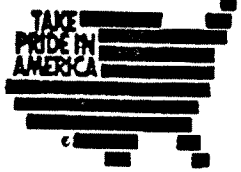




# United States Department of the Interior



OFFICE OF THE SOLICITOR  
Washington, D.C. 20240

October 4, 1993

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M-36979

Memorandum

To: Secretary

PIRTLE, MORISSET  
SCHLOSSER & AYER

From: Solicitor

Subject: Fishing Rights of the Yurok and Hoopa Valley Tribes

You have asked for an opinion concerning the rights of the Yurok and Hoopa Valley Indian Tribes to an allocation or quantified share of the Klamath River Basin anadromous fishery resources. The request arises from the need of this Department for definitive legal guidance in setting yearly tribal harvest allocations. The Department of Commerce, although it does not have authority to regulate in-river Indian fisheries, has also requested a legal determination from this Department on the Tribes' rights because of the impact on decisions that the Commerce Department must make concerning ocean fisheries that harvest Klamath basin fishery resources.<sup>1</sup>

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<sup>1</sup> By memorandum dated September 16, 1991, the Assistant Secretary - Indian Affairs, originally requested this opinion. On March 10, 1993, in a letter to the Secretary of Commerce, you stated the position that in the absence of a formal legal determination, the most reasonable and prudent course for the United States, as trustee for the Tribes, would be to set aside at least a 50 percent share of the harvestable surplus of Klamath River stocks for the Indian in-river fishery. As a temporary resolution of differences between your recommendation and concerns expressed by the Department of Commerce, which has jurisdiction over ocean fisheries, this Department set the in-river tribal harvest ceiling in 1993 at 18,500, and both Departments agreed that additional conservation measures for 1993 were appropriate. The Secretary of Commerce directed a 1993 ocean fishing season that conformed to the in-river tribal harvest constraint, and provided a natural spawner escapement floor of 38,000 for 1993. See "Commerce and Interior Departments Set Chinook Salmon Management Measures," April 29, 1993 (U.S. Department of Commerce Press Release NOAA 93-R117); Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California, 58 Fed. Reg. 26922 (May 6, 1993) (emergency interim rule); Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California, 58 Fed. Reg. 31664 (June 4, 1993) (amendment to emergency interim rule).

