

Tribal Hunting Overview

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Department of
FISH and
WILDLIFE

Stevens Treaty Language

“The right of taking fish, at all usual and accustomed grounds and stations, is further secured to said Indians in common with the citizens of the Territory...together with the privilege of hunting, gathering roots and berries, and pasturing their horses on open and unclaimed lands...”

Interpretation of Treaty Rights

- Treaties are contracts between two sovereigns.
- Treaties are the “Supreme Law of the Land” in US Constitution; preempts state law unless conservation necessity.
- Treaty fishing and hunting rights belong to tribes, not tribal members.
- Courts interpret treaty language ambiguities in favor of the tribes. Treaty must be construed, not according to the meaning of words to learned lawyers, rather the meaning to Indians at the time.
- Treaties are a reservation of rights, not a granting of rights to tribes.

Tribes with Off-Reservation Hunting Rights

5 Treaties in Western Washington; 20 tribes

3 Treaties in Eastern Washington; 3 tribes*

1 Executive Order Tribe (CCT)

29 Federally Recognized Tribes in WA—not every
tribe has off-reservation hunting rights

Important Case Law

- *State v. Miller* (1984)
- *State v. Buchanan* (1999)
- *State v. Chambers* (1973)

State v. Miller

Two members of the Skokomish Tribe shot a cow elk in Olympic National Forest outside of state season.

The Court ruled that there is not an operative distinction between the words “right” and “privilege” as relates to construing Indian treaties.

The two words are synonymous.

State v. Miller (cont'd)

State wildlife regulations applying to tribal members:

1. State regulation of tribal hunting only can apply when both “reasonable and necessary for conservation.”
2. State has the affirmative burden of proving these elements for a regulation to apply.

Reasonable: appropriate to its conservation purpose.

Necessary: required for the perpetuation of a species or game within a certain zone.

State v. Buchanan

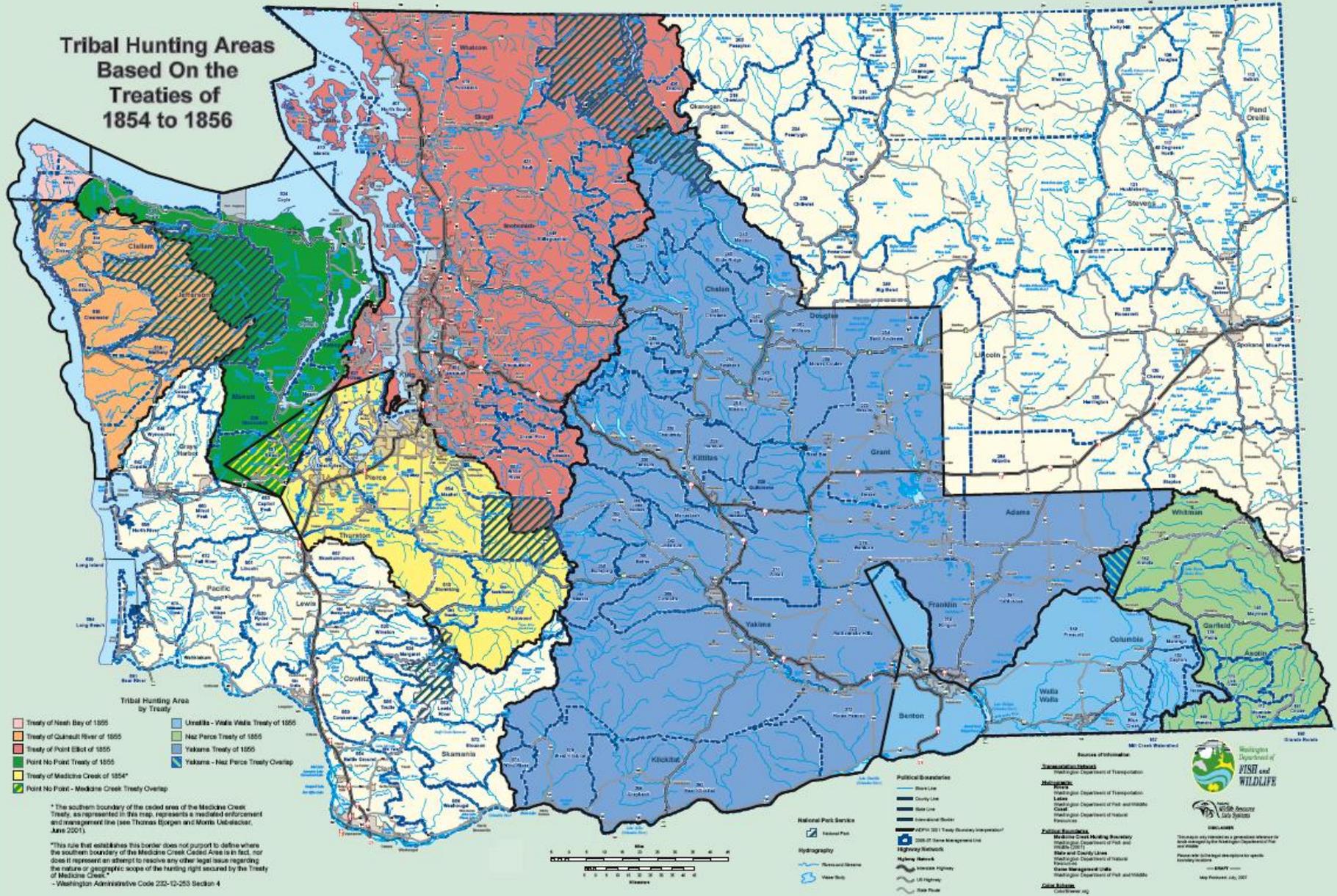
Nooksack tribal member harvested two bull elk without license and out of season at Oak Creek Wildlife Area.

The State Supreme Court ruled that a tribe's treaty hunting right extends to the areas ceded to the United States by that tribe, and may also include areas outside of the ceded area where the tribe hunted historically, provided they can demonstrate traditional use (area actually used for hunting and occupied by the tribe over an extended period of time).

A method to determine traditional use was not defined in the opinion.

Despite the Court decision, some tribes contend that their hunting right extends to open and unclaimed lands throughout the state.

Tribal Hunting Areas Based On the Treaties of 1854 to 1856



State v. Chambers

Unlicensed Yakama tribal member harvested a deer on private, fenced property (which was not signed) a short distance from unoccupied house.

Private land is not “open and unclaimed.” Private land needs “outward indications of such ownership observable to a reasonable man,” thus preventing entrapment.

Open and Unclaimed Lands

“Open and Unclaimed Lands” are public lands that are being managed in a way that is consistent with hunting.

Yes

US Forest Service

BLM

DNR

WDFW Wildlife Areas

No

National Parks

University Lands

Military Reservations

Commission Policies

Policy Document: July 20, 1996

Section 6 of “Role of the Commission:”

Establish and maintain a cooperative management relationship with treaty tribes.

Section 8 of “Role of the Director:”

Negotiate management agreements with tribes consistent with federal court mandates.

C-3607: April 3, 1998

Acknowledges and respects sovereignty.

Overlapping jurisdiction creates a co-management relationship.

Department committed to cooperative management for preservation of healthy populations.

Interagency Wolf Committee

Agencies:

N. Cascades Nat. Park, Ok/Wen Nat. For.,
Olympic Nat Park, WADOT, DNR, USFWS,
USDA Wildlife Services

Tribes:

Jamestown S'Klallam, Sauk-Suiattle, Cowlitz,
NWIFC, Port Gamble S'Klallam, Makah,
Yakama, Stillaguamish, Muckleshoot

Membership as of June 4, 2007

Summary

- Tribes with off-reservation hunting rights can set harvest regulations on open and unclaimed lands within ceded area or areas of traditional use.
- Work with tribes on government-to-government basis.
- Land management/ownership—important natural resource conservation partners.
- Tribal wildlife management programs
- Overlapping Jurisdictions

Contact Information

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