Marine mammal predation rates are a man-made factor in the sense that the marine mammal protection act has resulted in unnaturally large numbers of them, especially of the California Sea Lion. Historically, Indians, and during more recent times, game wardens, had kept marine mammal populations in check. We need to return to the practice of controlling those predator populations.

Steelhead is not the only sea-run "trout" which has recently been declared a Pacific salmon. The other species is the sea-run cutthroat trout, previously *Salmo clarki clarki* now *Oncorhynchus clarki*. There is a fishery on both these species.

An interesting anomaly is that one landlocked stock of cutthroat obtain oceanic growth rates and sizes. These are in Pyramid Lake, Nevada. However, changes in the plankton community in recent years have ended the ocean-like regime in that lake. Cutthroat growth rates there have returned to normal. The critical difference appears to be that in oceanic systems, the plankton community isn't limited by fish predators. As a result the plankton are much larger and much more abundant. This provides the fish which feed upon them with a rich food supply. The result is that the fish grow rapidly to large sizes.

Sea-run trout whose trouty nature hasn't been questioned include Atlantic salmon (introduced but probably not successfully, *Salmo salar*); Brown trout (which only rarely makes excursions to sea, *Salmo trutta*); and dolly varden, (*Salvelinus malma*).

9.7 Sockeye salmon, red salmon

Sockeye stocks breed from Sacramento River in California to Kotzebue Sound in Alaska. Relatively few sockeye stocks breed in Washington State. Among these is a native stock in Baker Lake (Skagit River System, Whatcom Co.). That stock was used as the source for the introduced stock in Lake Washington (at Seattle, Washington). The endangered Redfish Lake stock (Snake River System, Idaho) is another introduced stock.

The southern-most commercially important stocks were in the Columbia River. There had been eight sockeye producing lakes in that system. However, overfishing by the commercial fishery in the lower river, fishing on the

spawning grounds, and the construction of complete barriers to the spawning grounds have reduced those runs to insignificance (Fulton 1970). Only three of these lakes are producing sockeye today.

Sockeye characteristically are associated with subarctic and arctic waters and live as juveniles in large lakes.

Washington is at the southern limit of the distribution of major sockeye stocks. Washington state is also a transition zone between the subarctic (with its glaciers and large glacial lakes) and the temperate zone (with small lakes). Sockeye are characteristically lake fish as juveniles. Southern British Columbia has many large lakes of glacial origin. Washington State has fewer large lakes. Oregon has relatively few large lakes. Washington State was the southern limit of the polar icecap during the ice ages. This accounts for this marked North-South transition in lake morphology. Consequently, it isn't surprising to find that Washington State is also the southern limit of the distribution of this species which characteristically uses lake habitats. The presence of small populations further south shows that sockeye could survive there if suitable habitat were available.

Historically the Fraser River had the largest sockeye runs. However, today, the runs in Bristol Bay are larger. The stocks in Washington State have declined and those in the Columbia River are severely depressed. These changes are the results of management or mismanagement.

Sockeye salmon feed primarily on small fish, euphausiids, amphipods, and squid. The fish include sand lance, herring, and capelin. They also eat copepods and other small planktonic organisms. Their planktonic diet gives their flesh its bright red color and contributes to its excellent flavor.

Their planktonic feeding habits also make sockeye more difficult to catch on hook-and-line. On the other hand, their schooling behavior makes them relatively easy to net in relatively large numbers. Sockeye are usually caught in gillnets, reef nets, and seines.

Sockeye salmon may migrate far upstream to their spawning grounds. Furthermore, they often reside in the nursery lake for a period, maturing, before they spawn. Consequently, the flesh of sockeye is generally still of high quality when they first enter freshwater.

Most of the commercial catch is canned. Canned sockeye salmon is a high-valued product. As a result, the sockeye fishery is economically the most important commercial salmon fishery on the Pacific Coast of North America.

One of the best studied salmon stocks is the sockeye stock from Chilko Lake, British Columbia. The population dynamics of that sockeye stock appear to be fairly well understood Crittenden (1994 a,b,c).

The Canadians collected 35 years of data on the salmon from that lake. Over those years about 80% of the year-to-year fluctuation in their abundance can be accounted for by biological processes which have been observed in the field. The remaining 20% is probably mostly measurement error. Hence, it appears that we can say that we know what controls that stock.

We can't say as much about our knowledge of any other stock of salmon. Despite the over ten thousand man-years which have been devoted to the study and management of Pacific salmon, little is known about most stocks (Koslow 1992). That is a telling commentary on the quality of our scientific institutions and management agencies.

Chilko Lake sockeye have predominantly a four-year life cycle. Eggs are laid in shallow nests (redds) in gravelly stream beds and along lake shores where there are underwater springs. Eggs are laid in the fall of each year and hatch the following spring. There is a constant probability of survival through the egg stage.

The young fish are called fry. They migrate to a nursery lake, in this case Chilko Lake. During their early fry stage they appear to have habitat limitation in the sense that when there are more than a certain number of fry, their mortality rate increases. The limited habitat may be shallow water habitat or hiding places for the younger fry.

At first, the fry live in protected shallow water habitat, but as they grow larger they move into the lake. There is relatively little mortality during the lake stage of their life history. This may be because predators have difficulty finding them.

The fry can be abundant enough to depress their food supply in the lake. When there are fewer fry there is more food available per fry and they grow to a larger size.

During their second Winter of life, they appear to experience high mortality rates. This mortality is size dependent: that is, smaller fry have higher mortality rates. The smaller fish may be exhausting their stored food supplies before the surface ice breaks up.

Shortly after ice breakup the fry begin their migration to the sea. They gather at the exit of the lake and migrate downstream in very dense schools on only a few days. On a single day millions of fish may migrate.

Predation during their migration is intense. The predators appear to be mainly larger fish which are resident to the lake. The predation appears to occur at the exit to the lake and in the near downstream part of the river. The

predators feed until they are satiated. Therefore, they take a fixed number of smolts each day. Hence, smolts which migrate on days with large runs have a relatively good chance of surviving but smolts which migrate on off-days may have very poor survival. Thus, run size is very important to their survival.

As the fry move downstream their schools gradually disperse. Sockeye, however, remain schooling fish throughout the rest of their lives.

The smolts go directly into saltwater. They mostly swim North up the Straits of Georgia (behind Vancouver Island) and up into the Gulf of Alaska. Then they turn West and travel part way across the North Pacific to where they feed on the rich plankton blooms along the Arctic fronts (those are upwelling zones which bring nutrient rich water to the surface). The sockeye appear to have constant and excellent survival during the saltwater phase of their live history.

They return at age four to breed and die. They are caught as they return as adults.

That is the life-cycle for the Chilko Lake stock of sockeye. Other stocks can have quite different life-history patterns. For example, the Harrison River stock has no freshwater residence. Sockeye have adapted their life histories to local conditions.

9.8 Minor causes for the decline of salmon

The major news media tell us the factors causing the longterm decline of Washington's salmon are habitat loss, pollution, marine mammals, el nino, foreign fishing by high seas drift nets, and for the Columbia River stocks there is a dam passage problem. However, there is reasonable evidence to suggest that the major causes are the ones mentioned in the previous chapters.

One general difficulty is that there has been little attempt made to determine the cause of the decline. A great deal of money is spent on habitat restoration (mostly to citizens groups and non-profit organizations), but effectively no money has been available to identify the causal factors.

Even if there were such a study, would it have any credibility? For example, what would be expected conclusion of a study conducted by the Department of Fish and Wildlife and the University of Washington? Furthermore, such a study would probably use the department's estimates and projections, which are unreliable.

There have been several studies of the overall problem. One generally fits the above description. It was contracted by the Department of Fisheries and Oceans (Canada) to various University of Washington professors. My impression is that this study reached the conclusion which can be expected from the political positions of the party doing the study.

There are also several reviews of the cause of the decline of Columbia and Snake River Salmon. One was The Snake River recovery plan recommendations prepared by Bevan et al. (that is, the Snake River Salmon recovery team). That review didn't cover the scientific literature and it ignores Indian fishing as being part of the overall problem. It primarily was based on the gray literature provided by the state and federal departments and management agencies. Apparently, they only considered the literature which was submitted to them by the parties which are directly affected by the river.

Another review (which I have not seen) was done by Dr. Cada of Oak Ridge National Laboratories. It was commissioned by the Northwest Power Planning Council.

A third review was prepared by Palmisano et al. (1992) and Kaczynski and Palmisano (1992). That study approaches being an independent review. It's weakness is that it unquestioningly uses the department's estimates, which are of doubtful quality. It also uses estimates from other government agencies, which are of similar quality. The reader must, therefore, distinguish what is valid from what isn't.

However, the authors also considered the scientific literature. Although the original scientists may have been biased, this body of literature is probably generally more reliable than the government's estimates. Their review reaches a number of reasonable and useful conclusions. Of all the studies, in my opinion, only this one is worth consideration.

Most of the literature on salmon are devoted to single life-history stages. Demonstration of a factor is limiting during one life-history stage doesn't demonstrate that limiting factor is limiting salmon abundance, because there might be a stronger limitation at some other stage which occurs later in the life-cycle. Thus, there is a gap in our scientific knowledge: specifically, for most stocks we don't know what controls their abundance, only what controls

survival through single stages. Furthermore, it is clear that the controlling factors can differ among stocks (Crittenden 1994b). Hence, ultimately, salmon population dynamics needs to be described stock-by-stock.

Nevertheless, the major factors have such strong effects that it is possible to draw some general conclusions.

9.9 Habitat

For most of the rivers in Washington, there appears to be available unused stream habitat. Hence, stream habitat is not the cause of the decline of the salmon. However, there are exceptions:

- Some rivers have barrier dams: for example, the Cedar River which had been a major spawning area for Lake Washington sockeye. Today there is only a few miles of spawning habitat available because the salmon can't get past the dam.

Other examples are the Toutle and Cowlitz Rivers. Both of these rivers have barrier dams without any fish passage facilities. Furthermore, WDFW hasn't planted fry upstream of those dams. As a result, the wild stocks have been exterminated. This appears to have been a deliberate policy. WDFW now intends to use these watersheds as a hatchery rearing facility for the brood stocks they selected.

Their genetic selection criterion is reported (Friends of the Cowlitz, personal communication, 1995) to have been to reduce the return timing to a narrow window of only a few weeks rather than from early Spring through late Fall as it previously had been. Their selection criterion would benefit commercial fishermen, whereas the natural timing is better for the sport fishermen.

In some parts of the state substantial areas have been closed off to fish as a result of barrier dams. By 1950 only one-half of the original area in the Columbia River Basin remained and by 1977 only one-third (Netboy 1977). The problem is less severe in other parts of the state. In the Puget Sound Basin on about 5% is lost and in the coastal area only about 1% (Palmisano et al. 1993).

Therefore, I conclude that with regard to the Columbia Basin, barriers are a problem. However, with regard to Western Washington they aren't a major factor, with the exception of the Toutle-Cowlitz basin (which is part of the Lower Columbia River Basin).

- Urban rivers and streams are often severely damaged in terms of habitat. For these rivers and streams, runoff from roads and roofs increases the peak flows and often causes these rivers to dig deeper channels in some areas and deposit silt in other areas; many of these rivers may be channelized or put into pipes and culverts; the riparian vegetation may be cut down reducing the shade needed to keep the water cool in the Summer; and the salmon may be disturbed by children and dogs.
- Some rural logged areas have the same problem of increased peak runoff and even of silt and mud getting into the river directly from rain water flowing off logged areas which don't have adequate setbacks from the streams.
- When cattle aren't fenced away from streams, they undeniably destroy habitat. Other farming activities can have similar effects.
- Many estuaries have been modified to provide harbor facilities or wetlands and marshes were diked and drained to provide farmland. In many cases this has completely destroyed the rearing habitat for juvenile chum salmon and juvenile fall chinook salmon.

Hence, it is certainly possible to find areas where habitat has been damaged and it is also possible to find streams (especially in urban and agricultural areas) here habitat loss is a problem. The media document these types of cases.

If spawning habitat limitation were limited, then one would expect to see salmon very abundant in small spots of good habitat with a few salmon forced out into poor habitat. This is certainly not the case for the spawning habitat of Washington's salmon. At least, I've never seen anything like this.

Juvenile sockeye reside in lakes, juvenile coho and stream-type chinook reside in streams, but juvenile pinks and ocean-type go directly to saltwater.

One argument against the limitation of stream habitat for juveniles being the cause of the decline is that all salmon species have declined including sockeye, pinks, chum, and ocean-type chinook. I can see little reason to

suggest that lake habitat for juvenile sockeye or saltwater habitat for juvenile pinks and ocean-type chinook has been as severely reduced as we are told instream habitat is.

It is not so easy to observe habitat limitation for juveniles rearing in streams. The coho and chinook are territorial and are, therefore, not particularly noticeable even when they have filled their habitat. Therefore, scientific study is needed. Also it is necessary to conduct these studies throughout the year to determine which period is critical. For example, habitat may only be limiting at the end of the summer when warming of the water has reduced the amount of habitat that is below their upper temperature tolerance limit (Crittenden 1978).

I have not seen studies demonstrating that habitat limitation is a major factor leading to the decline of Washington's coho and chinook. If these studies existed, the management agencies ought to be holding them up as proof, but they aren't doing that. Hence, I conclude that studies of this type haven't been done, or so few have been done that an overall conclusion can't be reached.

My impression is that spawning habitat limitation isn't the primary cause of the decline and instream juvenile habitat probably isn't either. Also I conclude that these issues haven't been adequately studied. Nevertheless, there are probably a few rivers where these factors may be important. Clearly, barrier dam have affected some stocks, but there are still many undammed rivers.

9.10 Pollution

Pollution can either come from a point-source or a non-point source. These are regulated differently. I have difficulty believing that non-point source pollution is a major cause for the widespread decline of salmon, because a large part of Washington is forested public land: for example, SW Washington is over 75 percent public forest. Furthermore, septic tanks are one of the main non-point source problems but permits have limited the installation of new septic tanks. I suspect that point sources aren't the cause of the decline of salmon either, because point-sources are regulated. These factors may, nevertheless, be important in a few specific locations.

Again there is the problem of the lack of a study to determine the cause of the decline of salmon. In the case of water quality degradation, there is also a lack of comprehensive studies on pollution sources because of the difficulty of having to extract data on point-source pollution from the regulating agencies and the lack of monitoring data. A comprehensive study of water quality would be a major undertaking even for one river system. Such a study wouldn't be justified unless there were a clear indication that pollution is having a serious effect on salmon.

A few rivers have pollution problems: for example, parts of the Chehalis River occasionally have no dissolved oxygen because of industrial or sewage-treatment-plant point-discharge. Furthermore, in a few areas there are toxic material disposal sites: for example, there is a super-fund site near Chehalis.

Point-source discharges are dealt with by state and local governments through permits. This is an administrative quagmire because there are multiply-overlapping jurisdictions. Unfortunately, my impression is that monitoring data is limited. Lacking data, I can only present an impression. My impression is that these point sources aren't a big problem except in a few specific isolated locations. Nevertheless, a discharge which occurred at night or during Winter might go unobserved, but kill that year-class of salmon in the polluted area. This would especially affect the eggs and youngest fish which can't effectively escape the polluted area.

In contrast, funding is available for citizen's groups and non-profit organizations to examine non-point source pollution. Therefore, this is a topic where a lot of information is available.

One of the important water pollution problems in Western Washington is septic tanks. The difficulty with septic tanks is that Western Washington soils are of glacial origin: specifically, mostly either gravel or fine clay. The sewage goes too rapidly through the gravel and the clay is impervious. A second difficulty is that on the valley floors, the water table can be at or close to the surface throughout much of the year. The traditional septic tank and drainage field isn't effective under these conditions. Solutions to this problem are available but there are some difficulties with its regulation.

9.11 Seals and other marine mammals

If marine mammals were the cause of the decline of the salmon, then the salmon stocks in British Columbia would show a similar decline, but they don't. In fact, 1994 is predicted to be a good year for Fraser River sockeye: there

will be a strong Chilko Lake run (TJ Doherty 1994).

Marine mammals are efficient predators and take a fixed number of prey each day if prey are available. This is a “depensatory” source of mortality. A depensatory mortality process is one which causes a higher per capita death rate (of salmon) when the population abundance (of salmon) is low. At high salmon abundance, these factors are generally negligible.

Hence, marine mammals are a legitimate concern for the preservation of severely depleted salmon stocks but marine mammals probably aren’t the cause of the decline.

9.12 Foreign fishing

If drift netting by foreign distant water fleets were the cause of the decline of the salmon, then we should expect the salmon stocks in British Columbia to show a similar decline, but they don’t.

Just as with marine mammal predation, if we want to protect endangered stocks, we should seek to reduce all mortality sources. Therefore, there is some legitimate concern about foreign drift nets, even if they aren’t the cause of the decline.

Canadian and Alaskan interception is a different issue. It was discussed in Chapter Five.

9.13 Columbia River

The first thing to point out is that the decline of the Columbia River stocks isn’t all due to the dams. There has been well-documented overfishing for a long time: for example, commercial fishing around the turn of last century exterminated the mid-Summer run, so that today there are only the Spring and Fall runs.

Columbia River stocks have much the same problems as other Washington salmon stocks. However, they also have several additional problems.

Unlike Western Washington which has lost less than ten percent of its spawning habitat due to barrier dams, the Columbia River Basin has lost about two-thirds of its habitat. This factor doesn’t obtain much publicity, yet it must be a substantial part of the overall problem for that river system.

Another factor is the American shad population in the Lower Columbia River. They are competitors with juvenile salmon and their abundance has increased twenty-fold from 1960 to 1990 (Palmisano et al 1993). Their numbers appear sufficient to have a substantial impact upon the available food supply for juvenile salmon.

Also, there are predators (squaw fish and bass) in the reservoirs. They take a fixed number of the smolts as they migrate downstream. This is a problem because the Columbia River stocks are in poor condition already: that is, this is a depensatory mortality problem. Hence, there are programs to reduce the number of predators and also to transport the smolts to the sea in trucks and barges. I think these programs are reasonable and there isn’t much dispute about these programs among the scientific community although some environmentalists appear to be concerned about it.

The Bonneville Power Administration has also proposed to release water from their dams during the period of smolt migration. This will not necessarily speed the transit of the smolts to the sea. The reason is that the smolts require a certain amount of time to complete smoltification (that is, change their salt-balance systems to be ready to enter saltwater). Hence, they may resist the increased current. They are certainly quite capable of doing that. In one study, king salmon smolts migrated at the same rate in both high and low discharge conditions.

Also in the data presented by Sims and Ossiander (1981) the trends for decreasing travel time for the smolts with increasing river discharge are unduly influenced by a few data points which have both extremely low travel times and very high discharges. If these data are excluded from the analysis, the remaining data would show either no relationship or gradually increasing travel time with increased discharge.

The drawdown of the reservoirs may have diverse effects on the behavior of the smolts and their predators. Smolts have different survival rates for the various dam passage routes: that is whether they go over the top of the dams, through the turbines, or through the fish bypasses. Hence, it is quite possible that there may be an effect from the increased releases. I don’t believe anyone knows what the overall effect will be.

One certain effect of the increased releases will be an increase in our electrical rates. Since rates rarely go down, this may be only an excuse to jack them up. Another effect may be that the drawdown may allow Bonneville Power

Administration to satisfy the courts, Indian nations, and environmental groups that they are doing something.

A third effect will be to decrease the water level in the reservoirs. This may have expensive consequences to the irrigators (farmers) whose pumps are designed to pump water from a relatively constant lake level.

9.14 Recovery Time

Assume that poor hatchery practices and overfishing are the dominant causes of the decline and these are stopped. How long it will take to restore the stocks depends upon whether the decline was due simply to under-escapement or whether it was due to cross-breeding and under-escapement. In the latter case, it will also be affected by how the mortality due to cross-breeding acts.

If the cause was only under-escapement, the stock may be restored in a single generation if escapement goals are achieved. Good hatchery practices (for example by using the new technology) can assist recovery if there aren't enough adult salmon to reach wild escapement goals.

Of course, the escapement goal is (ideally) determined by the amount of available habitat. That is, if overfishing is eliminated as the limiting factor, the salmon population will expand until it is limited by a different factor. In this case, probably habitat. Full restoration to the original natural levels will require restoration of the natural amount of habitat. Thus, habitat restoration becomes of interest once escapement goals can be achieved. It is, therefore, reasonable to restore habitat if overfishing can be eliminated as the controlling factor.

On the otherhand, if the cause is the combination of genetic contamination and overfishing, then recovery may begin 7 to about 20 years after the poor hatchery practices are stopped and the is harvest sufficiently reduced. (assuming fish with a three-year life-cycle and provided that the stock survives). The genetic contamination is an additional mortality source for the wild fish and its effect is delayed. Hence, some stocks may continue to decline for a period after the poor practices have stopped and some may be too contaminated to survive.

For stocks which recover, the best case is that recovery might first be seen seven years after the poor hatchery practices are stopped. This would occur if the mortality rate due to crossbreeding is very high in the hybrids (that is, the first crossed generation). The seven year wait arises because the hatchery fish return in three years and cross-breed. The resulting hybrids don't return three years after that. That is the sixth year. The next year, recovery begins.

However, if hybrids don't have high mortalities because they have a complete wild set of genes (as well as a complete hatchery set), mortality may begin only in the generations following them as the stock's gene pool randomizes. In that case it will take several generations to eliminate the hatchery genes. I have heard six generations as a rule-of-thumb. This seems to apply to a similar case involving Atlantic salmon in the Baltic. That would be roughly 20 years for a three-year life-cycle.

Thus, depending on what is happening, recovery will take 3 to 20 years. My feeling is that the three-year case is reasonably likely for stocks which are not severely depressed. This is because salmon have a natural straying rate of about one-percent. Hence, the wild stocks probably naturally have reasonably high genetic diversity. Therefore, if the cross-breeding due to the hatchery was only moderate for whichever stock is in question, then the increased genetic diversity (and the consequent increased mortality) may not be too high.

The scientific issue here is "genetic load": that is, diversity's cost in increased mortality. There is also a benefit of genetic diversity in the stock's ability to respond to environmental change and to colonize new environments.

Salmon are colonizer species, have colonized the geologically young Pacific Coast, occupy a remarkable range of habitats, and exhibit a wide range of migrational patterns. Their genetic strategy of being a colonizer is what makes their genetics insect-like. This strategy is to have high genetic diversity, high genetic load, and to produce a lot of young per adult. This strategy gives them an insect-like resilience: for example, consider that they have withstood a century of our commercial fishing despite the fact that we know where they must come to breed.

Part II

Elite Planners

Chapter 10

The Weyerhaeusers and Their Company

The Weyerhaeuser's have been prominent figures in Washington state politics for several generations. They appear repeatedly throughout this book.

10.1 The Weyerhaeuser Family

This brief biography is drawn primarily from Charles E Twining's (1985) book *Phil Weyerhaeuser, Lumberman*.

He presents the Weyerhaeusers as being non-political. That is incorrect. As his book was supported by the Forest History Society, it is as self-serving as all paid biographies. It is interesting that the Weyerhaeusers would like us to think of them as non-political. That begs the question: What is it in their politics and history which they wish to hide?

Frederick Weyerhaeuser emigrated to the United States from Germany and settled in Rock Island Illinois in 1856. He was then a teenager and is said not to have had any notable personal wealth. He worked at a saw mill for one year. But the next year he profited from the economic panic of 1857 and became the owner of a saw mill. That economic panic is known to have been caused by Rothschild and was also extensively exploited by JP Morgan and Jacob Schiff.

Frederick developed that mill into a thriving business based on the pine forests of Wisconsin, notably in the Chipewa Valley.

He married Sarah Elizabeth Bloedel. Both Frederick and Sarah had come from the same Rhine River town, Neidersaulheim, Germany. They had seven children. He died in 1914 having accumulated a fortune valued at \$30 million.

As the West was settled, the numerous Weyerhaeusers, their inlaws, and their lumber businesses spread with it. They seem to have worked in concert. Charles Twining (1985) provides a genealogical tree of the family up until 1957. That is helpful in identifying family members when they turn up on various boards and committees.

Regrettably, that family tree doesn't include the current generation. Nevertheless, I have heard from many sources that Governor Gardner is a nephew of George H. Weyerhaeuser (although that remains unverified).

Frederic Weyerhaeuser's eldest son, John Phillip Weyerhaeuser took over the original saw mill. It was his children who eventually ran their operation in Washington State. He hadn't been college educated but his children Frederic and Philip attended Yale University. After that date there is a repeated and close connection between the Weyerhaeusers and Yale.

Anthony Sutton shows that Frederic Weyerhaeuser was a member of skull and bones. He also says that the Weyerhaeusers, specifically, are one of a small group of American big money families which have been members of that order for generations. These families also intermarry within that group to a remarkable degree.

The connection of the Weyerhaeusers to these elite organizations may have began with Frederic and John Philip jr. around the 1920's. George H. Weyerhaeuser is John Philip jr's son.

Nevertheless, we can't rule out that Frederic (senior) and Elizabeth might have been involved in the Illuminati or Skull and Bones in Germany. In that case, their parents or leaders may have sent them to the States, and they didn't meet by chance. That would help to explain Frederic's meteoric rise, for he would have known of Rothschild's

plans or would have been following instructions based on them, and he may have been funded by JP Morgan or some other Rothschild agent.

But whether the Weyerhaeusers have been involved with elite planning organizations for two generations or for five or more generations doesn't make a great deal of difference — they have been involved throughout most of this century. Knowledge of their connection to the elite groups gives a indication of what to expect from them.

During the 1940's and 1950's Weyerhaeuser Company diversified into the housing business and later into international trade. You will also find George H. Weyerhaeuser or his relatives on the board of directors of many other companies in the Northwest, including The Boeing Co.

The Weyerhaeusers are the personification of big money in Washington State. Politically, they generally are found in connection with other old money in the state. Among these are families whose members have been both prominently involved in elite planning organizations on the federal level and which have had Skull and Bones members (some for several generations). These are the Bullitts, who are heirs of the Stimson fortune; the deForests, who are closely related to the Lords; and the Cowles of the Cowles Communication empire.

10.2 Weyerhaeuser Company

In 1899, Weyerhaeuser purchased 1 million acres of forest land in Washington State from Northern Pacific Railroad for \$6.5 million. They then expanded by buying land. Apparently, a large part of that land were originally homesteads. Several local publications on Washington history relate how a citizen would claim acreage under the land donation act and then immediately transfer it to Weyerhaeuser Company Agents in exchange for a small cash payment. There, apparently, was also some pressure on homesteaders to sell out. Those who didn't were sometimes found shot dead on their homestead in the forest. By 1905 the company owned 1.5 million acres valued at \$9.5 million and by 1916 it owned 2,013,404 acres valued at \$28,896,699 (Multinational corporations group, 1975)

Transportation is an important issue for Weyerhaeuser Co. because it was necessary to get their products to the eastern markets. Weyerhaeuser Company has a connection to the railroads since their beginning in Washington State: that is, they are connected to Jacob Schiff and, therefore, to Standard Oil and also the Rothschilds. Who, just as Weyerhaeuser got his start in lumber during the economic panic of 1857, gained control of the railroads as the result of that same panic.

These events were contemporary with the settlement of Washington State. The Stevens treaties which freed Washington state for settlement were signed in 1854 and 1855. Governor Stevens was employed by the Federal Government but, he also was employed by the railway companies to do land surveys. The settlement of the state involved large land grants to the railways — a sector on either side of their rail lines. The railroads developed some of this land and acted as land agents.

Weyerhaeuser got into shipping after the Panama Canal was completed and by the time of second world war, their fleet had sixty ships.

Weyerhaeuser consolidated during the depression (that is, 1929 to the mid 1930's), taking over many of the sawmills, which had previously been relatively autonomous.

The corporation made good profits during both world wars. After world war II the company began to diversify. In 1955, 65% of their profit came from solid wood, but by 1973 that had dropped to 35%. This was also a period of expansion both nationally and internationally. In 1957 Weyerhaeuser was ranked among the top 100 companies world wide in number of employees, sales, and assets. By 1973 it was the largest private owner of timberland both worldwide and in Washington State. In 1973 it was second in sales among timber companies. International Paper sold \$2.31 billion whereas Weyerhaeuser sold \$2.30 billion. It is a large international corporation.

Sometimes, at meetings there are interesting people who confirm that which is suspected. Such was the case with Dr. Michael E Colby. His business card confirmed that Weyerhaeuser is indeed an international company with connections to various political programs and the World Bank. On the front of his card it said, "Michael E. Colby, PhD, Ecology, Economics and Social Systems, 942-2906, Environmental Management, Sustainable Development, Strategic planning, Organizational Development, 2104 N. Quantica St., Arlington, Va. 22205, (703) 241-7518"; while on its back it said, "Michael E. Colby, PhD, Consultant, Strategic Planning Division, Latin America Environmental Director, Southern Africa Country Operations Division, World Bank, 1818 H St. NW, Washington D.C. 20433, Plaistow NH 03865, (603) 382-5717. This circumstantial evidence is sufficient to raise a strong suspicion that these two organizations may be cooperating in the types of programs his card mentions.

10.3 Their Board of Directors: 1975

This section is drawn from (Multinational Corporations Group 1975). That makes this 20 years out of date. Nevertheless, the 1970's was the era when some of the programs that are a concern today were instituted in Washington State, so this information is relevant.

Norton Clapp (born 1906) Son of Weyerhaeuser director (1921-1946) E.P. Clapp and grandson of founder M.G. Norton. He is the largest direct stock owner, holding directly 1.8 million shares in 1975. Chairman (in 1975) of Weyerhaeuser, Halekulani Hotel Inc., and Laird Norton Co.; Director of Weyerhaeuser Real Estate Co., Safeco Co., Seattle First National Bank, Univar Corp., General Insurance Co of America, Metropolitan Building Corp, Pelican Cold Storage, American Management Assn; Trustee of University of Chicago; President of Madina Foundation and Pacific Basin Economic Council.

Carlton Blunt (born 1905) Director of Weyerhaeuser, Weyerhaeuser Real Estate Co., Rand McNally and Co., Acme-Cleveland Corp. Trustee of Northwestern University; Chairman of the board of Trustee of the Evans Scholars Fund; Member of the law firm: Bell, Boyd, Lloyd, Haddad and Burns.

John H. Hauberg (born 1916) Grandson of founder F.C.A. Denkmann. President and director of Pacific Denkmann Co. Director of Weyerhaeuser and Weyerhaeuser Real Estate Co.

E. Bronson Ingram (born 1931) Descendent of the Ingram family. President and director of Ingram Books Co., and Ingram Corp. Vice President and director of Ingram Material Inc., Director of Weyerhaeuser, Weyerhaeuser Real Estate Co, Synercon Corp., and First Trust Co (of St Paul Minn.)

Robert H. Kieckheifer Director of Weyerhaeuser and Weyerhaeuser Real Estate Co. Previously a major owner of Kieckheifer Container Company which had extensive forest lands in the American South East and merged with Weyerhaeuser in 1957.

Otto N. Miller (born 1909) Director of Weyerhaeuser Co, American Petroleum Institute, Crocker Bank, Crocker National Corp., Equitable Life Assurance Society of US; Past chairman of Standard Oil of California.

John M. Musser Son of Weyerhaeuser director C.R. Musser (1919-1950) and grandson of founder Peter M. Musser. Director of Weyerhaeuser, Weyerhaeuser Real Estate Co., St. Paul Companies, First National Bank of St Paul, International Timesharing Corp., Weil-McLain Co.

Robert D. O'Brien (born in 1913) Chairman of the Board of Paccar Inc. Director of Weyerhaeuser, Weyerhaeuser Real Estate Co., Pacific Northwest Bell, Univar Corp., Puget Sound Power and Light, National Association of Manufacturers, Washington Metal Trades, inc.

C. Davis Weyerhaeuser (born 1909) Son of Frederick E. Weyerhaeuser. Graduated from Yale in 1933. Chairman of the Board of Comerco. Inc. and Dawson Co. Vice President and Director of Flightcraft Inc, and Fiduciary Counseling Inc. Director of Weyerhaeuser, Weyerhaeuser Real Estate Co., Arcata National Corp.

George H. Weyerhaeuser (born 1926) Son of Weyerhaeuser director, John Philip Weyerhaeuser (1947-1956). Graduated from Yale in 1948. President of Weyerhaeuser, Weyerhaeuser Real Estate Co., Weyerhaeuser American Corp, Weyerhaeuser International S.A., Weyerhaeuser International Inc. Director of Boeing Co., Puget Sound National Bank, Weyerhaeuser Canadian Ltd, R-W Paper Co., Barlow-Weyerhaeuser Packaging Investments Ltd. Trustee of Weyerhaeuser Co. Foundation and Charles Wright Academy member of the Board of Visitors of University of Puget Sound member of the Board of advisors of University of Washington.

Robert B. Wilson (born 1915) Graduated from Yale in 1938. President of Equity Management Co., Member of Executive Board of Directors, US National Bank of Oregon Director of Weyerhaeuser, Weyerhaeuser Real Estate Co., Burlington Northern Inc., and US Bancorp.

Six of the eleven directors are decedents of the original founding families: that is, the Weyerhaeusers, the Denkmanns, the Norton's, the Laird's, the Ingram's, and the Musser's. In 1939 the Weyerhaeuser family owned 15.4 percent of the company's stock. It is difficult to say how much they own today, although it is obviously significant.

10.4 Interlocking Directorates

The importance of the interlocking directorates should be appreciated. They greatly increase the power of the company. The US Federal Trade Commission says (1951)

A director who is on a board of an industrial company and a financial institution cannot in good conscience encourage the latter to finance expansion of competitors of the former which may jeopardize the former's property; nor can he in good conscience encourage the industry company to obtain credit through other channels. Thus the inherent tendency of interlocking directorates between companies that have dealings with each other as buyers and sellers or that have relations to each other as competitors is to blunt the edge of rivalry between corporations, to seek out ways of compromising opposing interests, and to develop alliances where the interest of one of the corporations is jeopardized by third parties.

Financial institutions interlocking with Weyerhaeuser Company:

Crocker Bank;
 Equitable Life Assurance society of US;
 First National Bank of St. Paul;
 First Trust Co.;
 Puget Sound National Bank;
 Seattle First National Bank;
 US Bancorp;
 US Bank of Oregon;

Corporations interlocking with Weyerhaeuser Company:

American Petroleum Institute;
 Boeing Co.;
 Burlington Northern Inc.;
 F.C.A. Denkmann;
 Ingram Books Co.;
 International Timesharing Corp.;
 Laird Norton Co.;
 Paccar Inc.;
 Puget Sound Power and Light;
 Rand McNally and Co.;
 Stantard Oil of California;
 Synercon Corp.;
 Univar Corp.;
 US West = Pacific Norwest Bell;

Universities interlocking with Weyerhaeuser Company:

Northwestern University;
 University of Chicago;
 University of Puget Sound;
 University of Washington;
 Yale: (Three of the directors are Yale graduates);

Chapter 11

The Washington Roundtable

The Trilateral Commission's triangle paper number 8, in 1975, had found that America had too much liberty. It recommended that in order to regain control over the United States, the commissioners should form coalitions between businesses, citizen's groups, and government to provide leadership in the planning of public policy.

George Weyerhaeuser is a commissioner. Since at least the 1960's he was deeply involved in politics both at the state, national, and international levels. However, he didn't immediately found a formal institution to provide leadership in Washington State. At that time, Washington State's Governor was another trilateralist, Dan Evans and the following governor, Dixy Lee Ray (term 1977-1981), implemented the Commission's energy policies.

Hence, the need for a planning organization may have been met by the political organizations behind these governors and by the state administrations. An elite planning organization wasn't founded until Governor Spellman's term. Specifically, in 1983, George Weyerhaeuser founded The Washington Roundtable.

It is of no importance whether he was implementing the Trilateral Commission's policy or was simply applying a method which they developed. The important thing is that here is an elite leadership organization which has the structure described in Triangle Paper Number Eight and which is active in Washington State. Their policies also seem to be fully in accord with the policies developed by the Trilateral Commission and to be coordinated with federal policies.

11.1 Earlier Socialist Activity in Washington State

The Washington Roundtable's name is reminiscent of the semi-secret Roundtable organizations founded by Rhodes and Milner just after the turn of the century. It seems likely that there had been one of those Roundtables in Washington State.

The parties which were generally represented by the Rhodes-Milner Roundtables are present in Washington State. There is also abundant evidence of the influence of those interest groups. For example, the following provide prominent parts of the state's early history: the railroads, timber barons, the opium trade, during prohibition the alcohol trade, Eastern Establishment money, intrusive federal influence in the settling of the state for the benefit of these same big businesses, socialist politics.

Also during the early part of this century, when the Rhodes-Milner roundtables were most active in promoting Fabian socialism, Washington State was a hotbed of socialist and communist activity. Some of Washington's cities formally constituted themselves as "soviets". Washington State became so infamous for communism that the Postmaster General under Franklin D. Roosevelt referred to the United States as "the 48 states and the Soviet of Washington".

The communist activities in Washington State were more than just words. For example, one violent incident took place in Centralia. A group of Wobblies (Workers of the World) blew up that city's armory, thereby, killing several people. The citizens captured the culprits while they were trying to make their escape. Their captors would have given them swift justice had the city police not intervened. The Wobblies were jailed. Nevertheless, a group of individuals broke into the jail that night and hung the culprits. The police seem to have been absent at the time

of the break-in and hanging. There was never any prosecution of the individuals involved, so it is impossible to tell whether that was a cover-up or a group of citizens who had little faith in the court system.

The above examples illustrate the state of affairs in Washington State during the early part of this century. It appears that most of the citizens had a sense of community but that there was an activist minority which promoted the communist ideology. Given that individuals in the Rhodes-Milner organizations were behind world socialism; it is reasonable to suppose that the local barons of industry may have been also — if not them, who else would have been?

Washington Roundtable's name is suggestive. Regardless of whether the Washington Roundtable is analogous or homologous to the older Roundtables, its name provides a good description of their ideology and composition.

11.2 Composition

Corporations Listed by Contribution to the leadership of the Roundtable

Corporation	man years	executive
The Boeing Co.	20	
Seafirst	18	vice chair,
Puget Power and Light.	16	vice chair, sect.
Fluke	16	
Weyerhaeuser Co.	16	
Washington Energy Co.	15	
Simpson timber	14	chair
Skinner Corp.	14	vice chair
Burlington	14	
Cowles Publ or		
Inland Empire Paper	14	chair
Paccar Inc.	14	chair
Milliam Robertson	14	
Longview Fiber	13	
Continental Inc.	13	

Adding up the man-years for the companies which had interlocking directorates with Weyerhaeuser Company in 1974 gives an overwhelming 80 man-years. I believe that is adequate to identify the group which the Roundtable of Washington represents: that is, those companies which interlock with Weyerhaeuser Company.

However, Weyerhaeuser isn't the only large international corporation represented here. Boeing and Seafirst are also members of that class. Hence, there may be companies which interlock with these latter two international corporations but not with Weyerhaeuser Co.

Anthony Sutton (1986) says that the Weyerhaeuser family has Skull and Bones members. That implies membership in a social circle which tends to work for their own mutual benefit. Other powerful families in Washington State with Skull and Bones members include the Bullit, DeForest, and Cowles families. When the companies directed by these families and the Weyerhaeuser family are combined with the companies which interlock with Weyerhaeuser Company, more than half of the leadership of the Washington Roundtable is accounted for.

The remaining companies, which aren't obviously interlocked with Weyerhaeuser Company, are Fluke, Washington Energy Co. Simpson Timber, Milliam Robertson, Longview Fiber, and Continental Inc. These remaining companies all represent old big-money families from this state; except Fluke and Milliam Robertson, which I don't know much about. Thus, the Roundtable of Washington appears to represent the interests primarily of one clique of people and their companies.

A large number of other corporations also participated in the Roundtable for a short period of time. Their short participation indicates that the Washington Roundtable doesn't have the broad support which it at first appears to have. Presumably, the other companies would have remained in the Roundtable longer if they had felt that it advanced their interests rather than the interests of a narrow group of corporations.

Notwithstanding its relatively narrow base, the principle companies represented in the Washington Roundtable are sufficiently powerful to strongly influence state politics.

Year	yrs	95	94	93	92	91	90	89	88	87	86	85	84	83
John McGregor	3											X	X	X
John A. McMillen	4	X	X	X	X									
Robert B. McMillen	7	X	X	X	X	X	X	X						
Jack C. McRae	1								D					
Neil McReynolds	1								D					
Stanley F. Moeschl	2					X	X							
Harry Mullikin	7							X	X	X	X	X	X	X
Michael K. Murphy	2								X	X				
Sally G. Narodick	1								D					
Paul T. Nolan	2								X	X				
Raymond A. Norwood	1								D					
Robert D. O'Brien	11			X	X	X	X	X	X	X	X	X	X	X
Dennis I. Okomoto	2	X	X											
Thomas H. O'Leary	8	X	X	X	X	X	X	X	D					
Frank C. Partin	1								D					
William G. Parxybok jr.	4	X	X	X	X									
Louis H. Pepper	4					X	X	X	X					
Joseph R. Piedmont	1								D					
W. W. Philip	11			X	X	X	S	X	X	X	X	X	X	X
Charles M. Pigott	13	C	C	X	X	X	X	X	X	X	X	X	X	X
Paul A. Redmond	10	X	X	X	X	X	X	X	X	X	X	X	X	X
Wm. G. Reed jr.	13	X	X	X	X	X	C	X	X	X	X	X	X	X
John V. Rindlaub	2	X	X											
Lee D. Roberts	2	X	X											
Charles Robinson	3			X	X				D					
William D. Ruckelshaus	3								X	X	X			
George F. Russell jr.	2	X	X											
Bruce B. Samson	1							X						
Wendell J. Sartre	3											X	X	X
George E. Schwartz	1								D					
Frank A. Shrontz	8	X	X	VC	VC	X	X	X	X					
W. Hunter Simpson	3											X	X	X
D. E. Skinner	3											X	X	X
Paul W. Skinner	10	VC	VC	X	X	X	X	X	X	X	X			
Richard R. Sonstelie	2	X	X											
Andrew V. Smith	6								X	X	X	X	X	X
Philip H. Stanton	2			X	X									
Donald R. Stenquist	1									X				
Samuel N. Stroum	3											X	X	X
Daniel J. Sullivan	1								D					
James A. Thorpe	11			X	X	X	X	X	X	X	X	X	X	X
R. M. Trafton	3											X	X	X
G. Robert Truex jr.	5									X	C	X	X	X
D.G. Vandenheuvel	1								D					

Year	yrs	95	94	93	92	91	90	89	88	87	86	85	84	83
Raymond J. Vecci	2			X	X									
George L. Walker	3			X	X				D					
George Weyerhaeuser	13	X	X	X	X	X	X	X	X	X	X	X	X	X
William R. Wiley	6	X	X	X	X	X	X							
Luke G. Williams	11			X	X	X	X	X	X	X	X	X	X	X
Walter B. Williams	13	X	X	X	X	X	X	X	X	X	X	X	X	X
T. A. Wilson	11			X	X	X	X	X	X	X	X	X	X	X
R.P. Wollenberg	13	X	X	X	X	X	X	X	X	X	X	X	X	X
Howard S. Wright	5									X	X	X	X	X
Lewis J. Zirkle	1									X				

11.4 Biographical Information

Anthony W. Armstrong Vice president, revenue requirements, General Telephone Company of the Northwest.

Gilbert W. Anderson Roundtable member, Physio-Control Corp.

M. Lamont Bean Chairman of the Board of Pay 'n Save Corp.

Carl G. Behnke President ALPAC also associated with Skinner Corp.

James W. Bernard President and CEO of Univar (1994).

Frank A. Blethen Chairman, President, and CEO of the Seattle Times (1994).

Richard M. Bressler Chairman of the Board, Burlington Northern Inc. (1988).

S. Fred Bruhn Corporate General Council for Safeco Corp.

Phillis J. Campbell President and CEO of US Bank of Washington (1994).

Edward E. Carlson Chairman Emeritus of UAL inc.

David A. Clack Clack and Co.

Robert S. Cline Chairman and CEO of Airborne Express (1994).

Forrest G. Coffey Vice President, Government Affairs, The Boeing company.

Richard P. Cooley Chairman of the Board of Seafirst Bank Corp (1990).

W. H. Cowles 3rd President of Cowles Publishing Co. (1994)

James C. Cowles Chairman of the Inland Empire Paper Company (1988).

John W. Creighton jr CEO and President of Weyerhaeuser Company (1990's)

James A Curtis Chairman and CEO (retired) of Milliam and Robertson Inc (1994).

Robert J. DiNicola Chairman and CEO of The Bon Marche (1994)

Elizabeth A. Edwards Vice President and General Manager of GTE Northwest Inc. (1994)

Roger H. Eigsti President and CEO of Safeco corp. (1994)

James R. Ellis Partner in Preston, Thorgrimson, Ellis, and Holman.

John W. Ellis Chairman of the Board of Puget Power and Light.

Daniel J. Evans citizen member, ex-governor, ex-senator

Wilber J. Fix Chairman and CEO of The Bon Marche (1992).

John M Fluke jr. Chairman of Fluke Capitol Management L.P.

Fielding Formway Vice President — Mfg. NW, ARCO Products Company (1992).

William H. Gates Chairman and CEO of Microsoft Corp.

John C. Getzelman Chairman and CEO of Security Pacific Bank of Washington (1992).

A. M. Gleason PacifiCorp.

Joshua Green 3rd Chairman and CEO, US Bank (1992).

Michael R. Hallman President of Microsoft (1992).

Bert H. Hambleton President of Associated Grocers Inc.

Tod R. Hamachek President and CEO of Penwest Ltd.

Luke S. Helms Chairman, Seafirst Bank (1992).

Robert M. Hellsell President of Wilder Construction Company, earlier with Wright Schuchart Inc.

Walter C. Howe jr. Vice President for Government Affairs, Weyerhaeuser Company.

- Randy C. James** Executive Vice President and manager of the Commercial Markets Group of Seafirst Bank Corp (1988).
- James A. Johnson** Senior Vice President, Public Affairs, Alaska Airlines (1988).
- Bruce R. Kennedy** Chairman of the Board of Alaska Airlines (1988).
- Kerry K. Killinger** President, Chairman, and CEO of Washington Mutual Savings Bank (1994).
- Ronald J. Kirakofe** Refinery manager, ARCO Products Company (1994).
- William R. Kopp** Vice president of Sundstrand Aerospace.
- Bruce A. Koppe** Senior Vice President and General Council for Rainier Bancorp. (1988).
- Joseph L. Leitzinger** Vice President of Public Affairs, Simpson timber.
- Frederic T. Lhamon** Consulting actuary associate with Milliman and Robertson Inc.
- Charles B. Liekweg** Vice President and general manager of GTE Northwest Inc. (1992).
- Roy C. Liljebeck** Executive Vice President of Airborne Express. (1988)
- Larry Magnan** Weston Hotels and Resorts.
- Bruce Maines** President of SAFECO corp.
- John D. Mangels** Chairman of the Board of Rainier Bancorp. (1988), later with Security Pacific Bank.
- Carroll Martenson** Chairman and CEO of Criton Corp.
- Craig O. McCaw** CEO McCaw Cellular Communications.
- John McGregor** President of McGregor Land and Livestock Co.
- John A. McMillen** Co-Chairman of the Board of Nordstroms (1994)
- Robert B. McMillen** President and CEO of Totam Ocean Trailer Express (1994).
- Jack C. McRae** Director of Public Affairs, Paccar Inc.
- Neil McReynolds** Senior Vice President of Puget Power and Light Company (1988).
- Stanley F. Moeschl** Sundstrand Data Control.
- Harry Mullikin** Chairman of the Board of Weston Hotels and Resorts.
- Michael K. Murphy** President, Central Pre-Mix Concrete Company.
- Sally G. Narodick** citizen member.
- Paul T. Nolan** President, General Telephone Company of the Northwest.
- Raymond A. Norwood** Senior Vice President for Public Affairs, the Washington Energy Company.
- Robert D. O'Brien** Chairman of the Board of Univar Corp.
- Dennis I. Okomoto** Vice President for Washington, US West Communications (1994)
- Thomas H. O'Leary** Chairman and CEO of Burlington Resources Inc. (1994)
- Frank C. Partin** Industry and Public Affairs manager for the John Fluke Manufacturing Company.
- William G. Parxybok jr.** Chairman and CEO of Fluke Corporation (1994).
- Louis H. Pepper** Chairman, Washington Mutual Savings Bank (1992).
- Joseph R. Piedmont** Vice President Public Relations and Public Affairs, Washington Water Power Company.
- W. W. Philip** Chairman of the Board of Puget Sound Bank Corp. (1992).
- Charles M. Pigott** Chairman of the board and CEO of PACCAR (1994)
- Paul A. Redmond** Chairman and CEO of The Washington (1994) Water Power Company.
- Wm. G. Reed jr.** Chairman of Simpson Investment Company (1994).
- John V. Rindlaub** Chairman and CEO of Seafirst Bank (1994).
- Lee D. Roberts** General manager — Northwest, IBM (1994).
- Charles Robinson** President, Pacific Telecom Inc. (1992).
- William D. Ruckelshaus** Director of the EPA, member of Perkins, Coie, Stone, Olsen, and Williams (this firm should be regarded as a red flag indicating a political player on the side of big money, Trilateralism, etc.)
- George F. Russell jr.** Chairman and CEO of the Frank Russell Co.
- Bruce B. Samson** US West Communications.
- Wendell J. Sartre** Chairman and CEO of Washington Energy Company.
- George E. Schwartz**
- Frank A. Shrontz** Chairman and CEO of Boeing Company (1994).
- W. Hunter Simpson** President and CEO of Physio Control Corp.

D. E. Skinner President, Skinner Corp.

Paul W. Skinner Vice President of Skinner Corp.

Richard R. Sonsteli President and CEO of Puget Sound Power and Light Company (1994).

Andrew V. Smith President, US West — Bell.

Philip H. Stanton Chairman of the Board of Washington Trust Bank (1992).

Donald R. Stenquist President, Criton Corp.

Samuel N. Stroum Chairman of the Board of Schuck's Auto Supply Inc.

Daniel J. Sullivan Director of public relations and community affairs of Sundstrand Aerospace.

James A. Thorpe Chairman of the Board and CEO of Washington Energy Company (1992).

R. M. Trafton Chairman and CEO of Safeco Corp.

G. Robert Truex jr. Chairman, Rainier Bancorp.

D.G. Vandenheuvel Executive Vice President of Puget Sound Bancorp.

Raymond J. Vecchi Chairman, CEO, and President of Alaska Airlines (1992). Earlier Vice President for Washington and Idaho of PNW Bell.

George L. Walker Vice President and CEO for Washington of US West communications (1992).

George Weyerhaeuser Chairman and CEO of Weyerhaeuser Company (1992).

William R. Wiley Senior Vice President and director of Battelle Pacific Northwest Division .

Luke G. Williams Williams investment Co.

Walter B. Williams Chairman of Continental Incorporated .

T. A. Wilson Chairman of the Board and CEO of The Boeing Company

R.P. Wollenberg Chairman and President of Longview Fibre Company.

Howard S. Wright Chairman, Wright Construction Co.

Lewis J. Zirkle President of Key Tronic Corp.

11.5 Outcome Based Education

The federal "goals 2000" program (also known as "outcome based education", OBE) attempts to use the K-12 system throughout the US to mold the public according to the objectives they prefer.

Examination of the goals set by that federal program leaves little doubt about the nature of this program. It isn't directed at improving the quality of education. The goals aren't proficiency in reading, writing, and arithmetic. The goals are things like, a sense of self-worth, understanding of environmentalism, avoidance of punishment, willingness to accept changing social values, . . .

The teaching method is based on the stimulus-response research of Pavlov. It is as follows:

Definition: a "basic unit" may be an individual as a unit of society; or it may be a child in a school; or it may be a regional council, a municipal government, . . .

1. A predetermined goal is established;
2. A test is designed so that "success" of "failure" in reaching the goal can be determined;
3. Data is collected on how the basic unit responds to programs.
4. A program is developed to achieve the mission of getting the basic unit to the goal;
5. The program is implemented.
6. At the end of the program a test is conducted to determine if the goal was reached;
7. Steps three to seven are repeated until the goal is reached.

The process is repeated indefinitely until either the goals are achieved or the basic unit leaves the system. For a student that means that he or she must achieve all the goals in order to graduate.

The OBE approach to education is one of psychological manipulation. It is a sophisticated integrated system for moral persuasion and represents more than a century of research.

Within the Pavlovian stimulus-response framework, The schools use a number of state-of-the-art psychological techniques. The student is directly involved in the goal-setting process so that he or she feels that he or she choose the goals and, thereby, have a measure of control over his or her own life. However, in fact, someone else sets the goals. The teacher's job is to manipulate the student until he or she chooses those externally determined goals.

For this purpose they use essentially two methods: 1) control the information which the student has access to, based on which the student makes decisions; and 2) use the Socratic system: that is provide the student with a series of choices which lead the student to the preselected goal.

The schools accumulate comprehensive files for each student. One thing these files contain are the results of psychological tests and evaluations for the purpose of determining the student's motivational structure: that is, they wish to determine how the student makes decisions.

Psychiatric researchers have developed several systems for categorizing people according to their motivational structure. One such system is the Meyers-Briggs Temperament Test. In that system, the individual is one of 81 different types. That system has four variables and for each variable there are three possible categories, a first type, a second type, or in between. For example, an individual may be an introvert, an extrovert, or in between. I know that the Meyers-Briggs Temperament Test has been widely used in education. Specifically it was used in California for more than 20 years and I know someone who was studying its application in Washington State during 1985. However, there are also several alternatives systems for categorizing a person's motivational type.

There are also categorization systems based on learning types. When I taught at the University of British Columbia, they provided a brief training program which introduced us to these types and how to teach for each learning type. For example, some people want to be taught the underlying theory and then to be left to develop the application themselves; whereas other people are intolerant of theory and want to be taught the application. I was condemned to teach nursing students, who are mostly the latter type — That was an startling introduction to the differences in human psychology.

The comprehensive files on any individual student contain data allowing the student to be categorized by motivational type, learning type, . . . , depending on which categorization system used. These comprehensive files also include monitoring data on the student's progress. This gives the individual student's present status and also provides information on what choices the individual student made in practice.

When computers are extensively used in the teaching process, psychological evaluations and education may be indistinguishable: The computer provides the student with information and then asks him or her to make a choice. That could serve as both education and as a psychological evaluation.

Armed with knowledge on a student's motivational type the teacher, counselor, or even potentially the computer, selects an educational pathway for the individual student. This pathway has two features: first, it leads only to the set of predetermined goals; and second, it provides the student with a number of choices. This is where the Socratic method comes in. The art is to design the set of choices so that the student arrives at the predetermined goal. The choices the student is given aren't open choices. If the program fails to reach the predetermined goal, they try again.

The educational system may also be able to control, to some degree, the information a student receives. The control of the public through the control of information is referred to as "cybernetics". There has been substantial study of these techniques and there is a voluminous literature on it. It is probably relatively easy to do in the school environment.

As the OBE system attempts to determine the student's motivational structure, control the information he or she receives, and control the choices the student is presented with; it is reasonable successful at delivering the students to the predetermined goals. As many students are deceived into believing that they selected those goals themselves, those students may be happy with what they became. That is the objective, to mold students to a set of predetermined goals and to make them happy about it.

Olympia Highschool uses OBE. During 1995, I met graduates from Olympia Highschool who were incapable of doing simple arithmetic: in particular, dividing by two. These were healthy individuals from middleclass families, but they were incompetent. Nevertheless, they felt good about themselves.

Parents need to vote for a officials who will oppose OBE. In Washington State, the local school boards also have the power to stop OBE in the local districts. If both of these fail, there are excellent resources for homebased education. That alternative would effectively return us to the conditions before the General Education Board, but the educational level of the general public was better before universal public education than it is today under OBE.

11.6 Outcome Based Education in the Soviet Union

The “progressive” educational techniques developed by John Dewey and his associates, were tried in the United States early this century but were soundly rejected. Nevertheless, the Soviet Union adopted them — with predictable effects. This course of events is well described by K.T. Heaton (1993):

Augustin Rudd, long time head of the Sons of the American Revolution, also headed an early group of concerned citizens, formed to protest the “Building of America” (Rugg) series of textbooks which were placed in American schools in the 30s. In his book, *Bending the Twig* (1940), which resulted from the research he did to prepare a case against the Rugg texts, Rudd documented Soviet manipulation of education after the coups in Russia.

According to Rudd, Soviet interventions in education included destruction of the former methods of instruction, and replacement of them by “progressive education” (Spawned in the United States by communist sympathizer John Dewey and his coterie of fellow socialists at Columbia University). The result was a generation of Soviet youth which, when they left school, could not read, write, or cipher. Juvenile delinquency became a major problem in the Soviet Union, and there were bands of non-productive young people roaming the steppes, robbing, looting and using violence against any who got in their way.

After that generation of Russian children had been thoroughly perverted by this program, the Soviet schools were returned to “traditional education” — but now they were completely controlled by the State — not, as before the revolution, designed to produce individuals who think for themselves. They now produced the vaunted “Soviet man”.

As Soviet schools became models for production-line indoctrination, American educators (some of them trained in Moscow) began to direct American schools into the system which had proven capability for destroying national culture and heritage, through conditioning the minds of the children. . . . The mind control techniques of Pavlov, made more effective through the use of computers, were now ready to turn American children into compliant “citizens for the 21st century”.

11.7 Roundtable Education Program

The Roundtable of Washington has consistently had a study group on public education. They have produced a series of reports, which can be found listed under “Roundtable of Washington” as Author.

Their study group in 1985 is a familiar cast of characters: Wollenberg, James P. Cowles, James R. Ellis, John Fluke, Robert O’Brien, and W. Hunter Simpson. In 1987 we see: Wollenberg, Anderson, R.P. Cooley, W.H. Cowles III, and James Ellis. The chair of the working group is Joe Taller. He is an ex-chair of the Nature Conservancy of Washington’s and is Boeing’s Director for Public and Community Affairs.

The perspective of the Roundtable’s study on education is that the citizens of the state are their labor pool. The Roundtable wants to create a close link between big business and the education of their labor pool.

The OBE system requires that someone set its goals. The Roundtable study is primarily concerned with setting the goals for secondary school education in Washington State. One of the programs they examined and praised, in particular, was the Olympia Highschool. It is quite possible that those incompetent young people I spoke about above were precisely what the High School’s program was intended to produce.

The Roundtable’s reports on education suggest greater state control of the educational programs, modification the school’s administrative structure so that it more effectively concentrates authority; team teaching, which would prevent individual teachers from pursuing their own objectives; and a mentor system, which would help assure the compliance of new teachers. They also recommend state licensing of day care operators and education as a life-long process with refresher courses. They generally promote teaching reading, writing, arithmetic, and science. However, they state that basic math courses aren’t suitable for the needs of students who won’t continue to college. They also promote group activities including group composition of written reports. They justify this by saying that they wish to promote cooperate works and that they wish to redefine the social concept of “cheating”.

Not all schools in Washington State follow their program. However, those that do have created the preceptorial system which Hegel and Marx dreamed of. Under this system, the youth of the state are molded to the specifications of a self-appointed elite. In this state, in practice, that elite appears to be the Roundtable.

The Roundtable's reports are reminiscent of a state document from the Evans Administration which gives his administration's longterm view. It said that the workers in the state could expect to enter big business possibly in apprenticeship programs and to advance through several job categories during their lives. It went on to say that they might also change spouses at these job category and life styles changes. This is a view of an authoritarian government in which a big business elite governs and molds a labor pool composed of individuals who are compliant and have liberal moral standards. A virtually identical view was also enunciated in Zbigniew Brzezinski's book *The technronic era* which was published contemporary with the Evan's Administration.

Mr. Brzezinski was confounder of the Trilateral Commission; Governor Evans is a member of that commission; and so is George Weyerhaeuser, who was the founder of the Roundtable of Washington. The other confounder of the Trilateral commission was John D. Rockefeller and it was his father who founded the universities, departments, and agencies where OBE and its predecessors were developed, and who founded the General Education Board which created universal public education and promoted the use of "progressive education" nationwide.

11.8 Big Brother's Computer: The Department of Information Services

The comprehensive files in the educational system appear to be part of a nation-wide database. Furthermore, they track the individual students not only throughout his or her education, but may potentially follow them throughout their lives.

At various times, the students are given tests which ask for information about themselves and also about their families. If this program were followed in all school districts throughout the country, the comprehensive files would include data on almost the entire US population.

The educational files used in OBE may become merged with other existing comprehensive databases maintained by this state's government. This includes employment and social insurance records from the Department of Labor and Industries and the Social Security System; tax and income information from both the state government and the Internal Revenue Service, psychiatric and health records currently maintained by the Department of Social and Health Services for all individuals receiving assistance (that would have been extended to all individuals under the State and National Health Care Programs proposed during 1994), law enforcement records, and any licensing records.

During 1989, under the Governor Gardner's administration, the Department of Information Services was mandated to develop a single integrated state computer system which would house a comprehensive data base. That system was effectively in place by 1994, although not all the types of databases were yet incorporated.

Personal psychiatric records were among the databases which were in their system by 1994. Those files could be accessed by all the law enforcement agencies, crisis clinics, the Department of Social and Health Services, and presumably some other state agencies. Elizabeth Gallagher (1995) expressed concern that personal psychiatric records in the state system are available to a very wide range on individuals throughout the state. Even emergency service centers, crisis clinics, and the like could become logged into that system (thereby, compromising the confidentiality of personal files) and that there was no also means for correcting erroneous information in those files. She told me (Personal Communication, 1995) that since that time the latter defect has been corrected. However, her article alerted me to the existence of the Department of Information Services.

The sunset act places that department up for review and possible termination during the 1996 legislative session. Recognizing their vulnerability, a bill was introduced, during the 1995 session, to privatize the Department of Information Services together with the state's comprehensive computer system and data bases. That would place them outside of legislative oversight and would have created a state-authorized monopoly over these databases and information services.

They would also have been allowed to contract services to the private sector. Thus, their comprehensive database might become officially accessible to a very wide range of people and businesses but would be less subject to public control. Fortunately that bill failed.

Nevertheless, the sunset review of the Department of Information Services provides the 1995 legislature an opportunity to investigate their program and to fail to renew it.

11.9 Higher Education

The secondary education system produces some students who are college-bound. All the indications are that students are selected for this path and channeled into it if they show a predisposition for elitism. This has been the state of affairs since, at least the early 1970's in some school districts. This process has now filled many of the positions in education and in government with the products of their programs.

I know that the same approach to education is also applied in some departments in higher education. Who determines their goals? Probably someone either in the internationalist funded educational programs working in collaboration with a local elite planning organization.

We know that since the 1870's there has been a deliberate program to use the higher education system in the United States to "prepare the public mind for the broad changes which, in their view, must be effected if social peace is to be preserved." We also know that one of their programs has been in place at the University of Washington for almost a century. During the 1980's I witnessed the final take-over of one department at that University. It seems likely that today, in the 1990's, their programs have probably expanded to cover most departments in the University of Washington and probably also many departments in other universities and colleges throughout this state.

Historically, they have concentrated their efforts on certain fields: These are education, psychology, statistics, ecology, business, international relations, and medicine. There are also some programs which are directly involved such as community planning.

The vehicle which they most often use to initiate and drive the takeover of departments is heavy funding. The departments at the University of Washington which have received heavy grants from the Federal Government and big business are the School of Medicine, the College of Ocean and Fisheries Sciences, the Jackson Institute of International Studies, the School of Forestry, and no doubt others.

It should be clear how to break the chain and resolve these problems. The first step is to prohibit outside funding. That would selectively hit the most severely affected departments and schools. Endowed program such as the Jackson Institute will need to be treated differently. Closing departments and programs may also be necessary, because faculty are tenured and can't be fired individually. The objective would be to reopen new departments and hire faculty based on independent evaluations of their ability, accomplishments, and personal integrity.

It should be noted some elected officials are fully aware of the importance of outside funding to the University System. Much of the University's reserved forest lands have been exchanged or other lands or for cash payments. Some of these lands have been clear-cut and won't be harvested for another 60 years or more. Recognizing this, Governor Lowry, during September 1995, announced that he would promote a program in which the economic shortfall of the University would be replaced by funding from the private sector. Governor Lowry doesn't appear to be interested in improving the quality of higher education.

It should also be noted that modern technology provides alternatives to classroom instruction. Today, home-based higher education is a possibility. All that is lacking is a process for accreditation. Such a process needs to be carefully considered, to avoid it being taken over by the same special interest group.

11.10 Northwest Renewable Resources Center

Another important issue which was addressed by the Washington Roundtable is the salmon issue, that is the consequences of the Boldt I and Boldt II decisions. These decisions and their consequences are the topic of the book *Salmon at Risk*.

As a Roundtable program, the salmon issue is an integral part of the topic discussed here. Hence, *Salmon at Risk* and *The Elite Planners* are bound together. *Salmon at Risk* begins with the chapter entitled "The Indian Treaties".

Chapter 12

The Nature Conservancy of Washington

12.1 Origin of The Nature Conservancy

According to David G. Gordon (1993), The Nature Conservancy's origin can be traced back to 1917. That year, the American Ecological Society hosted a meeting on the loss of natural lands in the United States. Following that meeting a group of Ecological Society members established two working groups: the Committee for the Study of Plant and Animal Communities and the Committee for the Preservation of Natural Conditions. These two committees appeared to do essentially what their names implied.

In 1946, members from those two committees formed the Ecologists Union and in 1950, the Ecologists Union changed its name to The Nature Conservancy. The following year it incorporated as a non-profit membership organization. At present The Nature Conservancy's national offices are at 1815 North Lynn Street, Arlington, Virginia, 22209.

Their statement of the purpose for their organization is (by-laws of The Nature Conservancy, 1950):

The objectives of The Nature Conservancy shall be, therefore, the preservation under proper safeguards of adequate samples of all biotic communities and other natural features in each distinctive natural region and the encouragement of the study of these communities.

12.2 Origin of the chapters in Washington State

Arnold and Gottlieb (1993) says that, "back in the old days, from TNC's inception in 1951 to the early 1970's, it was as American as apple pie, using small donor funds to preserve small selective nature tracts and manage them privately under local chapter control." That is born out by the experience in Washington State.

Prior to 1970 there had been two local chapters in Washington State. The Washington Chapter of the Nature Conservancy was founded by Charles Wesley Bovee, the first mayor of Bellevue. It received its charter in 1960. The Inland Empire Chapter (Eastern Washington) was founded by George E. Hudson, a professor of zoology at Washington State University. It received its charter in January 1, 1966.

These two chapters were operated by volunteers and had a combined total of 375 members in 1970. As of that date they had completed 19 natural area preserves in the Northwest totaling 6600 acres with a value of \$795,500.

12.3 Take-over by Big Money

The Nature Conservancy changed during the 1970's from local grass-roots chapters with local control and representing local concerns to a national organization with top-down control and representing big money.

Arnold and Gottlieb (1993) say that this change began in 1970 when the director of operations for the national office, Patrick F. Noonan, used a large grant (apparently on the order of a million dollars) from the Mary Flagler Cary Charitable Trust to advance one of their projects on the East Coast. That project was highly successful, Pat

Noonan became the president of the Conservancy in 1973, and The Nature Conservancy adopted a pattern of large projects based on grants from big money and advanced big money's interests.

Arnold and Gottlieb (1993) say that for more than a decade "a sizable fraction of the money behind the Nature Conservancy is the Mellon fortune." In 1970 Constance Mellon gained control of the Mellon Foundation, after her husband's, Richard King Mellon's, death. In 1977 she directed the foundation's grants towards "the acquisition of natural wilderness areas, both to protect lands from development and to assist in wildlife preservation". Arnold and Gottlieb (1993) say that in 1977, 42 percent of their total grants went to The Nature Conservancy.

Constance Mellon's son, Seward Prosser Mellon, continued her program after he succeeded her in 1980. In particular, the Mellon Foundation gave the Nature Conservancy a \$15 million grant in 1980 and a \$25 million grant in 1983. With this level of funding, close and cordial cooperation could be expected.

In 1980, The Nature Conservancy's president, Patrick Noonan, was succeeded as by William Blair jr and in 1987 William Blair jr. was succeeded by Frank Boren. These three presidents seem to have followed the same general program.

During 1987, there seems to have been an internal conflict over The Nature Conservancy's policy. According to Peter Carlin (1990) more than 50 of their leaders quit during 1987 and joined a new organization, Conservation International. However, he goes on to say that by 1990, these two organizations had resolved their differences. Both Arnold and Gottlieb (1993) and Morine (1994) say that one issue in dispute was whether to preserve small isolated properties or to preserve whole ecosystems.

However, at that time there was also a change of affiliation from the Mellon Foundation to a broader base which has a high degree of interlocking with the Trilateral Commission.

The year 1990 marks the point in time at which the Trilateralists had established control over Nature Conservancy. That year John C. Sawhill succeeded William Blair jr. as the president of The Nature Conservancy. Consider his biography:

John C. Sawhill: (ref: Arnold and Gottlieb 1993) President of The (national) Nature Conservancy (1990–present); member of the Council on Foreign Relations and the Trilateral Commission; member of the board of directors of RCA, Pacific Gas and Electric, Consolidated Edison, Philip Morris, Crane Corp., and General American Investors; trustee of Princeton University; chairman of the board of the Whitehead Institute of Biomedical Research at MIT, and Manville Personal Injury Settlement Trust, member of the board of advisors of the Center for Energy and Environmental Policy; Associate director of Energy and Natural resources in the Office of Management and Budget (Nixon Administration, 1972–74); head administrator of the Federal Energy Administration (Ford Administration, 1973–75); president of New York University from 1975 to 1979; Deputy secretary of Energy (Carter Administration 1979–80); author of the triangle paper, *Energy, managing the transition* which enunciated the Commission's energy policy.

This is the man who has been the president of The Nature Conservancy since 1990. There should be little room for doubt about who The Nature Conservancy represents and or what their long-range goals are.

12.4 The Nature Conservancy's Northwest Office: 1972–80

The Northwest office of The Nature Conservancy was opened in Portland during November 1972, just a few months before Patrick Noonan became the president of the national organization. The Northwest office covered the six states: Oregon, Washington, Idaho, Montana, Wyoming, and Alaska.

The Northwest Office was opened by Jon Roush, a medieval literature scholar at Reed University in Portland. However, after only one year he went to the national office to become its executive vice president.

Jon was replaced as the Northwest Director by Ken Margolis, an actor from San Francisco. Ken Margolis retired just before 1980. He was replaced by Spencer Beebe who had been working in the Northwest office since 1974.

The Conservancy is clearly divided between staff and leadership levels. The trustees set the policy, the staff executes it. Noonan, Roush, Margolis, and Beebe are Nature Conservancy staff. Their role is depicted by Morine's (1994) book in a collection of amusing anecdotes about their activities. The staff appears to act primarily as real estate agents, as Gottlieb and Arnold (1993) say, but they also lobby the state legislatures and coordinate the local chapters.

The activities of the Northwest Office are summarized in The Nature Conservancy's (1980) book, *Ten year report to Northwest Members: The 1970's in the Pacific Northwest and the Northern Rockies*. The information in this section is drawn from that book.

The 1970's were a period of rapid growth for the Northwest chapter of The Nature Conservancy: their membership increased 12-fold to 4,636 members by 1980. Also, by 1980, they had completed 58 natural area preserves in the Northwest totaling 192,944 acres with a value of \$42,688,160.

Their main political goal during the decade of the 1970's was to establish State Natural Heritage Programs in each of the Northwest States. The State Natural Heritage Programs assess and document the natural resources in the state, select areas to be preserved, and develop a preservation plan. By 1980 they had established these programs in Oregon, Washington, and Wyoming.

The Wyoming Natural Heritage Program was established in 1978 and the Oregon Natural Heritage Program was passed in 1979 (Senate Bill 448).

In 1972 the Washington State Legislature enacted the Natural Areas Preserve Act, establishing a statewide system of natural area preserves. In 1977 the Washington Chapter of The Nature Conservancy established the Washington Natural Heritage Program. This was made possible by a grant from the Steele-Reese Foundation and matching funds available through the Inter-Agency Committee for Outdoor Recreation, and state services. During that period, the Washington Natural Heritage Program was located at Evergreen State University under David Mladenoff.

In 1982 the Washington Natural Heritage Program were transferred to the State. The state program is administered by a 15-member Natural Heritage Advisory Council appointed by the Commissioner of Public Lands. This program is supposed to produce biennial state natural heritage plans.

The Northwest office of The Nature Conservancy was closed January 1, 1980. They say it had become redundant due to the establishment of state field offices in Oregon, Washington, Montana, and one planned in Wyoming (as of 1980). These offices report to the Western Regional Office in San Francisco.

The process of first replacing the local chapters by a Northwest office and then replacing the Northwest office by state field offices had accomplished what was probably its intended effect. The local chapters had been grass-roots organizations under the control of the local chapter membership. These were replaced by corporate structures with administrators and employees who are hired by the national office and who follow orders from the national office.

12.5 The Evans Administration: 1965-77

Washington State appears to have had a leading role in the take-over of The Nature Conservancy. One of the factors which contributed to this is that Dan Evans was Washington's Governor from 1965 to 1977. During his term as governor, Dan Evans had close ties to the Nature Conservancy. For example, he promoted Nature Conservancy projects and even co-authored with The Nature Conservancy a book on the Skagit River Eagle Preserve. Today, he is a member of the Nature Conservancy's national board.

Dan Evans also has close ties to the Eastern Establishment and was among the members of the Trilateral Commission when that organization was founded in 1973. At the time of its founding, a concern of the Trilateral commission was the Mid-Eastern Oil Crisis and President Nixon's policies which responded to it.

As the federal government is unduly influenced by the large corporations, the end result of these federal policies are the lining of the pockets of the energy related companies. Boeing and Weyerhaeuser are two large energy related companies in Washington State.

Nixon's and Carter's energy policies involved an Indian policy. The Boldt and Orrick decisions formed one of the cornerstones of the domestic part of the Federal Indian policies from that era. The Boldt decision (US v. Washington 1974) was reached while Evans was governor and it was supported by him. Judge Boldt wasn't the originator of the ideas in his decision. Much of the Boldt decision can be found in a bill sponsored earlier by Washington Senator Paul Conner.

Another Nature Conservancy board member (of the Washington Chapter), who was undoubtedly involved in these events is James M. Dolliver. He was Governor Evans' chief of staff. When there was a vacancy in the Washington Supreme court, Evans appointed him to that position, which he has held ever since.

Also a considerable amount of work on the Boldt case was done at the University of Washington's College of Ocean and Fisheries Sciences. It was from there that we got Washington's next governor, Dixy Lee Ray.

Another Washington State energy-related issue which can be traced to the Evans administration is the WPPSS atomic power plants. Their planning began during the Evans Administration. However, they were partially constructed and defaulted during the following administration, that of Dixie Lee Ray. Power-related industries and Batelle (another supporter of The Nature Conservancy) benefited from those projects.

When you consider everything which has gone wrong in this state over the last two decades, and trace them back to their origins, most often you end up in this era, during the Evans Administration. Also, the names start to become familiar. A lot of them are trustees of The Nature Conservancy. This appears to be one of their clubs. Here they gather together to form nature preserves

12.6 Nature Preserves?

Pacific County Commissioner Pat Hamilton is concerned about the impact that nature preserves are having on her county. The tax base of Pacific County has recently been reduced through the creation of large nature preserves. For example, the Bone River Preserve which was created in 1992 is so large that it includes an entire watershed.

These preserves cost the county more than just lost property taxes. Some of the preserved land had previously been productive, bringing money into the local economy. Through sales taxes, some of that money had supported the county. Pat Hamilton said, in an interview, that the county is now having difficulty finding adequate funds to hire enough deputy sheriffs to provide basic law enforcement.

The Rose Ranch (a dairy farm) was one of the businesses which Pacific County lost. Although Rose Ranch had used best farming practices and had little impact on the environment, it had been on land slated for acquisition to be part of a nature preserve. Pat Hamilton said that the state had instructed inspectors to find environmental violations on that farm. That would leverage its sale.

The nature preserves involved are part of the Washington Natural Heritage Program. That program was developed by The Nature Conservancy. In 1982 the program was transferred to the Department of Natural Resources (DNR). The Natural Heritage Advisory Council, which oversees that program, is still strongly influenced by The Nature Conservancy: for example, Dr. James Agee who its current chair is also a trustee of The Nature Conservancy of Washington.

The Natural Heritage Advisory Council produces biennial plans for the acquisition of land to form Nature Preserves. The state has purchased much of that land from The Nature Conservancy. This is because The Nature Conservancy cooperates closely with the Natural Heritage Advisory Council, buying land from individuals and then selling it to the state. The Nature Conservancy often retains a partial interest in the property so that they and the state end up as joint owners. In that case, the two parties draw up a memorandum of understanding for the co-management of the preserve.

For example, in 1991 The Nature Conservancy had collected all the land needed to form the Bone River Preserve. They then sold a 90% undivided interest in it to the DNR. That preserve contains a marsh, a mudflat, a meandering river, forest land and an elk herd lives in the region. It is closed to human access except to the DNR and The Nature Conservancy. However, for the purposes of research, the public can request entrance permits.

My first encounter with that preserve was in 1993 when I stopped to speak with a couple who were launching a kayak from the Bone River landing beside Highway 101. I was curious about the river as it looked like a nice place to canoe. They turned out to be a wealthy couple from Bellevue and they informed me that the area was closed to the public.

According to the memorandum of understanding, 90% of the preserve's operating costs are born by the public. The Nature Conservancy contributes the remaining 10%.

However, this creation of private preserves with public money pales in the face of what may be to come.

12.7 The Nature Conservancy, Washington Chapter, Board of Trustees: 1984–95

Symbols mark the years (columns) during which the following individuals (rows) served on Washington TNC's board of trustees. The type of symbol indicates their position in the board: C, Chair; VC, Vice Chair; X, Member; XO, Ex Officio (past chair).

This table is compiled from *The Chapter Newsletter* (That is, the newsletter of the Washington Chapter of the Nature Conservancy). 1994 information wasn't available when this table was compiled. An individual is assumed to have been a member if he or she was in both 1995 and 1993. There may also have been additional board members in 1994.

Year	95		93	92	91	90	89	88	87	86	85	84
James Agee	X	X	X	X	X	X	X	X	X			
Tony Angell	X	X	X	X	X	X	X	X	VC	X	X	X
Ernesta B. Barnes							X	X	X			
Alec Bayless										X	X	X
Christopher T. Bayley												C
Jennifer Belcher	X	X	X	X	X	X						
James W. Bernard	X	X	X	X	X	X						
Debbie Bevier	X											
Allan R. Boyce	X	X	X	X	X	X	X					
Sally S. Behnke								XO	C	VC	VC	X
Harriet Bullitt										X	X	X
Russell W. Cahill						X	X	C	X	X	X	X
Allison S. Cowles	X	X	X									
William H. Cowles			X	X	X							
Stephen E. DeForest	X	X	X	X	X							
Melinda F. Denton										X	X	X
James M. Dolliver											X	X
Anne V. Farrell	X	X	X	VC	VC	X	X					
William C. Fix					X	X	X	X	X			
Dale Foreman	X											
Elizabeth F. Foster					X	X	X	X	X			
Thomas C. Garrett								X	X	X	X	X
Tod Hamachek							X	X	X			
Mack L. Hogans	X											
John A. Johnson			X									
Marion Kyle	X	X										
John Larsen, jr., MD							X	X	X			
Peggy Lewis						X	X	X				
Russell B. Light												
Daniel R. McDonald			X	X	X	X	X	X	X			
John P. McMahon				C	C	VC	VC	X	X	X		
Neil McReynolds						XO	C	VC	X	X	X	X
Elizabeth Meadowcroft	X											
William H. Neukom	X	X	X	X	X							
James M. Norman	X											
Donald K. North							X	X	X			
Dr. Margaret O'Connell	X	X										
Louis H. Pepper			X	X	X	X	X	X				
Douglas D. Peters										C	C	VC
James C. Pigott	X											
Joel Pritchard	X	X	X	X	X	X	X					
Brooks G. Ragen	X	X	X	X	X	X	X	X	X			
Donald E. Rush										X		

TNC Board of Trustees, concluded

Year	95		93	92	91	90	89	88	87	86	85	84
Faye Sarkowsky									X			
Tom Scribner									X	X	X	X
Eliot Scull, MD	X	X	X	X	X	X	X					
Marion Kyle Sherman											X	X
David Skinner	C	VC	VC	X	X	X	X	X				
Andrew V. Smith									X			
Raymond L. Soule	XO	C	C	VC	VC	X	X	X	X			
Joe Taller					X	C	VC	X	X	X		
Phil Talmadge							X	X	X			
Alan Thompson										X	X	X
Don Vandenheuvel	X	X	X	X	X	X	X					
Doug Walker	X	X	X									
George A. Walker VC	X	X	X	X	X	X						
Gail Weyerhaeuser								X	X	X		
F. Lowry Wyatt										X	X	X

Trustees are nominated by a nominating committee and are voted on by the membership. According to the 1990 ballot, members are given an opportunity to nominate trustees, but that probably rarely happens. Moreover, the membership isn't given any choice on the ballot. For example, the official ballot for 1990 contains only one option: specifically, "I cast my vote for the slate of trustees proposed by the nominating committee."

12.8 Biographical Information on the Trustees

References: *The Chapter News*, *The Pictorial Guide to the Legislators*, List of directors in the Washington Roundtable's and Northwest Renewable Resource Center's annual reports (available from the Secretary of State's office in Olympia)

James Agee (Redmond) Research biologist with the National Park Service and Professor at the University of Washington, College of Forest Resources. Chair of Natural Heritage Advisory Council in Washington State Department of Natural Resources (ref: Chapter news Winter 89-90).

Anthony L. Angell (Seattle) Wildlife artist and environmental educator. Had been the Chair in 1980.

Ernesta B. Barnes (Mercer Island) President, Pacific Celebration '89; Vice Chair of the board of trustees of the UW Hospital; Advisory board member for Albers School of Business, Seattle University; Past Regional Administrator, Region 10, for the EPA.

Alec Bayless (Mercer Island) Died 1991

Christopher T. Bayley ()

Jennifer Belcher (Olympia) (as of 1993) Commissioner of Public Lands; former five-term state representative, Natural Resources and Parks Committee; Board member, Washington Wildlife and Recreation Council; Board member, Evergreen State College Foundation; Board member, Thurston County Economic Development Council.

James W. Bernard (Bellevue) (as of 1993) President and chief executive officer of Univar; Trustee Univar-VWR Foundation; director, junior achievement; member President's board Central Washington University; Executive, MBA board, University of Washington; member Seattle Chamber of Commerce; member American Chemical Society.

Debbie Bevier

Allan R. Boyce (Seattle)

Sally S. Behnke (Madina)

Harriet Bullitt (Seattle) The Bullitt Foundation is one of the leading funding sources or conduits for funding for the environmental programs in Washington State. It was one of the groups which funded the Northwest Renewable Resources Center and it has consistently funded the programs related to

their activities. The Bullitt foundation was founded by Dorothy Bullitt in 1952. Her family are heirs to C.D. Stimson's timber and real estate fortunes and own the major Seattle TV and radio stations: that is, King-TV, King-AM, and King-FM. This illustrates the close tie between environmentalism and the major media. Environmental programs and public involvement projects can generally rely on good coverage.

Russell W. Cahill (Olympia) When he first became a trustee, in 1985, he was Deputy Director of the Washington Department of Fisheries.

Allison S. Cowles (Spokane) (as of 1993) Director of Seattle-First National Bank and Seafirst Corp.; Trustee Wellesley College; National Advisory Board Smithsonian Institution; Mount Spokane 2000 executive committee; chair Spokane Advisory Committee of Washington State University.

William H. Cowles 3rd (Spokane)

Stephen E. DeForest(Seattle) (as of 1993) President of the Washington State Bar Association; Partner in Riddell, Williams, Bullitt and Walkinsaw; President and trustee of the Seattle King Count Bar Foundation 1985-87; King County Defender, 1975-77; Board member of United Way of King County.

Could the partner named "Bullitt" be related to the Bullitts of the Bullitt Foundation? As that isn't a common name and they are in a position of power in the Northwest, it seems likely. However, at this time I haven't proof.

Melinda F. Denton (Seattle)

James M. Dolliver (Olympia) A lawyer from Port Angeles, chief of staff for Governor Evans, who appointed him to a vacancy in the Washington State Supreme Court Judge. He is still there today.

Daniel J. Evans President Evergreen State College (1977-), Governor of Washington (1956-77), Past US Senator, Co-Chair (with Mike Lowry) of the Washington Wildlife and Recreation Coalition. He is a TNC national board member. (Ref: Chapter News Summer 89) He is also a member of the trilateral commission (Holly Sklar, 1980 page 102). So also is Tom Foley

Anne V. Farrell (Seattle)

William C. Fix (Spokane) (as of 1990) President, William C. Fix investments; Chairman, Diocesan Housing Corp., Episcopal Diocese of Spokane; Vice President, Spokane Mountaineers; Finance Chairman, Cathedral of St. John the Evangelist; Member Finance Committee, Inland Empire Chapter, Girl Scouts; Member Inland Northwest Community Foundation; Advisor, Spokane Symphony Endowment.

Dale Foreman (Wenatchee) House Majority Leader (Republican). In the 1995 issue of the Chapter News, Dale Foreman was listed as being a trustee. However, he says that he had been invited to fill Dan McDonald's position but had never accepted the position, attended a meeting, orientation for new members, nor any other TNC function. He said he had considered it an honor partly because he has a high regard for Senator Dan McDonald. Dale Foreman resigned the position August 16, 1995, after considering their policies. I find it difficult to believe that Dale Foreman wouldn't know about The Nature Conservancy's policies or be aware of the type of legislation which Dan McDonald had been sponsoring.

Elizabeth F. Foster (Seattle) (as of 1990) Board member, Northwest AIDS Foundation; Board member, World Without War Council; Past President, Planned Parenthood; Past member United Way planning and allocations committee; Past member Seattle Symphony Executive Committee; Associate member Childrens Hospital; Past board member, Population Dynamics.

Dr. Jerry Franklin (Seattle) (as of 1989) Professor of Forestry, University of Washington. Member of TNC's national board of governors.

Thomas C. Garrett (Spokane)

Tod Hamachek (Bellevue) President and CEO of Penwest Ltd.

Mack L. Hogans

John A Johnson (Enumclaw) (as of 1993) Vice President of Boeing Safety, Health, and Environmental Affairs; Loan executive, United Way; Advisory board member, Northlake College; Advisor, YMCA.

Marion Kyle Is this the same person (but divorced) as Marion Kyle Sherman?

John Larsen, jr., MD (Pullman) Professor of zoology, Washington State University.

Peggy Lewis (Yakima)

Russell B. Light (Kent)

Daniel R. McDonald (Bellevue) First elected as a Washington State Senator in 1978 from, Redmond, Bellevue, and Kirkland in King County. He is a Republican. He has the reputation of being a fiscal conservative, but the Washington Chapter of TNC's news letter shows that he sponsored bills supporting TNC projects and involving hundreds of millions of dollars. He retired in 1994. He has a wife Janie and two sons. He graduated from the University of Washington in Mechanical Engineering. He is a board member of the Washington Wildlife and Recreation Coalition; Mountain to Sound Greenway Trust; and Washington Special Olympics.

John P. McMahon (Seattle) (as of 1990) Vice President, Timberlands, Weyerhaeuser Company; member board of governors, National Forest Products Association; member, Executive Board of the American Forest Council; Director, Northwest Forestry Association; Director, American Forestry Association; member, Society of American Foresters.

Neil McReynolds (Bellevue)

Elizabeth Meadowcroft (Tacoma) This is probably the sister of George Weyerhaeuser, but it might be her daughter.

William H. Neukom (Seattle, Redmond)

James M. Norman

Donald K. North (Issaquah) President of Burlington Northern Foundation.

Dr. Margaret O'Connell (Cheney) (as of 1993) Associate professor of biology at Eastern Washington University; Adjunct professor, depts of zoology and natural resource science; research associate, national zoological park, Smithsonian Institute; Associate Editor of Northwest Science.

Louis H. Pepper (Seattle)

Douglas D. Peters (Selah)

James C. Pigott

Joel Pritchard (Seattle) He was elected Washington State's Lieutenant Governor in 1988 and again in 1992. That is the President of the Senate. He is a Republican. He has been an elected official for 31 years. He served in the state legislature from 1958 to 1970 (8 years in the House, 4 in the Senate) and as a US Representative from 1972 to 1984. He also, at one time, was the President of the Griffin Envelope Company of Seattle.

Brooks G. Ragen (Seattle) (as of 1990) Chairman of the board and Chief Executive Officer, Ragen McKenzie Inc; Member of the Washington State executive board of US West Communications; Board member, Cascade Natural Gas Corp.; Board member, Seattle Foundation; Board member, University of Washington Medical Center; Board member, The corporate council for the arts; Board member, Center for the New West.

Frank Richardson () (died 1985) Was a professor at the University of Washington, Department of Zoology. Had been a trustee prior to 1984.

Donald E. Rush (Tacoma) Vice President of Weyerhaeuser's solid wood division when first appointed a trustee in 1985.

Faye Sarkowsky (Seattle) Trustee (15 years as of 1986) for children's Orthopedic Hospital; board member of Seattle Foundation; Board member of Seattle Art Museum; Past chair of Children's Foundation; Past President of PONCHO; Past President of University of Washington Development Fund.

John C. Sawhill: (ref: Arnold and Gottlieb 1993) President of The (national) Nature Conservancy (1990-present); member of the board of directors of RCA, Pacific Gas and Electric, Consolidated Edison, Phillip Morris, Crane Corp., and General American Investors; trustee of Princeton University; chairman of the board of the Whitehead Institute of Biomedical Research at MIT, and Manville Personal Injury Settlement Trust, member of the board of advisors of the Center for Energy and Environmental Policy; member of the Council on Foreign Relations and the Trilateral Commission; president of New York University from 1975 to 1979; Associate director of Energy and Natural resources in the Office of Management and Budget (Nixon Administration, 1972-74); head administrator of the Federal Energy Administration (Ford Administration, 1973-75); Deputy secretary of Energy (Carter Administration 1979-80).

Tom Scribner (Walla Walla)

Eliot Scull, MD (Wenatchee) (as of 1993) Partner, Eye and Ear Clinic of Wenatchee; Chair, State interagency Committee for Outdoor Recreation; Former President, Chelan County Park Board; Board member, Chelan-Douglas County Land Trust; member of the Sierra Club; member of Audubon Society; member of Cousteau Society; member of Washington Environmental Council.

Marion Kyle Sherman (Maple Valley)

David Skinner (Friday Harbor) Chair of the Washington State Chapter of The Nature Conservancy. He may be (this is a guess) the son of David E. Skinner who is on the Board of directors of Boeing and a member of the Washington Roundtable.

Andrew V. Smith (Bellevue) President of Pacific Northwest Bell when first appointed a trustee in 1985.

Raymond L. Soule (Bremerton) (as of 1990) President, Chairman of the Board, and Chief Executive Officer, Northwest Federal Savings and Loan Association; Chairman of the Board, Seacoast Management Inc.; President of the Board, Washington Savings League; Director, Federal Home Loan Bank of Seattle; Director, systems and forms; Executive Committee Member, Bremerton Yacht Club.

Joe Taller (Olympia) (as of 1990) Corporate Director, Public and Community Affairs, The Boeing Company; Board Member, Seattle-King American Red Cross, Board Member, Arts fund committee, ; Board of Advisors, Member, Education Center (Northwest); Board Member, Corporate Council for the Arts; Board member, Evergreen College Foundation; Board member, 4H Washington State; Member, council of Regents, Heritage College; Board member, Seattle Chamber Community Service Foundation.

Phil Talmadge (Seattle) Prior to 1994 he was a Washington State Senator from King County. He is a Democrat and is notoriously liberal. A magna cum laude graduate of Yale in political science and a graduate of UW Law School. He served on Law Review there. An appellate attorney at the firm of Talmadge and Cutler in Seattle. Has a wife, Darlene, three sons and two daughters. In 1994 he was elected a Washington State Supreme Court judge.

Alan Thompson (Kelso) Was a state senator.

Don Vandenheuvel (Federal Way)

Doug Walker (Seattle) (as of 1993) Founding partner and Vice President, Walker, Richer, and Quinn Inc. (a software firm); board member, Children's trust; member, business advisory council, Resource Center for the handicapped; member of World Wildlife Fund; member of Audubon Society; member of Washington Environmental Council.

George A. Walker (Seattle) (as of 1993) Vice President and Chief Executive Officer, US West Communications-Washington; Past Chair, Washington Association of Businesses; Vice Chair, Shoreline Community College Foundation; Director, Washington State China Relations Council; Director, United Way of King County. (As of 1990) Director, Downtown Seattle Association; Director of board, Metropolitan YMCA; Member, State advisory committee for Department of Social and Health Services; Director, Hutchinson Cancer Research Foundation; Director, Washington Council for Economic Education;

Gail Weyerhaeuser (Eatonville earlier Tacoma) Possibly George Weyerhaeuser's wife. President of the Forest Foundation (in 1985).

F. Lowry Wyatt (Tacoma)

Corporations whose leadership are Washington TNC Trustees

Boeing : Vice President, Safety, Health and Environmental Affairs, John A. Johnson; Corporate Director, Public and Community Affairs, Joe Taller (1990);

Burlington Northern Foundation: President Donald K. North

Bullitt Foundation: Harriet Bullitt, probably a member of the Bullitt dynasty Stephen E. DeForest, possible connection through legal firm, RWBW.

Northwest Federal Savings and Loan: Raymond L. Soule, CEO and Chairman.

Penwest Ltd: Tod Hamachek, President and CEO.

Seafirst Bank or Corporation: Director: Allison S. Cowles

Univar : President, chief executive officer, and Trustee of Univar -VWR Foundation, James W. Bernard;

US West, earlier Pacific Northwest Bell: Vice President and CEO of US West, George Walker; President of PNW Bell, Andrew V. Smith;

Walker, Richer and Quinn Inc: Founding partner and Vice President, Doug Walker. WRQ donated to The Nature Conservancy the software which they use in their inventories of natural resources, in the Natural Heritage Programs. These programs were transferred to state and federal government — BINGO: the government pays through the nose for that software.

Weyerhaeuser Company: Vice President, timberlands, John P. McMahon Is Gail Weyerhaeuser a relation to George Weyerhaeuser? Vice President, Washington Solid Wood Division, Donald E. Rush; Is Elizabeth Meadowcroft a relation to George Weyerhaeuser: more exactly, is this his sister or his niece?

Colleges, Universities, Hospitals, and Research Foundations where Trustees hold Positions:

Central Washington University, President's advisory board, James Bernard;

Children's Orthopedic Hospital, trustee, Faye Sarkowsky;

Eastern Washington University, Associate professor; Margaret O'Connell;

Evergreen State College Foundation, board member; Jennifer M. Belcher; board member; Joe Taller (1990);

Heritage College, council of regents, Joe Taller;

Hutchinson Cancer Research Foundation, Director, George Walker (1990);

Northlake College, advisory board member, John A. Johnson;

Seattle University, Albers School of Business, Advisory board member, Ernesta B. Barnes;

Shoreline Community College Foundation, vice chair, George Walker;

Smithsonian Institute: National Advisory Board: Allison S. Cowles; Research associate: Margaret O'Connell.

University of Washington UW Development fund board, past president, Faye Sarkowsky; UW Hospital board of trustees, Vice Chair, Ernesta B. Barnes; Professor, College of Forest Resources, James Agee; Professor, Forestry, National Board of Governors, Jerry Franklin; Professor, Zoology, Frank Richardson (deceased); Friends of EOP, Jennifer Belcher (1990); Executive MBA board, James W. Bernard; board member, UW Medical Center, Brooks Ragen;

Washington State University, Spokane advisory council, Allison S. Cowles; Professor, John Larsen jr.

Wellsley College, Trustee, Allison S. Cowles;

Public Offices held by Conservancy Board Members:

Governor Dan Evans;

Lieutenant Governor (President of the Senate), Joel Pritchard (1988–present);

Commissioner of Public Lands, Jennifer Belcher (1992–present);

King County Defender, Stephen E. DeForest, 1975–77;

State Supreme Court Judge, Phil Talmadge (1994–present); James Dolliver;

Washington State Representatives Jennifer Belcher; Joel Pritchard (past, for 8 years); Dale Foreman (see text regarding as he resignation from TNC);

Washington State Senator Joel Pritchard (past, for 4 years); Phil Talmadge (past); Dan McDonald (1978–94); Alan Thompson (was during 1986);

US Representative Joel Pritchard (1972–84);

Deputy Director of the Washington Department of Fisheries (in 1984), Russell W. Cahill;

Regional Administrator, Region 10, EPA, Ernesta B. Barnes;

Chief Clerk, House of Representatives Alan Thompson (beginning 1987);

Corporate Associates, TNC, Washington Chapter: 1984-95

Corporate associates contribute \$1000 to \$10,000 annually to the annual fund (operating expenses). An X marks the year (column) during which a corporation (row) was a "corporate associate".

Year	Yrs	95	93	92	91	90	89	88	87	86	85	84
Ackerley Communications Inc.	1	X										
Acme Finance Co. Inc.	1	X										
Adobe Systems	1	X										
Airborne Freight Co.	11	X	X	X	X	X	X	X	X	X	X	X
Alaska Airlines	3	X	X	X								
Aldus Corp.	6		X	X	X	X	X	X				
Arthur Andersen Consult	2	X	X									
ATL	1	X										
Batelle Mem. Inst.	11	X	X	X	X	X	X	X	X	X	X	X
Berkana International	2	X	X									
The Boeing Co.	11	X	X	X	X	X	X	X	X	X	X	X
Burlington Northern Inc.	11				X	X	X	X	X	X	X	X
Campbell Associates	1	X										
Cascade Designs Inc.	5	X	X	X	X	X						
Chemgrate Corp.	3	X	X	X	X							
Chevron USA Inc.	4	X	X	X	X	X						
Christian, O'Connor, Johnson, and Kindness	7	X	X	X	X	X	X	X				
Clise Agency Inc	3							X	X		X	
Eddie Bauer Inc.	5	X	X	X	X	X						
First Interstate Bank	8		X	X	X	X	X	X	X	X	X	
Fischer Properties Inc.	1	X										
Forest Foundation	11	X	X	X	X	X	X	X	X	X	X	X
Foss Maritime	4	X	X	X	X							
Four Seasons Travel	3			X	X	X						
General Re Service Corp.	2		X	X								
Goodwin Development Co.	1		X									
Great Northwestern Fed. Savings	9			X	X	X	X	X	X	X	X	X
Heller, Ehrman, White, and McAuliffe	4	X	X	X	X							
High Mountain Rendezvous	2	X	X									
Hulbert Pontiac Cadillac Saturn	1	X										
IBM	1	X										
Immunix	1	X										
Intalco Aluminum Co.	3							X	X	X		
Interwest Savings Bank	5	X	X	X	X	X						
Ira F. Hurlburt and Co	3								X	X	X	
Key Bank	4	X	X	X	X							
Land Title Co. of Skagit Co.	1		X									
Landau Associates Inc.	1	X										
McBrides Card and Gifts Inc.	4		X	X	X	X						
Merrill and Ring Inc.	1				X							
Microserve	8	X	X	X	X	X	X	X	X			
Microsoft	7	X	X	X	X	X	X					
Milliman and Robertson Inc.	1				X							
Millstone Coffees Inc.	3	X	X	X								
Mitsubishi Internatl. Corp.	1					X						
Murray Pacific Corp.	5	X	X	X	X	X						

Year	Yrs	95	93	92	91	90	89	88	87	86	85	84
Transmountain Pipeline Inc	2		X	X								
Trillium Corp	1	X										
United Graphics Inc.	2		X	X								
Univar Corp.	11			X	X	X	X	X	X	X	X	X
Univar Foundation	11	X	X									
University Savings Bank	4	X	X	X	X							
US Bank of Washington	6	X	X	X		X	X	X				
US West Commun.	5	X	X	X	X	X						
Walker, Richey and Quinn	8	X	X	X	X	X	X	X	X			
Washington Irrigation and Development Co.	2				X	X						
Washington Natural Gas	2		X	X								
Washington Mutual Savings	3						X	X	X			
Washington Trust Bank,	10		X	X			X	X	X	X	X	X
Washington Trust Found.	10				X	X	X					
Washington Water Power Co.	9	X	X	X	X			X	X	X	X	X
Westinghouse Hanford Co.	3	X	X	X								
Weyerhaeuser Co.	11						X	X	X	X	X	X
Weyerhaeuser Co. Found.	11	X	X	X	X	X						
Wheelabrator Spokane Inc.	1	X										
Wright Schuchart Inc.	3									X	X	X

Some of the larger companies switched from giving directly to giving through a subsidiary, trust, or foundation (for example, Burlington Northern switched to Plum Creek Timber). For these companies, for the cases where I know they are associated, I have pooled their number of years of contribution.

The corporate associates fall into three distinct categories:

Major Players: with 10 or 11 years of contribution. Ten major companies are probably in a position of control.

- Airborne
- Batelle
- Boeing
- Burlington Northern
- Pacific Gas Transmission
- Puget Sound Power and Light
- Safeco
- Univar
- Washington Trust
- Weyerhaeuser

Except for Pacific Gas Transmission and Washington Trust, all of these companies are also the most influential members of the Washington Roundtable and have an interlocking directorate with Weyerhaeuser Company

Also rans: with 7 to 9 years of contribution. These corporations are probably influencing Washington TNC's policy.

- Christian, O'Connor, Johnson, and Kindness
- First Interstate Bank
- Great Northwestern Savings
- Microserve
- Microsoft
- Seafirst
- Walker, Richey and Quinn
- Washington Water Power

Major Corporate and Foundation Contributions to Specific Projects:

This isn't a comprehensive list, it only includes the grants listed in the Chapter News.

- Alaska Airlines** , 1992, general support \$9,000;
- Archibald Foundation:** 1992, San Juan and Ft Lewis projects, \$5,000;
- ARCO :** total:\$15,000 1989, endangered Washington, \$10,000; 1995, Washington Wildlands, \$5,000;
- Audubon Society (Martin Miller Fund):** 1991, Burnaby Slough, \$25,000;
- Batelle:** 1986, Barker Mountain preserve, \$5,000;
- Boeing** total \$312,000 1985, \$12,000, operations; 1986, Washington Wetlands campaign, \$100,000; 1990, Endangered Washington, \$75,000; 1993, Endangered Washington, \$125,000;
- Bressler Foundation:** 1992, San Juan Preserve management, \$1,000;
- British Petroleum:** total \$155,000 1985, Alaska Program, \$5,000; 1990, matching grant for endangered Washington, \$150,000;
- Bullitt Foundation:** total \$204,000 1985, Barker Mountain preserve, \$14,000; 1986, Washington Wetlands campaign, \$100,000; 1989, endangered Washington, \$15,000; 1992, Willapa Bay Project, \$75,000;
- Burlington Northern Foundation:** total \$135,000 1985, Operations, \$10,000; 1986, operations and natural areas registry program, unspecified amount. 1986, Washington Wetlands campaign, \$100,000; 1989, endangered Washington, \$25,000;
- City Corp:** Operations, 1985, \$2,500;
- The Dudley Foundation** 1995, Yakima Canyon Preserve, \$8000;
- Flintridge Foundation,** Washington Wetlands campaign, \$25,000;
- Foster Foundation,** total \$30,000 1992, Bone River Project, \$15,000; 1995, Sharp-tailed Grouse Project, \$15,000;
- Goodhill Foundation,** 1984, Pierce Island, \$30,000;
- GTE:** 1993, Bone River Preserve \$5,000;
- Greater Tacoma Community Foundation:** \$5000;
- Haas Foundation:** 1985, Skagit Education,\$500;
- Haffner Foundation:** 1985, Operations, \$2,000;
- Harder Foundation:** 1989, Columbia Basin Wildlife mitigation , \$7,000;
- Horizons Foundation:** 1992, Bone River Preserve, \$4,500;
- Immunex Corp.:** 1992, San Juan Preserve management, \$2,000;
- Johnson-Fix Foundation** 1995, Pinecroft Preserve, \$10,000;
- Kuyper Foundation:** 1989, Columbia Basin Wildlife mitigation , \$10,000; 1991, Burnaby Slough, \$10,000; 1992, Bone River, \$30,000;
- Microsoft:** 1992, Bone River Preserve, \$7,500;
- M.J. Murdock Charitable Trust,** 1986, Washington Wetlands campaign, \$75,000;
- Norman Archibald Charitable Foundation,** 1995, Washington Wildlands, \$4000;
- Peierls Foundations Inc:** total \$12,833 1992, general support, \$5,000; 1995, Washington Annual Fund, \$7,833;
- National Fish and Wildlife Foundation,** 1995, Black River Preserve, \$130,334;
- Norcliff Fund,** 1992, Endangered Washington, \$5,000;
- Osberg Foundation:** 1995, Washington Wildlands, \$25,000;
- Overlake flyfishing Club,** 1992, Bone River Preserve, \$2,000;
- Port Townsend Paper Co.:** 1988, wetlands acquisition, \$137,500, this was a legal settlement of a suite brought by the Sierra Club's Legal Defense Fund;
- Puget Power:** 1991, Burnaby Slough, \$7,500;
- Puget Sound Bank :** 1989, wetlands acquisition, \$25,000;
- Quality Food Centers:** total \$22,000 1989, endangered Washington, \$7,000; 1992, endangered Washington, \$15,000;
- Safeco,** 1992, Bone River \$5,000;
- Skagit Environmental Endowment Commission:** 1989, land acquisition in the North Cascades, unspecified amount;

Seattle Foundation: total \$26,600 1985, Yellow Island Preserve Management, \$1,600; 1989, Burnaby Slough, \$15,000; 1991, Burnaby Slough, \$10,000;
Seattle Times / Post Intelligencer: total \$10,000 1989, operations, \$5,000; 1992, general support, \$5,000;
Security Pacific Bank, 1992, Bone River \$5,000;
Simpson Timber: 1991, Endangered Washington, \$25,000;
Skinner Foundation: total \$24,450 1985, Yellow Island Preserve Management, \$4,450; 1995, Washington Wildlands, \$20,000;
Stroh Foundation: 1992, general support, \$4,000;
Univar : total \$15,000 1992, Washington Wildlands, \$10,000; 1992, Bone River \$5,000; 1995, Washington Wildlands, \$10,000;
US West, PNW Bell: \$30,000 1985, Pierce Island, \$5,000; 1986, Washington Wetlands campaign, \$25,000;
Walker, Richey, and Quinn total \$341,500 1989, in kind (software), \$26,500; 1992, Bone River Project, \$15,000; 1995, Skagit River Preserve, \$300,000;
Weyerhaeuser Co. Foundation: \$55,000 1985, Yellow Island Preserve Management, \$5,000; 1990, Endangered Washington, \$50,000;
Wilberforce Foundation: 1995, Klickitat Oaks, \$50,000;

Corporations with specific grants over \$10,000

Walker, Richey, and Quinn total \$341,500
Boeing total \$312,000
Bullitt Foundation: total \$204,000
British Petroleum: total \$155,000
Burlington Northern Foundation: total \$135,000
National Fish and Wildlife Foundation: total \$130,334
M.J. Murdock Charitable Trust \$75,000;
Weyerhaeuser Company Foundation: \$55,000
Kuyper Foundation: total \$50,000;
Wilberforce Foundation: total \$50,000;
Goodhill Foundation, 1984, Pierce Island, \$30,000;
US West, PNW Bell: \$30,000
Seattle Foundation: total \$26,600
Flintridge Foundation, \$25,000;
Puget Sound Bank : \$25,000;
Skagit Environmental Endowment Commission: unspecified amount;
Simpson Timber: \$25,000;
Audubon Society (Martin Miller Fund): \$25,000;
Osberg Family Foundation: \$25,000;
Quality Food Centers: \$22,000;
The Skinner Foundation: \$20,000
Foster Foundation, \$15,000;
Univar : total \$15,000
ARCO : 1989, \$10,000;
Johnson-Fix Foundation: \$10,000
Seattle Times / Post Intelligencer: total \$10,000

Although, The Nature Conservancy isn't composed of and supported by exactly the same group of people and companies as the Roundtable, but its leadership is similar enough that suggest that the Roundtable's and the Conservancy's programs won't conflict but that they will generally support each other. Considering the National leadership

of the Conservancy, that could almost be concluded, axiomatically. Another indication of the close relationship between these two organizations is that one of the current staff at the Washington office of the Conservancy had previously been employed as a member of the staff of the Roundtable.

12.9 Washington Wildlife and Recreation Coalition

The material in this section is drawn from the chapter news of the Nature Conservancy of Washington

Spearheaded by the Nature Conservancy of Washington, the Washington Wildlife and Recreation Coalition was formed in Summer 89. The founding organizations are The Nature Conservancy, National Audubon Society, Inland Northwest Wildlife Council, Izaak Walton League, The Mountaineers, The Wilderness Society, Trout Unlimited, Washington State Sportsman's Council, Washington Environmental Council, Trust for Public Land, Rails to Trails Conservancy, Washington Recreation and Parks Association, Washington Trails Association, and Washington Wildlife Federation.

Its President is Elliot Marks, the executive director of the Conservancy of Washington; the executive director is, Russ Cahill an ex-chairman of the board of trustees of the Conservancy of Washington; among the members of the Washington Wildlife and Recreation Coalition, are found Conservancy board members, Dan McDonald, Joe Taller, Andy Smith, and Jennifer Belcher; Conservancy National Board Member Dan Evans; and other members include Mike Lowry, Lois Stratton, and Gary Locke.

Considering their leadership, there can be no doubt about the nature of their programs.

By the summer of 1993, there were 130 member organizations in the Washington Wildlife and Recreation Coalition. Governors Dan Evans and Mike Lowry serve as co-chairs. Here is a verifiable link connecting Governor Lowry to the Nature Conservancy/Washington Roundtable group.

This coalition has primarily lobbied for funds for land acquisition: \$53 million were appropriated in 90 for land acquisition whereas only \$15 million had been appropriated over the previous decade for same purpose, thanks to the Washington Wildlife and Recreation Coalition. The appropriation was supported by legislators Gary Locke, Jennifer Belcher, and Dan McDonnald, Joel Pritchard, and the Commissioner of Public Lands, Brian Boyle. In 1991, the budget included \$60.1 million for land acquisition thanks to Jennifer Belcher, Mike Riley, Dan McDonald, and the efforts of the Washington Wildlife and Recreation Coalition. In 1993, \$65 million was appropriated for state wildlife and recreation lands and \$5 million for existing parks and natural area preserves.

The legislators who supported this funding are Jennifer Belcher, Mike Riley, Dan McDonald, Gary Locke, Joel Pritchard, and Mike Lowry.

12.10 Land Acquisition

Reference, the chapter news

In many cases the funds for land acquisition were allocated as matching funds, sometimes to be specifically matched by the Conservancy. Thus the money that the Conservancy spent to buy land may have been partially public money. One example is the \$1.5 million in matching funds from legislature in 1990 for their endangered Washington program.

The Nature Conservancy of Washington says of Senate Bill 5911, Co-sponsored by the Department of Natural Resources and the Conservancy, that they consider this "our most significant legislation to date". That was in 1987. That bill allocated \$4 million in state funds to be matched by \$1.33 million by the Conservancy for the acquisition of Natural Area Preserves. The money comes from a surcharge on real estate excise taxes. The bill also creates a new category, the "Washington Natural Resources Conservation Areas". The criteria for these areas is not as stringent as for natural area preserves. Four specific areas were named in the legislation to become Conservation Areas. The Conservancy thanks legislators Dan McDonald and Phil Talmadge, Alan Thompson, Pat McMullen, Jennifer Belcher, Jolene Unsoeld, and Nancy Rust.

12.11 Conversion of School Lands

However, I feel that the bill which will have the largest effects was a different one in 1987. Its affects will be felt in perpetuity.

That year Senator “Dan McDonald spearheaded a move to fund needed school construction with general fund dollars while at the same time releasing an equivalent value of state school trust lands from trust status, thereby allowing those lands to remain undisturbed and dedicated to natural or conservation area purposes.” (quoted from the Chapter news)

By this means it allocated \$71.5 million for land acquisition. However, that isn't its importance. Its importance is that the school lands were transferred out of trust status. Previously, those lands provided the schools with a guaranteed revenue. Now this is no longer the case. They must be funded by allocations. As funding usually comes with strings attached, this translates to a significant decrease in local control over education and provides an opening for groups such as the Roundtable to increase their influence over education. For this reason, the conversion of the school lands which was allowed in 1987, may be expected to have substantial long-term effects.

Those school lands need to be returned.

12.12 Debt for Nature Swaps

When the Northwest office of the Nature Conservancy closed, the Northwest Director, Spencer Beebe, went to the national office.

However, According to Peter Carlin (1990), during 1987 Spencer Beebe¹ (by then the president of their international program) and Peter Seligmann (their executive director) quit The Nature Conservancy as the result of a dispute within their leadership. They formed a new organization, Conservation International. Their headquarters is in Washington DC and their North American Office is in Portland, Oregon. More than 50 employees and board members of The Nature Conservancy followed them. So also did some major funding sources.

The story told is that the dispute was over whether to preserve whole ecosystems or whether to continue the practice of establishing small preserves. However, there was also a more important policy issue in question: that is, whether to participate in “debt for nature swaps”.

In July 1987 Conservation International executed their first “debt for nature swap”. That is a sophisticated maneuver involving international finance.

In that first swap, Conservation International bought some of the government of Bolivia's external debt, and traded it back for the government's commitment to preserve 2.7 million acres of tropical rainforest and grasslands (Peter Carlin 1990). A similar swap with Costa Rica followed in 1988. Since then there have been swaps in several countries including Brazil, Madagascar, Mexico, Colombia, and Peru.

These swaps have too often proved to advance the interests of the parties they represent at the expense of the host countries and local residents. In several instances it has been found that the environmental organization managing the preserve has allowed “sustainable” exploitation within the preserve. “Sustainable” appears to translate to whatever maximizes the benefits to themselves or the financiers behind them. There are more than a few instances where, once they had control of the land, they began unrestricted logging or mining operations without regard for either the environment or the local inhabitants (Collett 1989).

The recent revolt in Mexico (1994) can be traced to a nature preserve in Southern Mexico which had previously had been home for the Indians who revolted. There has been a news blackout on the issue, but the revolt appears to have followed from the eviction of the natives from their homeland and that they were fighting for their land and way-of-life. — perhaps I am wrong here. There is, afterall a news blackout. I'm a little short on information on this issue.

Washington State Senator Neil Amondson wrote a well documented paper on debt-for-nature swaps. He traces the origin of the program to the Trilateral Commission and the World Bank. He shows that the debt-for-nature-swaps are one step in the process of creating a one-world government: a progressive process of replacing local control and sovereign rights with a single centralized global authority. It is also one step in the process of replacing small businesses and local economies with large business and government dependence.

¹ Could he be a relative of the Beebe's we find associated with JP Morgan a century ago? There are a lot of Beebe's in America — hence, one might usually conclude, NO. However, if one considers how these elite groups operate, that seems a possibility.

As most Americans are aware, the US dollar is no longer based on gold. It might be secured by the Federal lands and the Natural Resources they contain. As I said in the first chapter, that issue is disputed.

Nevertheless, the US debt is growing. It is now three-and-a-half trillion dollars (thanks to a large extent to Trilateral Commission supported legislators). If the US defaults, the Federal Reserve will be entitled to confiscate those lands. In that event it would be necessary to evict the citizens from the government-held lands. That would be easier if the citizens had already been excluded from those lands and the local economies had been altered so that they don't depend upon the natural resources involved. These are precisely the types of policies the federal and state governments are involved in. The Nature Conservancy is taking the lead in promoting these types of policies which prepare us for a confiscation.

Of course, the citizens and US armed forces might object to land confiscation and hold the responsible parties to a strict accounting. However, the current administration is attempting to disarm the citizens and emasculate the armed forces. At the same time the UN is being armed and the USSR remains armed.

12.12.1 Swaps in the Pacific Northwest

During 1990, Spencer Beebe is quoted by Peter Carlin as having said that Conservation International is looking into debt-for-nature swaps in the Pacific Northwest. Specifically Mr. Beebe mentioned looking into a joint-venture with The Nature Conservancy in Washington State.

If we assume that debt-for-nature swaps are their objective, then the legislators who support them would want to drive the state into debt. Have you ever wondered why a certain class of legislators are such big spenders of the public's money? This may be part of the answer.

12.12.2 Secondary Financial Motives

Various organizations and individuals have said that debt-for-nature swaps are what they are doing and this is also something which environmental organizations have done to other countries during the recent past. The evidence indicates that what may be intended is the gathering of most land and natural resources worldwide into the hands of only a few very rich individuals and then they will rule through a one-world government and a one-world economic order.

This scenario provides a plausible explanation for their programs. However, they may not necessarily be doing this in Washington State. I suspect that they will do debt for nature swaps if they can, but that would be a "best case" outcome for them. They probably have alternative plans in the event that things don't go so well for them.

It would be particularly beneficial for them if their programs not only promised a pot of gold at the end, but also gave profits along the way. Examination of their programs shows that this is precisely the case.

The restriction of logging on federal lands which came about as the result of the president's forestry plan, nature preserves created by the Natural Heritage program and by similar programs, the destruction of the fishing industry (see *Salmon at Risk*), and similar programs have crippled the rural economies. These factors coupled with rising taxes have caused the closure or bankruptcy of some rural businesses and also some rural landowners have defaulted on their payments leading to foreclosure. This has resulted in an increased movement of the rural population into the cities to find employment and housing. This movement tends to keep down or even depress rural property values. However, the land, resources, and capitol improvements don't disappear, someone obtains them, generally at a fraction of their value. Later, then the state's programs change, that land may be valuable. Thus, the destruction of a region's economy can be profitable for the wealthy and large corporations.

A variation on this theme is that many mortgages are insured. If the buyer defaults, in some cases, the insurance company pays the party holding the mortgage both the remaining capitol and the interest which would have accrued over the lifetime of the mortgage. The party holding the mortgage, thereby, obtains a much higher interest rate. For example, consider a 30 year mortgage for \$100,000 on which the total interest paid will be \$30,000. As that interest will be paid over a 30 year period, the annual interest rate will be only a few percent. However, if the buyer defaults during the first year, then \$30,000 in interest will be paid in one year, which is a 30% annual interest rate. That is a very handsome profit.

Thus, it can be to the advantage of the party holding the mortgage to cause the buyer to default. This may help to explain why we find among the supporters of environmental groups so many banks and large companies, which have large interests in real estate, housing, and the related financial instruments.

Another result of suppressing logging through the federal forestry plan and the state's nature preserves is that timber and paper prices have risen. In consequence, large companies who own private forest land have made large profits. For example, Weyerhaeuser Co. is the largest owner of private forest land in the state and made a larger profit during 1994 than during any preceding year.

A fourth immediate benefit is that the natural area preserves which are jointly owned by the state and The Nature Conservancy are open to the elite of the Nature Conservancy but closed to the general public. Thus, the wealthy are provided with personal nature preserves at the public's expense.

These immediate benefits (that is, cheap land and capital improvements, high profits, and exclusive nature preserves) are the immediate consequences of their programs. These benefits alone provide large enough immediate benefits to justify their promoting their programs. Hence, even if their programs don't necessarily lead to debt-for-nature swaps, they will try to continue them.

Chapter 13

Marine Sanctuaries, National Estuaries, and Federal Parks

13.1 Federal Marine Sanctuaries

There is at this time a federal marine sanctuary on the Pacific Coast of the Olympic Peninsula. This is administered through the Sanctuaries division of the National Oceanic and Atmospheric Administration (NOAA). That division is separate from the National Marine Fisheries Service.

There is also a new proposed sanctuary. It is planned to stretch from Bellingham west along the Canadian border to just beyond Port Angeles and South to just north of Seattle where it abuts against the existing National Estuary. The Puget Sound National Estuary takes in the remainder of Puget Sound. An existing Marine Sanctuary stretches from just West of Joyce Washington (A few miles west of Port Angeles) out the Straits of Juan de Fuca and down the coast to just north of West Port. Just south of West port there is a marine preserve at Willapa Bay. The Lower Columbia National Estuary is planned to stretch from Willapa Bay down the remainder of the Pacific Coast of Washington and up the Columbia River to the first dam.

Thus, marine sanctuaries or preserves are planned for the entire marine and tidal waters of the state except for a few small gaps. There is a small gap at Joyce Washington and another at Westport. An oil port and pipeline has been planned at Joyce, but was stoutly resisted by the residents. Westport will probably be the home of charter boat fishing.

The state agencies complain that the existing Olympic Coast Federal Marine Sanctuary interferes with their ability to sample the species they are supposed to manage. But if it is a nuisance to them, consider how the citizens must view it.

The Sanctuary program includes the power to use *any* federal law enforcement agency to enforce federal, state, and local laws if the local law enforcement agencies aren't doing that adequately. Federal laws include such things as protecting marine birds. If a single bird is killed by a fishing net, then the federal government would have the power to shut down the fishery.

That is just one example of federal laws which local law enforcement agencies don't enforce, because the laws are unacceptable. But some the federal employees have recently committed some of the most offensive acts in the name of the Federal Government. One example is burning alive of women and children at the end of the siege in Waco, Texas; another was the murder Randy Weaver's wife, and son.

Another difficulty with these federal programs is that anyone who is found guilty of breaking a federal law, is likely to end up in Federal Court. Federal judges are political appointees and are not renowned for dispensing justice.

Nor are these programs confined to federally managed waters.

13.2 Federal Confiscation of Property Rights: Winters Doctrine.

Federal ownership of lands or waters implies more than just the federal government's right to manage their own property. Under some conditions it may also imply that they have a right to resources which lie outside the boundaries of their property and the right to regulate any activity which affects those resources.

These special rights come from a legal principle known as "Winter's Doctrine". That principle was first enunciated during 1908 by Judge McKenna in the case of *Winter's v. US*. That case involved water rights for the Indian reservation at Fort Belknap, Montana. The Indians had traded a large amount of range land for a smaller amount of farm land so that they could become farmers. However, their right to water came into question. The ruling of the court was that the grant of farming land to the Indians implied also a grant of the water needed to irrigate their lands. The general principle which this established was that when a grant of land is made to an Indian reservation for a specified purpose, all that is necessary to accomplish that purpose is also granted.

During the half-century which followed, Winter's Doctrine was applied only to Indian territory. However, in 1955 the ruling in the case of the *Federal Power Authority v. Oregon* was that Winter's Doctrine also applied to federal lands. The limitations on its application to federal lands were clarified in *Arizona v. California* (1963, 64) and *US v. New Mexico* (1978). Specifically, in the latter case the judge ruled that water rights are limited to the water necessary to achieve the primary objective for which the federal lands were purchased.

Winter's doctrine needs to be considered both when there are new federal acquisitions of land and waters and when there are changes in existing programs. For example, the President's forestry plan (option 9) changed the primary use of federal forest land from timber production to the preservation of wilderness. Wilderness includes the native fauna. That fauna may utilize or require habitat or resources which lie outside the forest's boundaries. It may, therefore, be deemed necessary to regulate the adjoining private lands to achieve the federal objective. In particular, salmon require water. Thus, option 9 provides a mandate for government regulation of water throughout the watershed.

Management of water implies the management of land. For example, the Puget Sound water quality plan includes not only water quality standards but also components on agriculture, mining, forestry, building, and transportation.

The proposed marine sanctuary provides a second and slightly different example of the application of Winter's Doctrine. The sanctuary's primary purpose also is the preservation of wildlife. However, although the proposed sanctuary is a federal program, it involves no federal lands. As their draft proposal notes, this is a new situation.

If Winters Doctrine is found to apply to the sanctuary (and that is but one small step away), then the preservation of the many species involved will imply a broad range of resources on private land. For just one example, shellfish are specifically mentioned in the Sanctuary's draft proposal. Most shellfish are sensitive to water quality. Thus, under Winter's Doctrine the Marine Sanctuary implies water quality. Hence, it is no surprise that the sanctuary's draft proposal lists the implementation of the Puget Sound Water Quality Plan as their first priority.

Another aspect of the marine sanctuary program is that it allows federal officers to supplement local law enforcement if those agencies don't adequately enforce state and federal laws. The sanctuary may look like a park, but under Winter's Doctrine it provides the basis for a broad confiscation of private property rights and there is an iron fist inside that velvet glove.

Citizens need to be wary of any federal program involving lands and waters. Specifically, they need to know Winter's Doctrine and consider all that it may imply.

13.3 Public Trust Doctrine

The public trust doctrine is another old legal principle which is being used to confiscate private property. That doctrine states that the government has the power to protect public resources. Originally that doctrine was restricted to the protection of the navigability of waterways in order to protect the commerce which depended upon them. However, the courts have extended that doctrine to include as divergent issues as public access and protection of the environment and natural resources.

In one case in Washington State, it was used to deny Orion Corporation the right to fill and develop tidelands along Padilla Bay. In a second case, *Caminiti v. Boyle*, the court ruled that public trust had always been law.

Dr. Ralph Johnson, a law professor at the University of Washington, in a publication supported by Washington Sea Grant, said (1991) that, "public trust isn't a sharp line which can't be crossed. It's a pressure to balance public

interests along with the private. The doctrine sits atop a body of statutory law and gives an extra push to state agencies to deny permits for projects that would damage public resources. I don't think our agencies realize they have that power. In some states, such as California, public trust is considered almost a constitutional doctrine that is very difficult to get around. I predict that Washington eventually will go that far."

He feels that the doctrine could be extended to land and water rights. He goes on to state that, in his opinion, the doctrine always applied to those rights, it just wasn't invoked until recently. Hence, he states that, in his opinion, compensation isn't due for confiscated property or use rights and he concludes, "If we always had to condemn property rights to protect resources, we couldn't afford it."

Shortly after Dr. Johnson published his opinions, the citizens got busy and set limits on this new excursion by the courts and government agencies. This was through Initiative 164 which required compensation for confiscated property or use rights. During 1995, that initiative was adopted by the legislature, but due to a counter initiative, it will also have to be voted on by the people in November 1995. We will see how the vote goes, and, if it passes, how the courts and government try to wriggle past this one.

13.4 National Estuary Program

Puget Sound south of Whidbey Island is an existing National Marine Estuary. The Columbia River Mouth is another.

There are plans to extend Columbia River National Estuary northward to just south of Willapa Bay and inland to the first dam on the Columbia. Governors Lowry of Washington and Roberts of Oregon authorized its formation as of December 1994.

According to Brian Offord of the Washington Department of Ecology, as a result of this program, Oregon and Washington stand to receive \$2.1 million from the Environmental Protection Agency (Daily News, Dec 5, 1994).

That program is under the authority of section (6217) of the federal Coastal Zone Management Act Reauthorization Amendments of 1990. The original act was passed in 1972. The original act mandated water quality standards. Its reauthorization also requires regulation of non-point source pollution. That translates to broad powers over land uses. The act affects the fifteen Washington Counties which contact either marine waters or freshwaters which have a tidal influence. That includes the entire Lower Columbia River up to the first dam. Above that dam the Columbia Gorge Scenic River begins and is already under federal regulation.

The reauthorization specifies a schedule of cuts in federal funding for state agencies which fail to meet the federal standards:

- Fiscal Year 1996: 10% of the previous year's funding;
- Fiscal Year 1997: 15% of the previous year's funding;
- Fiscal Year 1998: 20% of the previous year's funding;
- Fiscal Year 1999 and each year afterwards: 30% of the previous year's funding.

(quoted from a handout from the June 20, 1995 meeting of the Lower Columbia Bi-State Steering Committee)

EPA granted a five-year extension to allow implementation of Washington's program.

During that meeting, the representative for the Washington Department of Ecology stated that they didn't intend to introduce separate water quality standards for the Columbia River Basin as they were developing a statewide program instead. The authority for their program is Washington State's Water Pollution Control Act (RCW Chapter 90.48). That act grants authority not only to stop actual pollution, but grants enforcement powers when a person, "creates a substantial potential to violate". According to their own statement, the department feels this open-ended law can be construed to grant them sufficient regulatory powers to meet the Federal Standards.

The approach they are taking is a state-wide program based on local districts.

The following sections quoted from the handout from the June 20, 1995 meeting of the Lower Columbia Bi-State Steering Committee shows how they went about designing and implementing their program:

Coordination is sought by establishing mechanisms to ensure the participation of state and local officials responsible for land use programs and permitting, water quality permitting and enforcement, habitat protection and public health and safety. These mechanisms range from informal agreements to Memoranda of Understanding between agencies. Most of these mechanisms will be put in place as part of the watershed approach.

Our public involvement occurred on three levels. First, a large advisory group, comprised of high level representatives of agriculture, forestry interests, industry, various levels of government, tribes, and environmental groups provided input on the overarching policies and directions for the nonpoint program. Second, technical groups were formed to address specific nonpoint source issues these were comprised of staff from the various groups and agencies that have “on the ground” experience with nonpoint control activities. Finally, there were “feedback groups”. These are established entities that are mainly policy bodies in specific areas; we went to them to ask for feedback on the direction we took in creating the nonpoint program....

...Staff at the Department of Ecology decided early on in the process that it would be unnecessarily redundant to create one nonpoint program for the coastal zone (or even the Coastal Zone Management Area) and then a different program for the rest of the state. ...

...The watershed approach developed by the Water Quality Program at the Department of Ecology is a geographic based phased way of dealing with water pollution. The geographic areas are based on Water Resource Inventory Areas (of which there are 62 in the state) The phases cover activities for five years: Year 1 scoping, years 2 data collection, year 3 analysis, year 4 technical report and year 5 implementation. Different areas around the state are going through the same activities simultaneously and different activities can occur at the same time in different areas.This approach combines not only planning, monitoring, data collection and technical assistance in an area, but also permits, enforcement and financial assistance,...

...An additional benefit is that this approach builds on local efforts that already exist; it also creates ownership for both the nonpoint source problems and their solution by the local residents.

The management measures and management practices provided by EPA and NOAA as the guidance for the 6217 become the toolbox from which solutions can be crafted to the problems identified by the watershed assessments. When ecology discussed the technology-based all things everywhere approach of 6217 with the NPAC there was a fair amount of resistance. Many people want us to prove to them that there is a water quality problem, before we require a fix. Others want us to prove that it's their problem. That resistance was assuaged greatly by the watershed approach as outlined.We are confident the watershed approach will ultimately achieve everything required under 6217 with more likelihood of success. Creating local ownership of both the problem and the solution is key to success for non-regulatory programs. It also unlocks many partnering possibilities and leveraging of some fund sources.

Thus, federal water quality programs were translated into state land use regulations; the department of Ecology consulted with elite planning organizations on how to implement them; and they arrived at what is effectively OBE applied to land use management. In this case the operative unit is the local watershed council, the goals are set by the federal authority and probably others by the state or elite planning organizations.

During October 1995, a past member of the council for the Dungeness River watershed explained to me how that council had reached an impasse because some members refused to accept the conclusions (the pre-established goals) which the higher authority required of them. Therefore, the council was dissolved and a new council was constituted. The new council omitted those members who were unwilling to accept the pre-established goals.

If you wonder why DOE doesn't seem to be responsive to the state's needs, their federal funding and strings may have something to do with it. If you wonder why local institutions like the watershed councils aren't responsive to local needs their state control may have something to do with it. For those of us who have no use for DOE (other state or local departments could accomplish its legitimate functions), don't want federal regulation, and certainly don't want administrative governance by parties we don't elect and which aren't accountable to us; killing these so-called “water quality” programs or withdrawing from the National Estuaries Program or from Coastal Zone Management is attractive.

13.5 Puget Sound Water Quality Authority

Here is the older water quality program which the Department of Ecology spoke of.

To create totalitarian government, the object is to create powerful agencies and then place members of the elite into positions of control over those agencies and, particularly, to exclude from deliberative and executive functions

individuals who would advance or protect the public interest or elected representatives who are accountable to the public. Such an agency would be a powerful engine for arbitrary government.

The Puget Sound Water Quality Authority (PSWQA) provides an archetypical example of an agency with that structure.

Roberta Gunn, the executive director of the Puget Soundkeeper Alliance (Seattle, WA) said that their alliance had been instrumental in getting the Puget Sound Water Quality Authority established (Pers. comm. July 30, 1994). She described the Puget Soundkeeper Alliance as a coalition of a large number of environmental groups. She didn't acknowledge any connection to the Northwest Renewable Resources Center.

The Puget Sound Water Quality Authority was formed a year before the formation of the Northwest Renewable Resources Center. The Puget Sound Water Quality Authority was established by RCW 90.70.101 (RCW is the Revised Code of Washington, that is Washington State law) enacted in 1983. However, that section was repealed in 1985. The laws of 1985 established its current structure, consistent with the Northwest Renewable Resources Center's objectives. Those laws were sponsored by senators Talmadge and Unsoeld, representative Rust and various other legislators.

The Puget Sound Water Quality Authority has substantial power and a vague mandate. The revised code of Washington states regarding the Puget Sound Water Quality Authority, "It is, therefore, the policy of the state of Washington to create a single entity with adequate resources to develop ap a comprehensive plan for water quality protection in Puget Sound to be implemented by existing state and local government agencies." (90.70.001 enacted by laws of 1985).

Its powers include (RCW 90.70.025 enacted 1985) "Adopt rules under chapter 34.05 RCW as it deems necessary for the purposes of this chapter." Chapter 34.05 sets down the procedures by which a department can establish administrative rulings, which become law in practice. Thus, the Puget Sound Water Quality Authority has considerable power.

RCW (90.70.011, laws of 1985) states that the authority is composed of eleven members; nine of these appointed by the Governor and confirmed by the Senate; the two additional members are the commissioner of public lands and the director of the Department of Ecology (who chairs the Puget Sound Water Quality Authority); and three of the eleven members shall represent the cities, the counties, and the tribal authorities. It also states that, "In making these appointments, the governor shall seek to include representation of the variety of interested parties concerned about Puget Sound water quality."

Its board of directors is composed of representatives from business, environmental groups, and Indian tribal authorities and its director is on the board of the Northwest Renewable Resources Center. Thus, it is a powerful agency concerned with exactly the issues the Northwest Renewable Resources Center is most concerned with and the people who control it have exactly the intended composition.

The Puget Sound Water Quality Authority's first job was to establish a water quality plan for the Puget Sound Basin. That is they establish the initial direction for setting water quality standards. Hence, the Puget Sound Water Quality Authority may have a great deal of influence over the final outcome.

The Puget Sound Water Quality Authority appears relatively unresponsive to the public interest. For example, at their January 1993 meeting in Seattle, a woman complained of the effects the water quality standards had upon her and her husband's hobby farm. They were retired and kept a few cows. She said that they had been required to pick up all the cow feces in their fields. She also said that for the same or similar reasons, some of the dairy farms in her neighborhood had closed and moved to a different part of the state. No one from the Puget Sound Water Quality Authority made any helpful suggestions nor did they provided her with any substantive information about the reasons for the standards nor where to find information. In fact, their board of directors appeared amused.

This isn't the way a public agency should conduct itself. However, from its structure and origin this agency was probably not intended to benefit the public. That is, if it is assumed that this agency was established by a coalition whose intention was to curtail rural land use by private citizens and small businesses and that their approach is to apply overly restrictive and unreasonable environmental standards; then from that viewpoint, the woman's complaint was telling them that their programs had been successful.

13.6 North Cascades International Peace Park

This proposed Park is larger than the country of Switzerland. It takes in more than 25% of the land area of the State of Washington. It stretches from Mount Ranier National Park northward in the Cascade Mountains across the Canadian Border. Hence, its international component. Its exact borders are fluid, changing at each proposal. At one point it stretched from the Columbia River on the East to Puget Sound on the West. It has a core area into which no humans can go. It has buffer zones in which there will be very limited resource use. People may live in the I5 corridor. It will be administered by UNESCO.

This park is probably coordinated with the existing and proposed sanctuary and estuary programs. These encompass the entire marine waters of the state of Washington. The lands of Washington State are almost equally jeopardized.

The Cascades will be occupied by the North Cascades Park. The Olympic Peninsula is largely occupied by Indian reservations, state and federal forest land, and the National Park. That park is already an Ecosystem Park under UNESCO. Southwestern Washington has a large state forest, a number of natural area preserves, and a considerable amount of state and private forest land. The Columbia River Gorge is already under federal regulation. All the land from the Columbia River eastward into Montana is designated the Eastside Ecosystem. Much of that area is presently agricultural, but that use will end if the Columbia River is drawn down and irrigation is ended.

What is left is the I5 corridor, the great peninsula, and another corridor in the eastern part of the state.

These corridors are subject to the growth management act. The growth management plan calls for high density urban centers and small lightly used rural transition areas around them. Services such as fire protection, law enforcement, hospital districts, transportation (trains, busses, and roads), etc will be deliberately limited in the transitional areas to limit their growth and use. Under the federal crime bill, rural law enforcement will become a federal concern.

The urban areas will have high density housing with tight zoning and readily available but intrusive police and health services. Zoning will prohibit most manufacturing-based small businesses, but there won't be many of them anyway, because without a natural resource base (agriculture, forestry, mining, and fishing) there would be a lack of inexpensive raw materials. Only the service sector will probably remain the domain of small business. We are planned to become an apartment-dwelling proletariat who use public transportation and are dependent on government and big business.

However, one international business is coming to the Northwest.

13.7 The Opium Trade

In 1997 Hong Kong, which for more than 100 years has been the opium/heroin center of the world, will be taken over by Red China. They have vowed that the opium trade will end.

Canada has allowed wealthy residents of Hong Kong to emigrate. and many of them have settled in Vancouver, BC. Now high quality heroin is available Vancouver and the price of heroin has dropped in the Washington State. The conclusion I draw is that Vancouver may become the new Hong Kong.

The proposed North Cascades Park will make an ideal conduit for the transportation of drugs from Vancouver, BC, to the United States. There will be no border guards on the park, which will cross the border and the public will be excluded from it. Therefore, drugs can be transported into the park in Canada and out of the park in the United States. The Canadian government says that it is impossible for them to prevent entry of drugs into Canada. Their coastline and the Arctic are too long to police.

Not only will people be able to traverse the park illegally, but, the Indians, as indigenous people, won't be excluded from the park and neither would they necessarily be required to use their traditional means of travel within the park. So, for example, Indians might fly helicopters from Canada to the Yakima Indian Reservation. That would be over the park the entire way and no one would observe it. Alternatively drugs could be put onto boats at the head of Ross Lake, only a short distance from Canada, and unloaded at the dam alongside the North Cascades highway. Here are two open and convenient conduits and a ready-made labor pool.

The National Marine Sanctuaries will also be convenient for smuggling. Ships are restricted to not come within 24 miles of the Olympic Coast. That is far enough offshore that the curvature of the earth will hide a ship anchored next to the shore. Also the public is being progressively excluded from much of the shore on the landward side. In

addition, the Coast Guard helicopters no longer patrol beyond Pillar Point, leaving the Olympic Marine Sanctuary open for smuggling. The only difficulty at the moment is that private boats and fishermen may be in the area and see ships unloading.

A public presence on the publically owned lands and waters is a matter of public safety. If the public aren't there all manner of crime may occur within those areas.

Chapter 14

The Discovery Institute

Discovery Institute, 1201 Third Avenue, 40th floor, Seattle, WA 98101-3099: Voice (206) 287-3144 — That is in the offices of The Perkins Coie Law Firm.

The Discovery Institute appeared before the Public in 1994. It bills itself as a conservative forum addressing public policy issues and providing leadership.

Its “conservatism” may be merely the flipside of the same coin. Several individual and organizations which are members of the Institute are also members of one or more of the other elite organizations discussed in this book: that is, the Roundtable, the Nature Conservancy, or the Northwest Renewable Resources Center. The Institute’s policies aren’t materially different from the policies of the other groups. All of these organizations are better described as authoritarian rather than liberal or conservative.

14.1 Board of Directors

Bruce Chapman Institute President, former Washington Secretary of State; Director of US Census Bureau; US Ambassador.

Tom A. Alberg Institute Chairman; LIN broadcasting; executive Vice President McCaw Cellular Communications.

Charles J. Katz Institute Vice President; Senior partner Perkins Coie.

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14.2 Board of Advisors

Anthony W. Armstrong Vice President, GTE Northwest, Depute member of the Washington Roundtable, 1988.

Dr. Herbert J. Ellison Jackson School of International Studies, University of Washington.

Scott Hall Director of Corporate and Foundations Relations, University of Washington.

Dr. Donald C. Hellmann Professor, Jackson Institute of International Studies, University of Washington.

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James F. Lane Senior Counselor, Osgood Global Group, New York.

Gen. Merrill A. McPeak retired Chief of Staff, USAF.

J. Eugene Marans Cleary, Gottlieb, Steen, and Hamilton, Washington DC.

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14.3 Fellows

Sam Beard Chairman, National Development Council

Ray B. Chambers Chairman Chambers, Conlón and Hartwell Inc.

Albert Gidari jr. Partner, Perkins Coie.

George F. Gilder Author *Life after television, Wealth and Poverty*. . . .

Dr. Philip Gold Liberal Studies professor, Georgetown Univ.

Rex Hughes Research Fellow, Information specialist.

Dr. Roberta Katz General Council, Netscape Communications Corp.

Dr. Edward Larson Professor of Law, education, and history of Science, University of Georgia.

Dr. Stephen Meyer Associate Professor of Philosophy, Whitworth College.

Egils Milbergs Learning Access, Washington DC.

John R. Miller Member of Congress, 1985–1993, Chairman of the Institute's Cascadia Project.

Anne Neal Attorney and director of the Institute's Higher Education Accountability Project.

Dr. Mark L. Plummer Economist and co-author of *Noah's choice*

Eileen V. Quigley President of Seattle Municipal League.

Dr. Richard Rahn Economist, President of Novecon, Washington DC.

Peter J. Wallison Partner, Gibson, Dunn, Crutcher, Washington DC.

Dr. John G. West jr. Director of the institute's program on religion, liberty, and civic life; Assistant professor of Political Science, Seattle Pacific University.

John Hamer Adjunct fellow of the Institute; Vice President of Communications, Washington Institute for Political Studies; editor *Counterpoint*.

Robert Kaufman Adjunct fellow of the Institute; Professor, University of Vermont.

David Hancocks Adjunct fellow of the Institute; Director of the Arizona–Sonora Desert Museum, Tucson.

Anthony Hemstad Adjunct fellow of the Institute; Eklektik, Prague, Czech Republic.

Dr. Lewis J. Perelman Adjunct fellow of the Institute; High technology consultant and author of *School's Out*.

George Weigel Adjunct fellow of the Institute; President, Ethics and Public Policy Center, Washington DC.

14.4 Composition

The Board of Directors has a familiar appearance to it. It contains the usual principle corporations: that is, Weyerhaeuser, Boeing, and Seafirst Bank. Its chairman is an ex-chairman of The Nature Conservancy of Washington.

Key Bank seems to be more involved with the Institute than it is with the Roundtable. However, Key Bank had a relatively high level of involvement with The Nature Conservancy.

However, now consider the differences in its composition. The Institute has heavy representation from the information industry (that is, from communications, computer, and media sectors); it has considerable representation from academia; and it has considerable representation from government and law firms.

The Institute's board of advisors has a similar composition, but includes some retired judges and generals and also professors from the notoriously authoritarian Jackson Institute of International Studies at the University of Washington.

The fellows (that is, the people who will actually construct their programs) are an interesting collection. Surprisingly few of them are from Washington State, but a lot of them come from Washington, DC, and there is an emphasis on communications, high technology, ethics, religion, and sociology.

The Institute's composition is what would be expected if this is a group of local magnates and their cronies from Washington DC who to study Washington State as an experiment in New World Order Sociology. The Institute's composition suggests that the problem they are addressing may be the application of the Preceptorial System in the computer age in an economic system based on international trade without tariffs.

The difficulty with the Preceptorial System is that its purpose is to maintain a privileged class who rule for their own advantage. That is an inherently unstable social structure and, therefore, needs to be actively maintained. Previously, control of the news media and printing had been effective in controlling the public. However, we are now in a transition to a new society characterized by high technology and free trade. The control system needs to be modified to suit these new conditions. The organization assigned that mission might have a composition very much like the Institute's.

14.5 Current Programs

The Institute has several programs. Some of them appear good based on their superficial description, while others might or might not be good. However, one project seems to be the central issue they address. That is the Cascadia Project. It is egregious.

14.5.1 High Technology and Public Policy

Led by George Gilder, this group includes Dr. Philip Gold, Dr. Lewis Perelman, and Dr. Roberta Katz. To quote their flier,

New technologies born of the age of the computer are transforming business, education, government, and society as we know it. Specific topics explored in this program include government telecommunications policy, the role of new technologies in reforming education, the impact of new technologies on law firms and the legal process, and the importance of using technology to revitalize our national defense.

Government telecommunications policy probably means the State's computer system, which is being overseen by the Department of Information Services (DIS). Previously a small and unimportant department, Governor Gardner greatly enlarged it. They are building a single information system which will contain all the state's data. Such a system is needed to impose a totalitarian government. This Department comes up for review, under the Sunset Clause in the 1996 session.

Reforming education probably means computers in classrooms using programs prepared by a central agency. This prevents any instructor for teaching a student what the state doesn't want.

What we need is home schooling using computer programs and videos prepared by independent small businesses. The state needs an accreditation system which will allow creative educational tools to be used in both the K-12 and higher education systems. That will break the state's monopoly over thought.

I'm not sure what the impact of the new technologies on the legal process may be.

14.5.2 Representative Government and Public Life

This project is led by Bruce Chapman. Their description of it says,

Americans today distrust politics and politicians as never before, leading some critics to advocate the replacement of representative democracy with forms of “direct democracy”, including “teledemocracy”, where TV views will vote on national legislation. The Discovery Institute believes that such attacks on representative democracy are fundamentally misguided, and in this programthe Institute seeks to re-articulate for our own day why representative democracy is needed — and to propose concrete steps by which it can be strengthened and revived. Toward this end, Discovery hopes to develop new approaches to the public school curriculum on civics and the university curriculum on politics, emphasizing the principles underlying the American Founding.

I applaud the sentiment, but I’m inclined to distrust any elite planning organization with their composition. If they want the public trust they should include among their members known and reliable members of the patriot movement.

The most concrete step towards restoring confidence would be the investigation, trial, and conviction of the parties who are responsible for the things described in this book. However, I doubt that they would promote this as some of the members of the Institute may be implicated.

14.5.3 Religion and Liberty in Civic Life

Led by Dr. John West, this project is aimed at reviving the role of religion in civic life. Their flyer says they “want to explore the philosophy of British thinker C.S. Lewis”. Mr. Lewis was an Oxford don and a Cambridge professor.

I looked at some of C.S. Lewis’s books to see, for myself, what he says. His writing has a gentle and graceful tone but also has a hypnotic effect due to its repetitiveness and meter. As Anthony Burgess says (New York Times Book Review quoted on the jacket of Lewis 1947, *Miracles*), “Lewis is the ideal persuader for the half-convinced, for the good man who would like to be a Christian but finds his intellect getting in the way.” C.S. Lewis is a skillful writer who uses the arts of rhetoric to produce a powerful effect. His aim is to inculcate a religious viewpoint.

With some effort I evaded being either wooed or hypnotized by his style and I look at what he said. I found his message clear.

He strongly criticizes Hegel, Aristotle, Cicero, Wordsworth, Carlyle, and Emerson (see Lewis 1947, “Miracles” page 82) who he lumps together under the title of “pantheism”, even though their philosophies aren’t pantheistic and there are profound differences among these philosophers. They represent the opposing sides of the contemporary conflict between liberty and totalitarianism. Pantheism is the belief that the universe, taken as a whole, is God (Webster’s New International Dictionary second edn.), which Mr. Lewis confounds with the belief that God, the Holy Spirit, pervades all things, sets the rules for Nature and, hence, that man may see God through Nature.

In contrast, Mr. Lewis’s God is a “living” God — “A God who has purposes and performs particular actions, who does one thing and not another, a concrete, choosing, commanding, prohibiting God with a determinate character” (see Lewis 1947, “Miracles” page 81).

This God of his may suspend the rules of Nature or impose a supernatural force to affect events in a way which runs counter to the rules of Nature. He believes that God does this whenever and wherever at his caprice — these actions he calls “miracles”.

However, C.S. Lewis’s most fundamental criticism of Hegel was not what most Americans find unacceptable about Hegel’s views: that is, Hegel’s beliefs that the mind is white paper and the individual exists only to serve the State. Instead, C.S. Lewis criticized Hegel’s reliance on reason. Most of the philosophers who viewed the mind as white paper were referring to either training in the skills of reasoning and memorization or the acquisition of knowledge. Hegel, Kant, Marx and most other totalitarian philosophers, who approved of molding the public’s minds, dealt primarily with the mind as white paper with respect to facts and data. That led to the modern field of cybernetics and the Socratic method in teaching. Few people doubt that reason, if unhampered, will lead from the same data to the same conclusions.

In contrast, Mr. Lewis feels that reason is situational. He argues that the mind’s rational facilities mimic and conform to the rules of Nature. However, he sees Nature as containing a God who creates miracles. Miracles, by definition, run counter to the ordinary rules of Nature and man’s mind and reason should adapt to and accept these irrationalities. Mr. Lewis doesn’t place much credence on reason, he places his reliance on faith. In his view, people should follow articles of faith, taken and held without reason, but malleable to the winds of change.

C.S. Lewis's philosophy is where "situational ethics", which is taught in outcome based education, leads. In that system of belief the difference between truth and falsehood, heroism and cowardice, virtue and evil . . . depends upon the context and society's view. These are the beliefs and religion of totalitarianism under the preceptorial system. Mr. Lewis's vision is of the Christian public as a flock who complacently allow themselves to be molded by a shepard's guiding hand.

Who are to be the shepards but those who control public opinion (authors, reporters, and broadcasters) or influence religion and education (the Preceptors — that is ministers and teachers). C.S. Lewis was an author, a don of Oxford, and a Professor at Cambridge. I think he meant that such men as he are to be the shepards, they and the wealthy masters they serve.

Let us believe, instead, as Cicero, Carlyle, and Locke believed; as our forefathers the hard-headed Puritans of the North East believed; and as the founding fathers of our nation believed and so stated in the organic documents of our nation: Let us believe in the strength of reason which allows us to perceive in Nature, the workings of Natural Law and Nature's God.

14.5.4 The environment and people

They say that, "How to protect the natural environment without sacrificing the human environment is one of the most difficult and divisive issue of recent times."

The Institute's message, seems to be the liberal perspective that we have an environmental disaster and an insoluble dilemma. That is poppy cock — The answer is to use state-of-the-art management techniques. Even half-assed management techniques would do better than the mismanagement that has practiced during recent years.

14.5.5 Cascadia Project

The Cascadia Project is an all-encompassing project. It deals primarily with the economic viability of big business in the I5 corridor — that and one other corridor is all that is left after the parks and sanctuaries are withdrawn from the effective area of the state.

The Cascadia Project involves:

1. Growth Management: This is a comprehensive planning effort which will place all private land between the Parks in the mountains and the saltwater under government regulation. It was passed in the Growth Management Act during the Gardner Administration and is intended to restrict urban growth.
2. Norm Rice's Urban Villages Program: This is a system of high density urban housing.
3. Light rail from Eugene, Oregon, to Vancouver, BC. and the intermodal transportation plan.
4. International trade: this is the engine which provides revenue — but only for the biggest corporations.

14.6 The Intermodal Public-Private Transportation Plan

The transportation components of the various plans and especially of the Cascadia Project's plan includes a comprehensive transportation plan. I assume that this plan is related to the Federal Intermodal Transportation Act.

One of the central features of the Institute's plan is a light rail system from Eugene to Vancouver, BC. I have used light rail systems in London, Sydney, and Vancouver BC and can vouch for the fact that they can be both pleasant and effective for a commuting urban population. However, there are several major objections to the light rail plan.

The first objection is that many people don't agree that there is a need for any commuting system. That need is based upon restricting business activity to high density urban centers. An alternative growth pattern is to induce the businesses to relocated in suburban or rural areas where the people live. In that alternative plan there is no need for a commuting system.

The second objection is that rail systems are usually very expensive both in capitol outlay and in maintenance. The non-urban non-commuting population which neither wants nor will use that rail system will be taxed for its construction and maintenance. Naturally they oppose it.

A third objection is that the rail system is to be a private-public cooperative venture. As such it should be viewed as a means for big business to make high profits at the public expense. The public naturally objects.

So the conclusion is that this light rail system looks like a boondoggle for bilking the public.

There also is to be a comprehensive public bus system. Again, there is a need only if a urban-center based growth pattern is adopted. Also, it is rare that public bus systems are cost-effective. It is even rare that they save fuel. They are merely expensive boondoggles. It is only within city centers that public transportation systems make sense.

Two general objections to all public transportation systems are, first, they allow for increased government control of the public, if the public becomes dependent upon them and, second, they greatly increase the incidence of airborne diseases. With regard to the second concern, bronchitis is very common in Vancouver BC but rare just a few miles away in Bellingham, Washington. The principle difference is that Canadians often use public transportation while Americans rarely do. A recent development is that serious airborne diseases are appearing in the population. These include drug-resistant tuberculosis. The health cost of public transportation hasn't been considered in the planning process. The combination of congestion, public transportation, and serious airborne diseases would tend to limit the human population.

Another defect of the intermodal transportation plans is that they entirely ignore light vehicles such as bicycles. When I lived in Vancouver, BC, I commuted by bicycle and found that to be a pleasant, healthful, and desirable mode of transportation in all weather except when the road was icy and those conditions are fairly rare in the Northwest. Furthermore, I found that commuting 40 miles roundtrip to downtown Vancouver was faster by bicycle than by car, bus, or light rail.

The sole problem with bicycle transportation is the paucity of high quality bike routes. Bicycles have been ignored even though they provide both the cheapest and the best form of urban transportation where it is appropriate. The reason for this aspect of transportation being neglected is probably that big business and big government can't make a pile of money from it. Also it doesn't increase their control over the population, rather the reverse if anything.

Another aspect of the Federal intermodal transportation plan is the conversion of the state's highways into tollroads. First the state highway system has been converted to controlled access, next piece-by-piece it will be transferred to a public-private joint venture as a toll road. That is the plan, but the public wasn't deceived and stoutly opposed it. Under this plan, the public will no longer have freedom to move about over the state's highway system. The state will become isolated cities. Anyone who is worried about their freedom should be concerned about this development.

A corresponding plan is to put electronic identification devices in the license tabs. That would allow automatic billing of tollroad users. Another proposal was a pay-for-use lane system on the freeways. Individuals who pay higher fees can use the fast lanes. The fastlane fees would be raised until the traffic level in them was satisfactory for the wealthy. This is transportation by the wealthy for the wealthy.

We also find in various parts of the country restrictions on the use of private vehicles. For example in Michigan, citizens are limited on the number of days they may drive their cars per week. Similarly, roads in rural areas of Washington are not being repaired and there are plans to decommission some of them. Without rural bus service, with closed or poor rural roads, and with prohibitions on the use of private vehicles, much of the population will be forced out of the rural areas.

Put these aspects together, and you get the full impact of the transportation components of these plans: they plan that we shall become an urban proletariat.

14.7 Prisoner Labor — The Savior of International Trade

When we come to international trade we encounter a problem. How can we compete when our competitors use slave labor and have the same technology we do?

The pessimistic answer is probably best stated in a study contracted by the US Attorney General's office: (Dwyer and McNally 1993)

A comment on foreign-produced products and cheap labor is germane to discussion of the growth and development of prison industries. Despite tariffs and other trade barriers, countries with wages significantly lower than those in this country (e.g., Hong Kong, Mexico, the Philippines, the Caribbean

countries, etc.) have been able to assemble and produce products (with U.S. components) and sell them back to American markets. Considering the emerging global economy, it is reasonable to assume that the U.S. is losing significant business opportunities to foreign competitors.

The possibility of promoting prison-based labor forces as an alternative to offshore competition becomes significant. If inmate labor were perceived by U.S. corporations as a viable, cost-effective alternative to offshore labor, the number of co companies which might consider domestic prison-based operations could increase significantly and therefore recapture enterprises that have gone to foreign competitors (Will, 1989).

Poor conditions for the working classes and congestion in the urban villages will produce high crime rates and assure an continuous supply of prisoners. However, already, with the proliferation of drug abuse and violence we are incarcerating more people, 455 per 100,000 (Criminal Justice Digest, 1992, p. 1) than any other country.

14.8 International Seattle

This is the name of a meeting held in Seattle May 6, 1993. Its topic was the remodeling of the I5 corridor into an "international city" like Hong Kong or New York. The proceedings and the reports and recommendations of the various projects are published as a single book by Hammer and Chapman (1993). I found it available at the Public Library. According to them the Northwest is to become a tourist mecca, a meeting center for international businessmen, a cite for international trade. We and our children will provide services to these tourists and international businessmen. For this we must learn international cultures and languages.

Chapter 15

The Politicians

The previous chapters have listed some of the politicians who sponsored or promoted specific bills. This chapter presents a more comprehensive analysis aimed at identifying the legislators who have been sponsoring bills which are consistent with the agendas of The Washington Roundtable, The Nature Conservancy, The Northwest Renewable Resources Center, or the Discovery Institute. It examines sponsorship of bill during the 1993 1994, and 1995 legislative sessions.

15.1 Context of the 1993 and 1994 Legislative Sessions

The reasons for the abrupt increase in the publicity on environmental issues during 1993 and 1994 were political rather than biological. The difference between those years and other years is the dominance of the Democratic party.

During the 1993 and 1994 sessions, the Democratic party had control in Washington state government and also of the federal government. Specifically: in November 1992 Democrats were elected to the Washington State Governor, the Washington State Attorney General, and enough Democrats were elected to hold the majority of both the House and the Senate in the State legislature. In the same election (November 1992) a Democrat was elected president (that is, Clinton) and enough Democrats were elected to hold the majority of both the House and the Senate in the US legislature. Thus, 1993 and 1994 were the years for them to play their hand.

In the November 1994 elections, there was a strong public reaction to the 1993–1994 government. Republicans gained a 60–to–38 majority in the Washington State House of Representatives and they are in the minority in the senate by only a single seat. Those new freshman Republicans in 1995 mostly weren't Big Business Republicans. They are a different group, the "Small Business Republicans". In general, they were elected because of their opposition to the type of programs advanced by the 1993–1994 government.

15.2 Citizen's Initiative 601

However, by the end of 1993 the public already felt that the liberal government was out of control. They wanted to rein it in.

In the November 1993 the citizens of Washington voted in favor of Initiative 601. That initiative puts a cap on State Revenue. It allows the state revenue to grow only as the state's population grows.

The citizens want to limit the burden of the total government revenue. Much of the public would also like substantial reductions in the amount of government regulation. Of course, the limiting or reduction of the government's revenue and power is diametrically opposed to the intent of the programs discussed in this document. Hence, the legislators generally aren't complying with the public's desires.

I601 doesn't seem to limit fees, indebtedness, nor agencies outside the strict confines of the departments of state government. The state legislators rather than cutting back the total government expenditure are transferring its expenses to groups or revenue sources which aren't restricted by I601.

Throughout the bills examined here, revenue generation and transfers of expenses are issues. There are new and larger fees, authorizations to issue bonds, authorizations to seek public donations, mandates to find new revenue

sources, mandates to promote the use of volunteer labor, some routine operations are transferred to non-profit organizations (not to the private sector), and new regional or county authorities are created and take over some of the functions of state government. Also, the bills include text referring to a "stable funding base" (or similar phases) meaning, revenue which the citizens can't cut as easily. This is an ongoing fight.

15.3 Legislators and bills

The purpose of this section is to identify those legislators who consistently promote the authoritarian position. The eleven bills examined in this chapter are rated based on the types of programs they introduce. Brief summaries of these bill are presented at the end of this section Each legislator's score is the sum of the ratings for the bills he or she sponsored.

15.3.1 Rating the bills

The purpose of this rating is to score the bills according to the extent which they advance the coalition's position or degrade the citizen's liberty.

One (negative) point is assigned for each of the following things:

1. The bill creates an new bureaucracy or transfers power from a local authority to a regional or state-wide authority.
2. The bill gives leadership of the bureaucracy to a coalition of interested businesses, tribal authorities, and heads of state government.
3. The bill gives the bureaucracy broad rule-making authority over pollution, habitat, water, land-use, or wildlife (including fish or birds).
4. The bill grants Indians special privileges.
5. The bill states that salmon are habitat limited.
6. The bill implements the Puget Sound Water Quality Authority plan (or any other plan created by a bureaucracy governed by a coalition of interested parties) or introduces it into local or regional ordinances.
7. the bill imposes civil or criminal penalties related to the Puget Sound Water Quality Authority plan (or any other plan created by a bureaucracy governed by a coalition of interested parties).
8. The bill provides a bureaucracy with a revenue source which is independent of the legislature or outside the restrictions of I601.
9. The bill allows individuals or corporations to give gifts to the bureaucracy.
10. The bill transfers state expenses or obligations to a non-profit organization or local or regional government.
11. The bill prevents or inhibits land development.
12. The bill places government in competition with the private sector.
13. The bill opens new educational programs to advance their view.
14. The bill initiates a study or pilot program pursuant to one or more of the above objectives.

	HB:1309	1426	1442	2417	2741	SB:5215	5454	6001	6385	6417	6476
1		X	X	X	X	X	X	X	X		X
2	X		X	X	X						
3	X										X
4	X		X	X	X		X				
5	X										
6	X			X		X	X				X
7						X					
8	X	X	X	X		X	X	X			
9	X	X				X	X				
10		X		X		X		X			X
11		X				X		X			
12				X							
13	X										
14	X				X			X	X		X
Tot	-9	-5	-4	-7	-4	-7	-5	-5	-2	0	-5

SB6417 has a rating of zero. It appears to have been introduced by legislators opposed to the intentions of the other legislation examined in this chapter. SB6417 is included to show that there is an opposition and to point them out. The legislators who sponsored it are from both parties.

15.3.2 Legislator's scores

A low score indicates the legislator sponsored legislation which advances the coalition's objectives, as measured by the above criteria.

Rep.	Score	Rep.	Score
<i>Basich</i>	-21	Ogden	-14
Bray	-14	<i>Orr</i>	-21
Brown	-14	Shin	-14
Brumsickle	-14	<i>Pruitt</i>	-18
G. Cole	-14	Roland	-8
Jacobsen	-14	Riley	-7
R. Johnson	-8	<i>Rust</i>	-18
Jones	-7	Springer	-14
<i>Karahalios</i>	-18	Linville	-4
Kessler	-7	Valle	-4
<i>King</i>	-25	L. Johnson	-4
<i>J. Kohl</i>	-21	Rayburn	-4
<i>Kremen</i>	-18	Meyers	-4
Morris	-4	L. Johnson	-4
Morton	-14		

Representatives King and Kohl each sponsored four of those bills, and representatives Basich, Karahalios, Kremen, Orr, Pruitt, and Rust sponsored three each. The names of the legislators who sponsored at least three of those bills are printed in italics.

Senator	Score	Senator	Score
Barr	-5	Prentice	-10
Drew	-5	Quigley	-5
Franklin	-5	Rasmussen	-5
<i>Fraser</i>	-24	Reichbauer	-5
Huagen	-5	Sheldon	-5
Moore	-7	<i>Skratek</i>	-14
Morton	-5	Sutherland	-5
Niemi	-5	<i>Talmadge</i>	-19
Owen	-12	Winsley	-2
Pelz	-5		

Senator Karen Fraser sponsored every senate bill examined in this chapter except SB6417 (which is opposed); Senator Phil Talmadge sponsored four of those bills; and Senator Skratek sponsored three. Although this rating system is imperfect, it indicates who is promoting those bills. It shows who is more involved than others, but all of the legislators listed above sponsored at least one of those bills.

Senators Nelson, Oke, and Vognild each sponsored SB6417 but none of the other ten bills. Since SB6417 has a rating of zero, their scores are zero. They aren't listed in the above table, so that they won't be confused with the senators who sponsored the other bills.

15.3.3 Sponsors of house bills

HB no.	1309	1426	1442	2417	2741
rating	-9	-5	-4	-7	-4
Basich	X	X		X	
Bray	X	X			
Brown	X	X			
Brumsickle	X	X			
G.Cole	X	X			
Jacobsen	X	X			
L. Johnson					X
R. Johnson			X		X
Jones				X	
Karahalios	X	X			X
Kessler				X	
King	X	X		X	X
J. Kohl	X	X	X		X
Kremen	X	X			X
Linville					X
Meyers					X
Morris	X	X			
Morton	X	X			
Ogden	X	X			
Orr	X	X		X	
Shin	X	X			
Pruitt	X	X			X
Rayburn					X
Roland			X		X
Riley				X	
Rust	X	X			X
Sheldon				X	
Springer	X	X			
Valle					X

15.3.4 Sponsors of senate bills

SB no. rating	5215 -7	5454 -5	6001 -5	6385 -2	6417 0	6476 -5
Barr		X				
Drew			X			
Franklin						X
Fraser	X	X	X	X		X
Huagen		X			X	
Moore				X		X
Morton						X
Nelson					X	
Niemi		X				
Oke					X	
Owen	X	X			X	
Pelz		X				
Prentice		X	X		X	
Quigley		X				
Rasmussen		X				
Reichbauer		X				
Sheldon			X			
Skratek	X	X		X		
Sutherland						X
Talmadge	X		X	X		X
Vognild					X	
Winsley				X	X	

15.3.5 ESHB 1309: The Wild Salmon bill

This bill has passed both the house and the senate and was signed by the Governor on March 28, 1993.

Based upon the restoration of salmon habitat, ESHB1309 grants powers to develop new policies for land use and water rights. It creates a new bureaucracy composed of the interested parties and grants them broad powers. It also has sections for the implementation of their policies and for educating the public in them.

The motivation for this bill is the protection and restoration of wild salmon stocks. It attributes the decline of the wild stocks to habitat problems. It lists as examples of causes of their decline the construction of "urban and rural subdivisions, shopping centers, industrial park, and other land use activities". It finds the maintenance of rangeland and shrub-steppe vegetation vital. It proposes coordinated management plans especially for state grazing lands.

It creates a new bureaucracy: specifically, it instructs the conservation commission to appoint an advisory committee composed of the interested parties. It gives them a broad mandate to develop standards. Furthermore, it recommends that those standards be applied to state lands as a pilot program.

It makes the application of those standards to private landowners voluntary, but it is only a small step to induce most landowners to adopt them (by programs such as in SB5281) and, another, to make them mandatory.

It also has a number of sections further restricting water rights. It establishes the production of wild salmonids as the primary goal for the Department of Ecology's instream flow regulations and water conservation programs.

It instructs the governor's council on environmental education to raise funds for their programs on fish habitat from public and private funds. It requires Washington State University to report on how to integrate the teaching of these policies into their educational programs. It suggests they consider a rotational assignment with Washington Department of Wildlife.

15.3.6 SHB 1426: Washington Wildlife Heritage Trust

This bill creates the "Washington Wildlife Heritage Trust" and grants a quarter-million dollars to fund it. The trust is instructed to also solicit private gifts but they aren't given the power to tax the public.

The purpose of this non-profit public organization is to buy wildlife habitat, or development rights for that habitat. The trust is under a board which is appointed by Washington Department of Wildlife and the wildlife commission and, thus, are effectively under the control of a department of state government. However, they are outside the government in many other respects. One is that they aren't subject to I601, and another is that the land and development rights they acquire "shall not be considered property owned, leased, or held by the department, ...". The later feature of the Washington Wildlife Heritage Trust ties up the land much more permanently than even public ownership would do.

During the Middle Ages, the Catholic Church in England followed a similar policy. Their priests suggested that the donation of land to the Church was a virtuous act. Hence, many people gave land to the Church in their wills. Over time, a great deal of the land came under Church ownership. Consequently, it was periodically necessary for Parliament to confiscate those lands and place them back into private (non-Church) ownership.

One famous case of this occurred in 1414. That year, the church gave Henry V a very large donation to support him in a war with France, because Parliament would be closed during the war and, hence, its demand to confiscate church land would be ignored. That resulted in the unjust conquest of France and a century of turmoil for the French, but the church kept their land for a period. Later, in the 1540's Henry VIII's premier Thomas Cromwell (not the Lord Protectors, Oliver or Richard Cromwell) confiscated and transferred approximately a fifth of the land in England from the church to private individuals. These are only the most famous cases, of something which happened repeatedly because it was necessary for the public welfare.

The church's policy created a process which accumulated land. The Washington Wildlife Heritage Trust does the same thing: it ties up the land in perpetuity so that it isn't available to the people.

The Northwest Renewable Resources Center was interested in initiating processes: that is what this is, a process which slowly moves us off the land. It is an abuse we have seen before. It needs to be recognized for what it is.

15.3.7 ESHB 1442: Water Policy

This bill is concerned with establishing water resources policy on a statewide basis. It creates a new bureaucracy (The Washington Water Resources Policy Commission) which is under the direction of the legislators, the Indian tribes, and interested businesses.

Its duties are to review existing information on the status of the watersheds and to present a plan. Thus, these vested interests are establishing the direction of motion. In due time, their plans may follow the same course as the Puget Sound Water Quality Authority plan and become law.

The bureaucracy is also instructed to make "Recommendations for consolidation and expansion of state water resources program funding and water quality program funding with specific attention given to a long-term consistent and stable funding structure;".

The bill states that the Indian tribes are "independent sovereign governments". This is an attempt to advance their status, since, so far, no one has suggested that they have that status. They are, at most, dependent states with limited rights of self-government, but they are, more truthfully, a minority which has special privileges.

15.3.8 HB 2417: Transferring Hatcheries

In 1993 the legislature established a regional fisheries enhancement group account and imposed a one-dollar surcharge on food fish licenses (fishing licenses). These funds had been exclusively used to support the regional enhancement groups. HB2417 allows Washington Department of Fish and Wildlife to use those funds for their own programs if those programs are operated by the regional groups. The bill also allows the transfer of state hatchery operations to the regional groups and non-profit organizations (but not to the private sector).

It establishes new bureaucracies to oversee harvest of the surplus fish produced by those hatcheries. For each hatchery its bureaucracy is composed of Indian tribes, commercial fishermen, and recreational fishing groups (that is, the interested parties). The hatchery can participate in the harvest and its profits are at the disposal of the bureaucracy to cover the expenses of the operation of the hatchery. In one last clause the bill specifies that the state hatchery workers aren't to lose their jobs as a result of these transfers of hatchery operation.

Thus, state obligations are transferred to non-profit organizations under the control of the tribes and business. There is no specification of how it will be decided which groups represent the recreational fishermen. The bill provides those hatcheries with public funding via the surcharges, and allows them to participate in the commercial fishery.

15.3.9 ESHB 2741: Watershed Planning Bureaucracies

This bill was signed by the governor on April 1, 1994. It contains a partial veto.

This bill initiates natural resource planning on a watershed-by-watershed basis. From the point-of-view of salmon, this is an excellent idea, since in most respects the stocks act as independent units. The bill creates a new bureaucracy, the Watershed Coordinating Council. This bureaucracy is responsible for reviewing the status of the watershed, data on it, and its management. It is to make recommendations on minimizing duplication of management activities. It is also to make recommendations on possible new funding sources and the allocation of funding for watershed planning.

The above is what the governor signed into law. The bill also included a section he vetoed.

The section he vetoed created a watershed policy task force. It was to make recommendations on policies for the legislature to consider: that is, it was to develop and suggest new laws. That task force was to be composed of four members from the watershed planning council and twelve members from the Indian tribes and business interests.

He justified his veto on the basis that the task force duplicates the council. In fact it does, if their objectives were simply to do the positive things that the bill says they are supposed to do. Of course, the task force was there to advance their private concerns. It is better to have the heads of the departments be responsible for those duties, because, although three of the eight of them are known in the recent past to have been part of the Northwest Renewable Resources Center, at least they are supposed to promote the public interest and may be held accountable whereas the representatives of private concerns have no such obligation.

15.3.10 SSB 5215: Watershed Protection Districts

This bill authorizes counties to form watershed protection districts. They are authorized to charge fees, issue bonds, impose taxes, and to receive gifts from private individuals or corporate entities. They are authorized to implement the Puget Sound Water Quality Authority water quality management plan. That includes the land use, capital facilities, and transportation parts of their plan. It defines sensitive areas for septic systems and requires reporting of their use in those areas and grants the Department of Health rule making authority over that. It also creates an independent funding source for the Puget Sound Water Quality Authority: all civil penalties on water quality violations in the Puget Sound Basin will go to the Puget Sound restoration account.

Thus, the Puget Sound Water Quality Authority plan is implemented, metal is put behind Judge Orrick's decision, and the funding for it evades I601. Fortunately, this bill hasn't yet made it through the committees.

15.3.11 ESSB 5454: Puget Sound Water Quality Plan Implimentation

The intention of this bill is to provide financial resources for local governments and other entities to implement the Puget Sound Water Quality Authority plan, especially their various habitat restoration projects.

The original bill imposed taxes on sewerage collection, storm and surface water drainage control, marine fuel, and the manufacture of motor vehicles. This bill languished in committee.

It was replace by one based on obtaining federal funds for relief of workers in the timber industry who lost their employment due to the federal forestry plan. For this purpose it creates a new bureaucracy called the "environmental enhancement and job creation task force" composed of the heads of a number of state departments. They are authorized to solicit private and federal funds. This bill also extends the expiration dates of the Puget Sound Water Quality Authority and Washington conservation corps. It hasn't passed all the committees.

15.3.12 2-SSB 6001: Taxes for Parks, etc

This bill makes a number of relatively subtle changes in zoning and tax laws which increase the power of environmental legislation and provide substantially more funds for the purchase of parks, development rights, and habitat restoration projects. These funds come from local taxes and aren't subject to I601.

This bill gives the county authority greater influence over zoning in incorporated areas (that is, cities or towns). This bill changes the tax code with regard to land designated as open space. It appears that if a government body converts open space back to other uses, they incur a tax penalty.

The bill allows local governments to reserve up to one percent of their construction budget for an open space fund and it frees up their conservation futures funds so that they can be used for restoration and maintenance. It also allows park and recreation districts to put more than one bond issue on the ballot at each election and it increases by a factor of four the ceiling on the taxes they can charge. It also allows those park and recreation districts to incur general liability debts, whether voter approved or not. It allows them to use those funds for restoration and maintenance.

15.3.13 SB 6385: Environmental Permits Office

This bill creates a new bureaucracy, the environmental permits office under the Department of Ecology. This deals with industrial discharges and other point source pollution. The bill consolidates all permitting, standards, reporting, and enforcement. This may be phased in (or not) according to the department of ecology's judgment. At the present time these permits are dealt with by a multiplicity of agencies at local as well as state levels. This transfers authority to a single state agency.

Throughout all the environmental literature, point sources are treated separately: there is one law and mechanism for the people and another for large business. At the moment, municipal and county governments have some influence over the point discharge permits, but if this bill passes that will cease and the state will take over those functions.

This may be better or it may not be, depending on how it is done. The difference lies to some degree in how much control the people retain, and whether there are adequate safeguards both against business and against the bureaucracy.

However, the transition is being done in a very officious manner, with the people having little input: the director will prepare a plan which he or she will submit to the governor. The governor shall review it and submit it to the legislature in his budget proposal. Thus, very broad powers are being granted.

Since the department of ecology has been hand-in-glove with the Northwest Renewable Resources Center from the start, it seems likely that the intent of this move will be to further divest the people of control over pollution by big business and will hand to centralized big government the permitting power. That power can be used to harm some businesses and help others. That can have a tremendous effect on the prosperity of local economies. In the wrong hands it could even be used to displace whole populations from one region to another, by manipulating the local economies.

At the very least, local governments should have more authority over the transition and in establishing the structure of the consolidated agency (if there is to be one).

This change is a public policy issue which affects the citizen's liberty. The public needs to be consulted in this. The fact that the public isn't being consulted, and if their plan is adopted, won't be, makes me suspect that the outcome won't be what the public wants.

15.3.14 SB 6417: Wetlands Policy

This bill requires the development of a county-wide uniform wetlands policy. The intent is to make the policy predictable and uniform for all people in each county.

Another bill, SB5281, (Sponsors are Hargrove, Oke, Sutherland, Owen, Jesernig, Anderson, von Richbauer, and Barr.) also helps landowners. It allows the Department of Fish and Wildlife to make agreements with private landowners. The landowners may agree to certain improvements and the state, in return, agrees not to change the habitat laws which apply to their land as long as they own it.

Of course, there is no guarantee that the process will be uniformly applied. In the worst case the department might only reach agreements with landowners who are Northwest Renewable Resources Center members or with landowners who financially support department programs. There need to be some safeguards.

15.3.15 SB 6476: Environmental Policy and the Growth Management Act

This bill incorporates the state environmental policy act into the growth management act. It promotes combining of paperwork and processes. It says that this is to facilitate examination for compliance with state environmental law and other plans. This applies both to regional plans and to site specific projects. It says that review is to be done by

agencies and tribes. The state is considering reduced state environmental policy act requirements for jurisdictions which adopt combined regulations.

This is an imposition of the state environmental act upon local growth plans and potentially the assumption of the local authority by state government and the tribes.

15.4 Liberal and Big Business Republicans

Republicans didn't turn up in the above analysis. However, we know that there are Republicans on that side: for example, consider James Waldo, Dan McDonald, and Dan Evans.

James Waldo had been the Indian's lawyer in the Boldt II decision, had filed the incorporation documents for the Northwest Renewable Resources Center, was the Northwest Renewable Resources Center's Chairman ever since, negotiated the co-management agreement for salmon, the Timber Fish Wildlife Agreement, and several pollution issues concerning big business. He is the archetypical "Big Business Republican". He is running as a Republican Candidate for the Governor in the November 1996 election.

Washington State Senator Dan McDonald, and ex-governor Dan Evans provide other examples of prominent, liberal, big business Republicans. They promote liberal environmental legislation and are trustees of The Nature Conservancy. Dan Evans is also a founding member of the Trilateral Commission and has a habit of being a member of just about every pro-big-business or liberal organization you encounter.

According to the major press, one of Waldo's arch-rivals, for years, has been US Senator Slade Gorton. Senator Gorton came out strongly against the Boldt decision when he first came into office and, thereby, obtained considerable public support. His brother owns Gorton's Fish. Hence, Senator Gorton may be expected to side with the larger fishing companies. We also find him voting for NAFTA and GATT. We also find him as a speaker at the "International Seattle" and "Cascadia" meetings of the Discovery Institute. Thus, he bears the appearance of a big business Republican. Nevertheless, he makes a lot of noise about opposing the Endangered Species Act, opposing the NOAA restoration plan for the Columbia River Salmon, and opposing other environmental legislation. Thus, he maintains the appearance of being for the public interest. I doubt that he is. My assessment is that he is interested in supporting his big contributors.

The major media presents Slade Gorton as a "conservative" and James Waldo as a "liberal". The liberal Seattle Post Intelligencer and Seattle Times are anti-Gorton but pro-Waldo. They maintain the liberal-versus-conservative perspective.

The true state of affairs is suggested by the fact that James Waldo worked on Slade Gorton's campaign and found large contributions for him. Both Waldo and Gorton are authoritarians and probably serve the same masters. As we saw in the above analysis, the liberal Democrats do also.

I suggest that there is really only one major party in Washington State. I dub them the "Authoritarians". They represent big business and, of course, they listen to and participate in the elite planning organizations led by big business. This party controls much of the party mechanism for both the Democrats and the Republicans.

For many years, their opposition was an unaligned mass of legislators who lack organization and leadership. However, since 1992, there is growing grass roots opposition. It resides primarily within the Republican Party and it is most often referred to as "the small business Republicans" or the the "Patriot Movement". Politically this group lies in the upper half of the two-dimensional model and their objective usually is to restore the constitutional republic. In November 1994 elections they got some of their candidates elected.

15.5 Sponsors of house and Senate Bills, 1995

The context of the 1995 session is that the Republicans obtained a 60 to 38 majority in the House of Representatives but the Democrats retained a majority in the Senate by a single seat; the Governor (Lowry) is a liberal Democrat and is likely to veto any progressive bills.

Although the Republicans have a majority in the House. That includes big business Republicans, liberal Republicans, the religious right, and so on. There are some Democrats who support the small business Republicans.

rating	tot	1017	5271	1108	5194	1540	5777	2021	1397	HJM4005
		-1	-1	-1	-1	1	1	1	1	1
Pennington	2							X		X
Rassussen	1						X			
Reams	0			X						X
Robertson	0	X				X				
Rust	-1			X						
Schoesler	1							X		
D. Schmidt	-1	X								
K. Schmidt	0	X						X		
Scott	-1	X								
Sehlin	-1	X								
Sheldon	-1	X			X				X	
Shurtad	1									X
Silver	1									X
Snyder	-1				X					
Stevens	2					X			X	
Sutherland	1						X			
Talcott	-1	X								
L. Thomas	1					X				
Thompson	2	X				X			X	X
West	1						X			
Winsley	-1				X					
Wolf	-1			X						

I examine a small set of important bills, rate them either positive one for a good bill or negative one for a bad bill, and look at who sponsored them. This gives a general impression of who-is-who. Thirteen individuals had scores of 2 or greater, indicating that they sponsored at least two more good bills than bad bills. These legislators were Buck, Cairnes, Campbell, Carrell, Clements, Fuhrman, Hargrove, Johnson, McMahon, McMorris, Pennington, Stevens, and Thompson.

Representative Fuhrman sponsored four good bills, and Representatives Buck, McMorris, Stevens, and Thompson sponsored three. Senator Hargrove is remarkable in that he is both a Democrat sponsoring Republican-proposed bills and a Senator sponsoring House bills.

15.6 Legislative Bills from 1995

15.6.1 HR1017: Emergency Management

This bill transfers emergency management functions from the Department of Community Development to the Military Department (the National Guard). This bill has aroused grave concerns among parts of the civilian population.

15.6.2 SB5271: Warrantless Arrests by Federal Employees

This bill authorizes the National Park Service and the US Forest Service to make warrantless arrests. That power isn't confined to the federal lands, but applies anywhere in the state.

15.6.3 HB1108 and SB5194: Puget Sound Water Quality Authority

Its sunset clause terminates it in 1995 unless it is repealed. HB1108 proposes to reauthorize it. A matching Senate Bill (SB5194) does the same.

15.6.4 HB1540 and SB5777: Fish and Wildlife Commission

HB1540 and SB5777 gives the commission regulatory authority over food fish and shell fish in addition to their existing authority. They are also granted authority over the department's budget, their agreements (including agreements with the tribes), and they hire or dismiss the director.

The two bills differ in the composition of the commission. SB5777 continues the earlier practice of requiring that the commission members be knowledgeable about the State's fish and wildlife but have no financial interest related to those resources. This is a good practice.

In contrast, HB1540 requires that the commission include "representation recommended by the organized groups representing sportfishers, commercial fishers, hunters, private landowners, and environmentalists." It strikes the exclusion of individuals who have a financial interest but requires disclosure.

15.6.5 SB2021: Escapement First Salmon Management

This bill is requires escapement first management of salmon. Its full text is given in *Salmon at Risk*.

15.6.6 HB1397: Return of County Forest Lands from DNR

This bill establishes a procedure whereby the counties can regain control of their forest lands which are currently being mismanaged by the Department of Natural Resources.

15.6.7 HJM 4005: Renegotiate the Indian treaties

House Joint Memorial 4005 requests that the US Senate renegotiate the Indian Treaties made by Governor Stevens in order to protect resources, protect private property, provide citizen opportunities in common without special privileges to any group, and restrict tribal management to only those lands owned by the tribes and the natural resources found thereon.

Does anyone believe that those crooks in the Federal legislature will do this?

Appendix A

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Appendix B

The Washington State Legislature

B.1 How bill becomes law

This section briefly reviews how bills become law.

The legislature has two houses, a House of Representatives and a Senate. Bills may originate in either house.

A bill which originates in the house is named “HBxxxx” where xxxx is a number, but a bill which originates in the Senate is named “SBxxxx”. A substitute bill (intended to replace a specific bill) prefixes an additional S to its name: for example, SHBxxxx is substitute house bill xxxx and replaces HBxxxx. If a bill is amended on the floor it is called “engrossed”. An engrossed bill as an E prefixed to its name: for example for example, EHBxxxx is engrossed house bill xxxx.

To be entered as a bill, a piece of legislation must be sponsored by a legislator. Hence, we know who sponsored them. A new bill is read on the floor of the house in which it originated and is then sent to the appropriate committee in that house.

Committees have representation from both major parties. The majority party has more representatives and also chairs each committee.

A bill must pass the appropriate committee, then it goes to the rules committee and if it involves funds it must also go to the finance committee. If it passes both of these committees it goes up before the vote on the floor. It can be amended on the floor. If the bill passes, it goes over to the other house.

If it was amended in the second house, then it goes to a conference committee to resolve the differences. After that it is once again is voted on by both houses. If it passes and is signed by the governor, it is law. In Washington state the governor has line-item veto power, so bills are often partially vetoed.

The State legislature is open to the public. The public can attend most committee meetings. Each bill also has a public hearing where the public can express their views. The “bill room” provides anyone at no charge with copies of bills, daily and weekly schedules of the committee meetings, and the current status of the bills. After the end of the session, a printed summary of all the bills and their status is available. These materials may also be ordered by phone are available on-line both, however, at a charge.

B.2 How to influence public policy

State legislators have small staffs. For example, each representative has only one assistant who also serves as a secretary/receptionist. Therefore, they don't have the time or manpower necessary to formulate and write many of the legislative bills. They only originate bills on the issues they are most interested in. All the other bills come from outside parties: they come from the citizen's groups behind the legislators, special interest groups, lobbyists, elite planning organizations, and government agencies. Hence, a citizen's group which wants to influence public policy should expect to develop and write bills and to establish a relationship with a legislator who will run the bills they write.

If you have a member of your group who is a legislator or is willing to run, that is a good thing. But, otherwise, if a group wants to get a legislator to listen to them, they must develop a grass roots organization which can influence

the vote.

To deliver that basic commodity, the vote, it is probably necessary to develop an effective and creditable communication network to spread information to a voting public who agree with your objectives. Generally, it will be easier to gain influence with a new candidate rather than an incumbent, because the new candidate will need your network whereas the incumbent already has a network which was sufficient to get him or her elected.

Various groups will try to coopt either your group or a new legislator. This is where all the perks and influence come from for a legislator — from their association with other legislators and power groups. Therefore, if you don't have a solid person representing your group, expect him or her to only support your programs for a relatively short period of time.

Likewise, power groups will try to suck you in. First large existing groups will try to do this. Second, individuals within your group will maneuver for their personal power. There are always individuals who like power over others. There is evil within all of mankind, although there is more within some than others. Sometimes you find people who want to have power already in place, other times they will arise from the grassroots. Expect this to happen, and when it does, don't cooperate. If necessary just walk away and start over again. Liberty is the right of every individual to participate in the executive and deliberative processes. Defend that right against all antagonists whether from within your group or without.

Appendix C

Glossary

abrogate repeal, terminate

administrative governance Government by an administrator or bureaucracy.

analogous A similarity in structure or function which arose from a common origin. For example, the eyes of a monkey and the eyes of man are considered to be analogous as they both are believed to be evolved from the eyes of a common ancestor. In contrast, the eyes of man and the eyes of an octopus are homologous because, although their eyes are quite similar in form and function, they are derived from different body tissues and man and octopi aren't believed to have had a common ancestor which had a precursor of their eyes.

arctic front a region of upwelling near the arctic

aristocracy The just government by a few. See tyranny.

balkanization to break into small hostile groups who are dependent upon the government or an external power for their security or benefits. For example, the Balkans are broken into small hostile states who were dependent for their security upon their more powerful neighbors.

barrier dam a dam which the fish can't pass.

channelized the cleared, graded, and straightened river or stream

colonizer species a species which specializes in invading and using new habitats as they become available.

communist specifically, a state which owns the means of production. In practice, a totalitarian state which owns all businesses and holds an internationalist philosophy.

compensatory the percapita mortality rate decreases as the population size decreases

contravene to oppose, to act contrary to, to infringe a law

cybernetics The science of controlling public opinion through controlling the information they receive. Normally this involves control of radio and TV programming and control of the press.

Delphi method There is considerable ambiguity as to what, precisely, constitutes the Delphi method. I use the phrase to refer to a project which is broken into tasks, each of which is assigned to a working group of experts, and where the Socratic approach is used to define the tasks and select the working groups.

democracy Direct majority rule by the people. Classically this form of government, although initially just, is considered undesirable, because the party in power will soon plunder the treasury and then use those funds to maintain itself in perpetual power. Thus, democracies are prone to quickly degrade into a tyranny (see tyranny). The United States isn't a democracy, it is a republic.

depensory the percapita mortality rate rises as the population size decreases.

differential equation An equation inter-relating rates. For example, in mathematical symbols, $dx/dt = A + Bx$, which says that the rate of change of x is linear with respect to x . The question to be solved mathematically is, what is the value of X over time? An example from ecology would be to have x represent the abundance of an animal species in a pure birth process (no death, emigration, or immigration), then the question is, "how does their abundance change over time?"

dislocation of populations is their movement out of regions

dissolved oxygen the oxygen content of water

ecology the study of populations of plants or animals. This is a field of science, not a political philosophy. The general public, however, often confuses it with the latter.

egregious flagrantly and verifiably bad or wicked. This is a reference to Pope Gregory XIII. He funded the massacre of Paris and the Spanish Armada; he was behind the establishment of the Spanish Inquisition and the destruction of the republican liberties of the Spanish people; he was a strong advocate of absolute government; and he practiced some of the worst possible abuses of power against the citizens of several small Italian states which had the misfortune to be under his tyranny. He earned himself a place of unparalleled infamy in the English language.

enfranchise to admit to citizenship.

environmental refers to the habitat in which a plant or animal lives.

engrossed a legislative bill which has been amended on the floor.

escapement the number of fish which escape, especially the number which aren't caught by the fishery and return to freshwater to breed.

fascist a police state. In practice a state where there is private ownership (including private ownership of the means of production) but where most activities are tightly regulated. Fascist governments have often held ultra-nationalist philosophies and been run by coalitions of business owners, trade union leaders, and politicians (that is, by a powerful elite).

first generation the children

fishery the fish, the catching operation, the processing plants, the distribution system, and all the infrastructure supporting those businesses. However, it often is used loosely to mean only part of that.

freedom the absence of external or arbitrary control except those which come from natural law or morality.

fry juvenile salmon during their freshwater stage.

genetic contamination the introduction of undesirable genes or combinations of genes.

genetic diversity the amount of genetic variation within a stock or population of animals.

genetic load the cost in decreased survival resulting from increased genetic diversity. In Nature, genes are often co-evolved, that is populations or stocks of animals have groups of genes which are passed together. Each group of genes codes for all the enzymes for some biochemical pathway and all those enzymes need to be coordinated with each other for the pathway to function at its peak of performance. Hence not only the genes, but the combination of genes is important. Usually, co-evolved groups of genes have low genetic diversity within any stock or population of animals. That low diversity is maintained by a low rate of cross-breeding with other stocks or populations. However, when extensive cross-breeding occurs, the biochemical pathways of their offspring get a random collection of enzymes and cease to function well. That decreases their survival rate. The first generation may exhibit hybrid vigor because it has a complete co-evolved set of genes from each parent, but the generations which follow will get an increasingly random collection of enzymes. How fast

the randomization occurs depends upon the degree of linkage. Thus, the full effects of cross-breeding may be delayed several generations.

heritable a genetic trait which is inherited.

homologous see analogous.

hybrids the first generation of offspring from mating between parents from two different pure stocks

hybrid vigor increased health among hybrids. This sometimes can be the result of hybridization, but hybrids don't always exhibit increased health. Furthermore, the offspring of matings among hybrids won't exhibit hybrid vigor and often have very low survival.

indigenous people the aborigines, see appendix for the UN definition

intellectual property people whose jobs are to create new ideas own the new ideas they create: for example, a scientist who develops a new method has some property rights to that method.

interception the catching of fish somewhere along their migration route

irradiate to subject to high energy radiation from a radioactive source.

judicial legislation the re-interpretation of laws by the judicial branch of the government (especially by the supreme court), to alter the meaning of a law to something which is different from what the legislative branch of government had intended.

libertarian A political party in the US which espouses personal and economic freedom and democratic or republican government.

liberty the right to decide or to participate in the decision making process.

license 1) A complete exemption from any form of social control. 2) Permission from a competent authority to do something which would otherwise be illegal.

linkage the tendency to two genetic traits (genes) to be passed to the next generation together. Two traits which are on the same chromosome have higher linkage than traits on different chromosomes. Also traits which are located physically closer together on the same chromosome have higher linkage than ones further apart.

left-wing conventionally, someone who believes in personal freedom but regulation of business activity. "Wing" implies an extreme position. An alternative definition of the left, which I find more useful, is that the left are people who believe that society establishes what is regarded as being true.

life history the pattern of stages and related activities which an individual of a species goes through during its life.

matrix a two-dimensional array of numbers. Matrix algebra deals with equations whose terms are arrays of numbers.

maximum sustainable yield (MSY) the largest catch which can be taken every year without diminishing the stock.

mogul the emperor of India before English conquest, Tamerlane's heir.

nabob a local ruler in India.

nature In the context of "Natural Law", Nature means "the system of all phenomena in space and time; the physical universe; as in 'the study of Nature'" (Websters New International Dictionary, second edn.). Natural Law refers to truths of Nature such as "one plus one equals two" — It doesn't mean "biological" or "not influenced by humans".

nizam a local ruler in India.

- non-point discharge** pollution which arises from all over a region, such as chemicals leaching from farmlands, or from the septic tanks of many homes.
- ochlocracy** A tyrannical democracy (see tyranny).
- oligarchy** A tyrannical government by a few (see tyranny).
- optimum sustainable yield** the catch which optimizes the economic wellbeing of the fishery.
- organic law** laws which derive none of their authority from other acts of law: in the United States, the Declaration of Independence, the Articles of Confederation, the Northwest Ordinance, and the Constitution.
- phytoplankton** small plants which float about freely in the water. Many of them occur as single cells or small clumps or chains.
- plagiarism** illegal copying of a written document, either word-for-word or in content.
- plenary** full, entire, complete
- persuasion or moral persuasion** Any means of altering opinion which doesn't involve force. The opposite of coercion. In general, in this book I mean by moral persuasion a "massive, centrally managed, and saturating political indoctrination" (Lindblom 1977)
- point discharge** discharge of effluent at a fixed location such as a sewer outfall, hence, generally industrial or municipal pollution.
- political correctness** the avoidance of certain thoughts and styles of address which the left-wing have designated as offensive, especially to minorities.
- population dynamics** the mechanisms determining the abundance of a species. Also the models and mathematics describing those processes.
- preceptorial system** This name comes from Charles Lindblom (1977) who writes:
- Because persuasion has been singled out by the Maoists as the major form of social control to be practiced in China, we need to examine it carefully and — for ease of further reference — give it a name. We shall call it for lack of any existing name for it, a preceptorial system, from the word 'preceptor' meaning teacher. [His footnote: Following Tocqueville (1945), we might have called it a tutelary system].
- The preceptorial system: A massive highly unilateral persuasion of the public in which a small enlightened governmental elite instructs the masses in much the same way that Rousseau advised teacher to educate child and imagined a 'superior intelligence' transforming each individual.
- republic** a representative democracy.
- republican** of or pertaining to a republic.
- risk averse** the avoidance to situations which are likely to lead to an undesirable outcome. Also (statistics) Bayesian risk-minimizing methods.
- salmon** Strictly, geneses *Onchorynchus* (the Pacific salmon, including king = chinook, coho, pink, sockeye, and steelhead) and *Salmo* (trout and Atlantic salmon). This book deals only with Pacific salmon.
- situational ethics** The belief that nothing is intrinsically right or wrong. Values are established by society, or in the case of the preceptorial system, by government.
- smolt** strictly, juvenile salmon which has adapted its water-balance system to life in saltwater. Loosely, a juvenile salmon during its seaward migration and early marine life.

Socratic approach The Socratic approach to argument or to teaching is to ask a series of questions which will lead the person answering to a desired conclusion.

spring bloom for a brief period in the early spring of each year, shortly after the ice breaks up, the water column will have approximately the same temperature from top to bottom. Under that condition, the water will all mix. This brings nutrients to the surface where there is light. These nutrient rich waters support a dramatic bloom of the phytoplankton. The zooplankton feed upon the phytoplankton and their abundance quickly increases. This bloom of zooplankton provides an excellent food supply for fish.

socialist state ownership

stock a genetically isolated group of animals.

suffrage the right to vote

superfund a federal project to clean up some of the worst cases of pollution in the United States

supremacy clause the second paragraph of Article 6 of the US Constitution.

totalitarian of or pertaining to a highly centralized government under the control of a political group which allows no recognition of or representation to other political parties.

tyranny Any government whose actions are inconsistent with the political, legal, social, or religious heritage of the governed. That is, any unjust or repressive form of government. (This definition comes from Cicero.)

Tyranny is most often used to refer to bad government by a single individual, a tyrant (but if that individual govern justly, he or she is called a monarch); tyranny by small group is an oligarchy (but if the small group govern justly, they are called an aristocracy); and tyranny by the people is ochlocracy (but if the people govern justly, their government is called a democracy).

The classics on political science (for example, Cicero's *The Commonwealth*) deal with the stability of types of government, that is, how one type tends to change into another. The classics assume Natural Law and, hence, the central values of law and morality are established and the same for all people, although different publics may have differing heritages regarding legal, social, and religious practices. In contrast, under the preceptorial system, all social values are situational. Therefore, all their forms of government are just, according to their own definition. Under the preceptorial system anyone who disagrees with the government's view needs cultural retraining. However, to the extent that cultural retraining is repressive, all preceptorial system governments are tyrannies. Thus, a consideration of the meaning of the word "tyranny" illustrates that a fundamental difference between the classical and preceptorial models of government lies in who defines the public's heritage, the people or the government.

Any country which has so large a cultural diversity that compromise isn't possible will necessarily be unjust to some of its people. That problem can be resolved only by the extermination or assimilation of some parts of the public. Thus, programs which create high levels of cultural diversity should be regarded as being aimed at promoting the preceptorial system.

ubiquitous found everywhere.

under-escapement fewer adult fish return to breed than the escapement goal

upwelling the moving or mixing of water or nutrients from the depths to the surface.

water balance fish in freshwater need to take salts in but excrete water. In saltwater they need to do the reverse.

watermelon The late newspaper columnist Warren T. Brooks referred to members of the green movement as "watermelons": a person who is green on the outside and red on the inside, an environmentalist-communist.

Winter's doctrine that a grant in a treaty of a right implies the grant also of whatever is necessary to obtain that right: for example the grant of land for farming implies adequate water to farm. Also, if the grant reserved something before statehood, then whatever was reserved was never transferred to the state.

zooplankton the microscopic animals which float about in the water. In particular, salmon eat many small crustaceans including copepods and euphausiids. They also eat many other kinds of small planktonic animals.

Appendix D

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Appendix E

Afterward

The following is additional information which I discovered after 1995, but which are particularly relevant.

E.1 Positivism and Case Law

The Boldt case¹ is the key to the whole salmon/Indian issue; and that decision was clearly and openly the product of a legal philosophy called “positivism”. It is directly related to Comte’s philosophy.

The Court’s traditional role in reviewing laws was to examine their constitutionality and original legislative intent.² However, that changed as the result of Harvard Law School Dean Christopher C. Langdell (1826–1906). Beginning in the 1870’s, he introduced “positivism” and the “case-law study method”. Legal Positivism is the belief that the law should evolve through directed change. Under this view, laws and rights are not fixed and ancient precedents and original legislative intent, in particular, has little weight. The judge is guided by current social trends and previous judicial decisions. That is by “case-law”, the body of decisions made from the bench. Case-law was the invention of Christopher Langdell.

This legal philosophy was later advanced by Roscoe Pound (1870–1964), the Dean of Harvard Law School and later of the University of Nebraska. Langell and Pound were very influential and a succession of US Supreme Court Judges held this view from 1902 through 1969³.

As Chief Justice of the US Supreme Court, William Taft⁴ was a positivist on some issues, and used the Supreme

Court as a legislative body,⁵ but he also held certain rights to be inviolable. In particular, that included property rights. He led the court’s conservative majority for a decade (1921–1930), holding their progressive block⁶ in check. The court also maintained a slim “conservative” majority throughout the early 1930’s and undermined many of the laws of the New Deal, particularly during 1935 and 1936. That led to President Roosevelt’s court packing plan in 1937. But, after that the positivists increasingly had their way.⁷

Positivism reached its peak during the Warren Court of the early 1960’s. For example, by 1958 Chief Justice Earl Warren felt free to make the statement that a Constitutional Amendment “must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.”⁸ and in 1962/63 the Supreme Court openly repudiated the Natural Law and Biblical standards upon which our legal system and national heritage had previously been based.⁹

According to Joe de la Cruz, a Tribal leader from Washington State, the break-through on Indian fishing rights came for the Indians when they contacted the National Governors’ Association¹⁰. That helped to win them the support of Washington’s Governor Dan Evans. With his help and that of his appointee, the Director of Fisheries, Mr. Tollefson, and with the technical support provided by the Schools of Fisheries and Law at the University of Washington, that the tribes got what they wanted. That was contained in the decisions on Boldt I (1974) and

he served as the US President. However, he got the job he wanted when he was appointed the Chief Justice of the Supreme Court (1921–1930), by President Harding. (See Alpheus T. Mason 1958.)

¹US v. State of Washington 1974.384 F. Supp 312, 1974.

²Both the doctrine and process were spelled out, in 1803, by Chief Justice John Marshall in the case of *Mayberry v. Madison*, 1 Cranch 137 (1803), 177.

³Positivist Supreme Court Judges included Oliver Wendell Holmes jr, appointed 1902; Louis Brandeis, appointed 1916; Harlan F. Stone, previously the Dean of Columbia Law School; Benjamin Cardozo, appointed 1932; Charles Hughes, Chief Justice 1930–1942; and Earl Warren, Chief Justice 1953–1969.

⁴William Taft had been a Yale Law professor. His first major government appointment was as the Governor of the Philippines. In that position, he was effectively an absolute dictator. After that

⁵See the comment by Senator Norris, *Congressional Record* Vol 72 (1930): 3566).

⁶Brandise, Holmes, and Stone,

⁷See Mason 1958.

⁸*Trop v. Dulles* 356 US 86, 101 (1958).

⁹See *Abington v. Schempp* 374 US 203, 220–221 (1963).

¹⁰He made this statement during the Northwest Renewable Resources Center’s “Tribes and Counties” conference, January 1997.

Boldt II (1980) cases.

In 1974, Judge Boldt re-interpreted the Tribal treaty right to fish "in common" to mean "apportioned", which it quite specifically does not mean and never meant. The central issue is whether rights are held by individuals or groups: that is individualism or collectivism. Judge Boldt explained in his decision that his interpretation of "in common", in favor of collectivism, reflected current social trends. Thus, his decision could hardly have been a clearer example of positivism.

E.2 Final Appeal on Boldt II

In 1982, the US Supreme Court's final ruling¹¹ on the Boldt II decision overturned it in part and supported it in part. The parts overturned were the implied rights to fish habitat and water.¹² Thus, the most threatening parts of Orrick's decision were overturned. However, the parties who liked the original decision continue to bluff the public into accepting conditions which they don't have to. It was possible for them to do that because there are over 10,000 individual documents associated with the Boldt I and II cases and all its appeals and related actions. The public is generally not aware of this decision.

In 1989, the Northwest Renewable Resources Center hosted a meeting, at a resort near Lake Chelan for the purpose of restructuring how Washington State's water resources are regulated. Their agreement restored to the Tribes, State, environmental groups, and big business much of the power they lost when the Boldt II decision was overturned by the Supreme Court.

It did not become public policy until 1991 when the legislature authorized two pilot projects based on it. One of was in the Methow Valley of North Eastern Washington, while the other was in the Dungeness/Quilcene Valleys of Western Washington. The pilot projects' mandate was 1) to create management plans for these watersheds; and 2) to establish new rules for water use and water rights. These were to be submitted to the legislature by 1995.

In 1992, another law¹³ allowed the use of the consensus process in pilot projects to meet the public hearing and public input requirements for writing new Washington Administrative Code (WAC). Thus, these pilot

projects dovetailed with this new rule-making process, providing a mechanism to establish the Chelan Agreement by rule, state-wide.

The Methow Pilot Project finished both their watershed plan and their water-rights rule making. Their study team was composed primarily of representatives of government agencies and the local citizens had little input into the process.¹⁴

Their water rule establishes a minimum flow in the river and a water bank. As long as anyone can remember, that river flowed entirely underground, in some reaches, during the Summer months. It is not clear whether there ever was year-around surface flow. But there is abundant underground flow and, therefore, plenty of water available for beneficial uses. However, now no new water rights can be issued in that drainage basin until the minimum surface flow is re-established in the river. When an old water right is retired, it goes into the water bank and any new claims are made against it, but surface flow has first priority. As a result new homes can't be built in the Methow Valley, because building permits require proof of water rights. Thus, water can be used to control landuse.

In the other pilot project, the Dungeness/Quilcene Basins, the residents were more alert to what was transpiring. In this case, the pilot project's leaders were unable to get the relatively few public representatives to agree to all of the points they wanted, and they didn't complete their rule-making on water-rights before their sunset date of 1995.

These pilot projects were also trials of the consensus process as a new structure for government.¹⁵ Councils, such as these, are now being set up statewide and nationwide as part of the President's plan for the reinvention of government. These councils usually have seats reserved for "stakeholders". The stakeholders generally include State and Federal Agencies, Local and Tribal governments, business interests, and members of the public who have a stake in the outcome. That is, in order to be a member of one of the councils, you must be in conflict-of-interest, and government agencies, also, are almost always driven by funding considerations. This introduces a condition where financial interests can pretty much run the council. In addition, granting one seat on the council to each private stakeholder group, balances the various interests in the private sector, leaving the government agencies in control.¹⁶

¹¹ 694 R.2d 1374 (1982)

¹² The part supported was the mutual obligation of both the State and the Tribe to "each undertake reasonable steps commensurate with their respective resources and abilities to preserve and enhance the fishery." Furthermore, it says (on its page 1382) that the Supreme Court intended that there would be losses arising from reasonable development, and that these should be born 50-50 by the Indians.

¹³ RCW 34.05.310 and .313; Laws of 1993 C202

¹⁴ In particular, their team's final report states that they received no input from the public; but the local populace has some strong opinions about how they were excluded.

¹⁵ The first such watershed council in Washington State was in Grays Harbor County. These were formed not long afterwards.

¹⁶ This approach follows the principle of equipollence from skeptical philosophy.

These council's intended function is the formation of public policy: specifically, comprehensive watershed plans, salmon restoration plans, water use plans, and the like. Compliance with these types of comprehensive plans has been, and will undoubtedly continue to be, a condition for government funding and also for the issuance of permits. Thus, they determine what agencies will do and also what the public may do.

The structure of these councils violates the civil rights of the citizens of the community, because seats on these councils are held by individuals who were not elected by the voters in the community but they make public policy decisions which affect them.

