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5 UNITED STATES DISTRICT COURT
6 FOR THE WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 UNITED STATES OF AMERICA, et al.,

No. C70-9213RSM

9 Plaintiffs,

Subproceeding No. 09-01

10 v.

ORDER REGARDING BOUNDARIES OF
QUINAULT AND QUILEUTE U&As

11
12 STATE OF WASHINGTON, et al.,

13 Defendants.
14

15 On July 9, 2015, the Court entered lengthy Findings of Fact and Conclusions of Law,
16 determining that the western boundary of the Quinault Indian Nation's usual and accustomed
17 fishing ground in the Pacific Ocean is 30 miles from shore, that the western boundary of the
18 Quileute Tribe's usual and accustomed fishing ground in the Pacific Ocean is 40 miles offshore,
19 and the northern boundary of the Quileute Tribe's usual and accustomed fishing ground is a line
20 drawn westerly from Cape Alava. Dkt. #369. However, the Court also noted that it had not
21 received evidence at trial specifying the longitudes associated with the U&A boundaries
22 determined therein. Accordingly, in order to delineate the boundaries with certainty, the Court
23 directed the parties and interested parties to brief the precise longitudinal coordinates associated
24 with the boundaries set forth herein. *Id.* The Quileute, joined by the Quinault and Hoh Indian
25 Tribes, submitted proposed longitudinal coordinates of its longitudinal boundaries. Dkts. #372,
26 #374 and #376. The Makah proposed different longitudinal boundaries. Dkt. #377. The State

1 of Washington also filed a response, generally concurring with the Makah, but proposing still
2 different boundaries. Dkt. #381.

3 In consideration of its prior Orders, the Court adopted the longitudinal and latitudinal
4 boundaries proposed by the Quileute, Quinault and Hoh. Dkt. #394. The Court explained:

5 All parties agree that the latitude of Quileute's northern boundary at Cape
6 Alava is 48°10'00" N. latitude, and that the longitude of Quileute's western
7 boundary begins in the north at 125°44'00" W. The parties also agree that
8 the latitude of Quinault's northern boundary is 47°40'06" N. latitude, and the
9 longitude of Quinault's western boundary begins in the north at
10 125°08'30"W. The dispute is how the parties believe the Western boundary
11 for the Quileute and Quinault should be demarcated as the line proceeds
12 south. The Court agrees with the Quileute, Quinault and Hoh that the
13 methodology applied by this Court in the Makah's prior ocean RFD, *see U.S.*
14 *v. Washington*, 626 F. Supp. 1405, 1467 (W.D. Wash. 1985), is the
15 appropriate method to use in the instant case. The Court finds that equity and
16 fairness demand the same methodology for delineating the boundary at issue
17 here, and agrees that it is the *status quo* method of delineating U&A ocean
18 boundaries by this Court.

19 Dkt. #394 at 2. Accordingly, the Court found that:

- 20 1. Quileute's usual and accustomed ocean fishing boundaries are:
 - 21 a. Northern boundary: 48°10'00" N. latitude (Cape Alava).
 - 22 b. Western boundary: 125°44'00" W. longitude.
 - 23 c. Southern boundary: 47°3'70" N. latitude (Queets River).
- 24 2. Quinault's usual and accustomed western fishing boundary as
25 determined by the Court is 30 nautical miles offshore at longitude
26 125°08'30" W. and runs in a straight line running north to south between
27 Quinault's northern boundary (47°40'06" N. latitude) and its southern
28 boundary (46°53'18" N. latitude). Quinault's ocean U&A is:
 - a. Northern boundary: 47°40'06" N. latitude.
 - b. Western boundary: 125°08'30" W. longitude.
 - c. Southern boundary: 46°53'18" N. latitude.

Dkt. #394 at 3.

1 This matter was then appealed to the Ninth Circuit Court of Appeals. Dkts. #396 and
2 #398. While the Court of Appeals affirmed in large part this Court's determinations, it reversed
3 this Court with respect to its determination of the Quileute's and Quinault's U&A boundaries.

4 Dkt. #435. The Court of Appeals stated:

5 The parties agreed as to the northern boundaries but "dispute how the parties
6 believe the Western boundary for the Quileute and Quinault should be
7 demarcated as the line proceeds south." The court decided to use longitudinal
8 lines because it had done so in a prior proceeding with respect to the Makah's
9 boundaries. The court started at the northernmost point of the Quileute's
10 U&A, drew a line 40 miles west, and used that longitudinal position as the
11 western boundary for the entire area. The court did the same with 30 miles
12 for the Quinault. The map below depicts the final result.

13 [graphic omitted]

14 The Makah takes issue with the court's use of a straight vertical line because
15 the coastline trends eastward as one moves south. The Makah calculates the
16 coast-to-longitude distance at the southernmost point as 56 miles for the
17 Quileute and 41 miles for the Quinault. In other words, the Quileute's and
18 Quinault's southernmost boundaries respectively extend 16 miles and 11
19 miles beyond the court's finding of usual and accustomed fishing, and their
20 total areas respectively sweep in an extra 413 square miles (16.9% of the total
21 2,228 miles). The result would be different, for example, had the boundary
22 lines been drawn parallel to the coastline.

23 These significant disparities underscore the deficiencies in the court's
24 longitudinal boundaries. . . .

25 . . .

26 Accordingly, we reverse the district court's order imposing longitudinal
27 boundaries. Because the law does not dictate any particular approach or
28 remedy that the court should institute, we leave it to the court on remand to
draw boundaries that are fair and consistent with the court's findings.

Dkt. #435 at 23-27.

After remand, this Court reviewed its Findings of Fact and Conclusions of Law and
Memorandum Order (Dkt. #83), along with its Amended Order Regarding the Boundaries of Quinault
and Quileute U&As (Dkt. #394), and the following documents:

1. Quinault Indian Nation's Notice of Longitudinal Boundary Line of the Quinault Usual and Accustomed Fishing Area (Dkt. #372);
2. Declaration of Anthony Hartrich In Support of Quinault Indian Nation's Notice of Westerly Boundary of the Quinault Usual and Accustomed Fishing Area (Dkt. #373);
3. Quileute Indian Tribe's Notice of Usual and Accustomed Fishing Grounds (Dkt. #374);
4. Declaration of Garrett L. Rasmussen In Support of Quileute's Notice of Usual and Accustomed Fishing Grounds (Dkt. #375);
5. Hoh's Response In Support of Quileute Indian Tribe's Notice of Usual & Accustomed Fishing Grounds and Quinault Indian Nation's Notice of Longitudinal Boundary Line of the Quinault Usual and Accustomed Fishing Area (Dkt. #376);
6. Makah's Response to Quileute and Quinault's Notices of Usual and Accustomed Fishing Grounds (Dkt. #377);
7. Declaration of Dale Johnson In Support of Makah's Response to Quileute and Quinault's Notices of Western Boundaries (Dkt. #378);
8. Declaration of Eian Ray In Support of Makah's Response to Quileute and Quinault's Notices of Western Boundaries (Dkt. #379);
9. Fourth Declaration of Stephen Joner (Dkt. #380);
10. State's Response to Quileute and Quinault Tribes' Notices of Usual and Accustomed Fishing Grounds (Dkt. #381);
11. Declaration of Captain Dan Chadwick (Dkt. #382);
12. Declaration of Andrew Weiss (Dkt. #383);
13. Quileute Indian Tribe, Quinault Indian Nation and Hoh Indian Tribe's Reply Re: Notice of Usual and Accustomed Fishing Grounds (Dkt. #388); and
14. Second Declaration of Garrett Rasmussen.

1 In light of the analysis and instructions of the Ninth Circuit Court of Appeals, the Court now
2 finds and ORDERS as follows:

- 3 1. The State of Washington's method of determining the boundaries at issue are most
4 consistent with this Court's determinations regarding boundaries in this matter, and
5 addresses the Court of Appeals' concerns with the Court prior conclusions. *See* Dkts.
6 #381 at 3-4 and #435 at 23-27.
- 7 2. As described in Mr. Weiss's and Captain Chadwick's Declarations, the State's method is
8 also consistent with how ancient mariners would navigate in offshore waters without
9 aid of modern navigation tools, and it poses no barrier to location and compliance by
10 typical vessels engaged in coastal fisheries. *See* Dkts. #382 and #383.
- 11 3. Utilizing the State's method, the narrative description for each U&A is:

12 **Quileute offshore U&A:** A polygon commencing at Cape Alava, located at latitude
13 48°10'00" north, longitude 124°43'56.9" west; then proceeding west approximately
14 forty nautical miles at that latitude to a northwestern point located at latitude
15 48°10'00" north, longitude 125°44'00" west; then proceeding in a southeasterly
16 direction mirroring the coastline at a distance no farther than forty nautical miles from
17 the mainland Pacific coast shoreline at any line of latitude, to a southwestern point at
18 latitude 47°31'42" north, longitude 125°20'26" west; then proceeding east along that
19 line of latitude to the pacific coast shoreline at latitude 47°31'42" north, longitude
20 124°21'9.0" west.

21 **Quinault Offshore U&A:** A polygon commencing at the Pacific coast shoreline near
22 Destruction Island, located at latitude 47°40'06" north, longitude 124°23'51.362"
23 west; then proceeding west approximately thirty nautical miles at that latitude to a
24 northwestern point located at latitude 47°40'06" north, longitude 125°08'30" west;

1 then proceeding in a southeasterly direction mirroring the coastline no farther than
2 thirty nautical miles from the mainland Pacific coast shoreline at any line of latitude,
3 to a southwestern point at latitude 46°53'18" north, longitude 125°53'53" west; then
4 proceeding east along that line of latitude to the pacific coast shoreline at latitude
5 46°53'18" north, longitude 124°7'36.6" west.
6

7 *See* Dkt. #383 at ¶ 15.

8 DATED this 5 day of March, 2018.

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11 RICARDO S. MARTINEZ
12 CHIEF UNITED STATES DISTRICT JUDGE
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