

Summary Sheet

Meeting dates: April 11-12, 2014
Agenda item: Tribal Hunting Overview
Presenter(s): Nate Pamplin, Assistant Director, Wildlife Program

Background summary:

In the mid-1800s, Isaac Stevens, the first governor of the Washington Territory, negotiated treaties with Native American tribes for the peaceful settlement of their traditional lands. By signing the “Stevens Treaties,” tribes reserved the right to continue traditional activities, such as hunting.

The 24 tribes that have off-reservation hunting rights in Washington can set hunting regulations for their tribal members. Those tribes can allow members to hunt on open and unclaimed land – public land that is managed in a way that is consistent with hunting – within their ceded area or within an area proven to have been traditionally used by the tribe. Two of the tribes, the Confederated Tribes of the Umatilla Indian Reservation and the Nez Perce Tribe, are located outside of the state, but they reserved hunting rights within Washington.

Not all of the tribes signed treaties with the federal government. Several of these tribes have reservations designated by executive order. These include the Colville, Spokane, and Kalispel reservations in eastern Washington, and the Chehalis and Shoalwater reservations in western Washington. Tribal hunting rights for these tribes are typically limited to areas on the reservation, although the Colville Confederated Tribes’ hunting rights extend to an area formerly part of the reservation, which is known as the “North Half.” The Colville’s hunting rights to the North Half were upheld by the U.S. Supreme Court’s decision in *Antoine v. Washington* in 1975.

There are additional tribes that are recognized by the federal government, but have no specific reservation or tribal hunting rights. Members of those tribes are subject to state hunting regulations.

Treaty hunting rights are not rights granted to the tribes, rather they are rights reserved by the tribes. By signing the treaties, the tribes retained those rights that they have possessed since time immemorial. Treaty rights belong to tribes, and are not the property of any individual tribal member. Only tribal members may exercise treaty hunting rights. Members of one tribe cannot exercise the treaty rights of another tribe. Also, treaty rights must be exercised in accordance with tribal regulations.

The courts have created a narrow exception to the general rule that state regulation of tribal treaty hunters is preempted by the treaties. This exception applies in situations where the state is regulating the fishing or hunting of a particular species in order to conserve that species.

The treaties do not expressly specify the geographical extent of the hunting right. In *State v. Buchanan* (1999), the Washington State Supreme Court ruled that this right extends to 1) the lands formally ceded by the tribes to the United States as those lands are described in the Treaties; and 2) other areas where it can be shown that those

areas were “actually used for hunting and occupied [by the tribe] over an extended period of time.” The court did not provide a formal mechanism to evaluate and determine traditional hunting areas.

Since tribal and non-tribal hunters impact the wildlife resource over much of the state, it is important that WDFW and the tribes work cooperatively to develop management strategies that can meet the needs of both. This process is complicated because tribal ceremonial and subsistence hunting and state recreational hunting are two different philosophies steeped in different traditions and cultural heritages.

Many tribal governments take an active role in the management of wildlife resources. Most tribes with off-reservation hunting rights have a tribal hunting committee that meets to develop regulations and management strategies. Many tribes have hired biologists, or have access to biological staff, that can advise them on the development of management approaches. Tribes have taken the lead in several areas on research projects to gather the information that is needed to better manage wildlife resources. WDFW and various tribes have worked together to develop herd plans for key wildlife populations. WDFW has also worked cooperatively with tribes to rebuild or augment populations that are below desired levels.

WDFW staff from Wildlife and Enforcement Programs meet with tribal representatives to discuss wildlife and hunting management issues. The discussions stem from a 1998 Washington Fish and Wildlife Commission policy directing the department to negotiate with tribes to resolve hunting issues. Hunting co-management is also a stated objective within the department's Game Management Plan and the area-specific elk herd management plans, all developed with extensive public-involvement.

WDFW and some tribes have entered into cooperative management agreements and Memorandums of Agreement/Understanding to foster and maintain a good working relationship, share hunting regulations and harvest information, and to cooperate on Enforcement issues.

Policy issue(s) you are bringing to the Commission for consideration:

An update on how the Department is implementing Commission Policy: C-3607.

Public involvement process used and what you learned:

N/A

Action requested:

N/A: Briefing Only

Draft motion language:

N/A

Justification for Commission action:

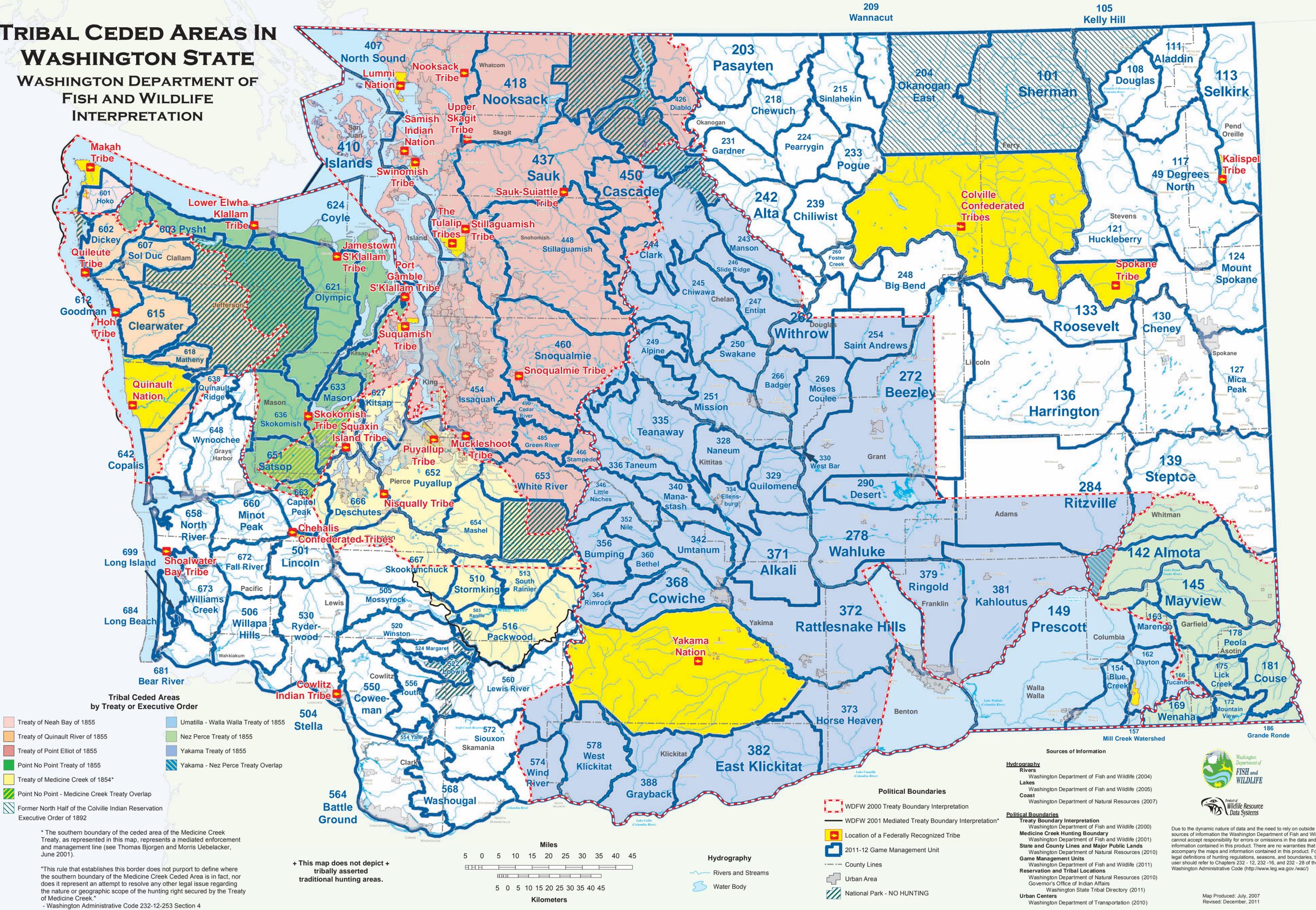
N/A

Communications Plan:

N/A

TRIBAL CEDED AREAS IN WASHINGTON STATE

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE INTERPRETATION



FISH AND WILDLIFE COMMISSION POLICY DECISION

POLICY TITLE: Tribal Hunting
Coordination

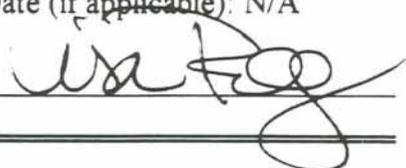
POLICY NUMBER: C-3607

Cancels: N/A

Effective Date: April 3, 1998

Termination Date (if applicable): N/A

See Also:

Approved by: 

The Washington Fish and Wildlife Commission acknowledges and respects the sovereign status of Washington's federally recognized tribes. Under existing law, the overlapping nature of state and tribal jurisdiction and responsibilities creates a co-management relationship in which it is essential that the parties work together. The Commission recognizes that the preservation of healthy, robust, and diverse fish and wildlife populations is largely dependent on the state and the tribes working in a cooperative and collaborative manner. The Washington Fish and Wildlife Commission is committed to a cooperative management relationship with the tribes. In the spirit of these acknowledgments, the Commission adopts the following policies to guide Department staff in their relationships with the tribes:

1. The Department of Fish and Wildlife will work cooperatively with representatives of each tribal government in an effort to resolve all issues through direct communication and negotiation.
2. The Department of Fish and Wildlife supports tribal self-determination and meaningful self-regulation, enforcement, and prosecution.
3. The Department of Fish and Wildlife will engage tribal representatives in its decision making processes relative to wildlife management issues that affect tribal hunting.
4. The Department of Fish and Wildlife commits to work jointly with the tribes in the development of an information and data exchange system that enhances the parties' ability to effectively communicate and collectively identify resource and hunting issues and concerns.
5. The Department of Fish and Wildlife, in cooperation with tribal governments, will develop enforcement protocols to guide Department officers in their contacts with tribal hunters.