



Quileute Natural Resources

QUILEUTE INDIAN TRIBE

401 Main Street • Post Office Box 187
LaPush, Washington 98350
Phone: (360) 374-5695 • Fax: (360) 374-9250



Mel Moon, Jr., Director
(360) 374-3133
mel.moon@quileutenation.org

August 30, 2006

Olympic National Park General Management Plan
National Park Service
Denver Service Center,
PO Box 25287
Denver, CO 80225

Re: Draft General Management Plan for Olympic National Park
Comments by Quileute Tribe's Natural Resources Department

These comments are only those of Quileute Natural Resources, which has responsibility for protection and management of the treaty-reserved resources of the Quileute Tribe. As you are aware, the Quileute Tribe has been involved for decades in a boundary dispute with Olympic National Park, specifically, and with the National Park Service over all, and to our knowledge, those issues are not resolved, to date. Attorneys with outside counsel are working with the Quileute Tribal Council to develop appropriate remarks on that complex issue, and our remarks are not intended to cover or in any way displace such comments. They focus on natural resource department issues and how your stated dual goals of visitor access and resource management impact the tribe's natural resources.

1. Concurrent jurisdiction. Noticed parties are listed at the end of your plan (p. 354-359) but jurisdiction bears discussion at the front. The Park is not "master of its domain." In fact, it shares jurisdiction with the eight tribes listed throughout the document, throughout its entire area. Further, it has overlapping jurisdiction with Washington's DNR (Natural Resources) and DFW (Fish and Wildlife) along the coastline and with its DOE (Ecology) for water quality standards in its inland water bodies. It shares jurisdiction on the coast with Olympic Coast National Marine Sanctuary. Inland, we expect it shares jurisdiction with the USEPA on a number of issues. US Fish and Wildlife has jurisdiction over its listed birds, amphibians, and bull trout. NOAA has jurisdiction over its listed salmonids. This multiple jurisdiction deserves a full discussion in your opening sections. These governmental entities have a different role from the noticed "interested stakeholders" who may be affected by your plan, such as business owners and adjacent landowners.

You have a standard statement on page 355 of the trust relationship to the eight (8) treaty tribes listed there, and describe meetings with tribal councils and representatives. *This duty does not stop with notice and consultation. It is ongoing. It is our hope that Olympic National Park in particular and the National Park Service overall will be responsive to these comments and integrate the needed changes.*

2. Usual and Accustomed Area, Ceded Lands: These are terms for the lands and waters beyond the reservation boundaries, in which all Stevens Treaty Tribes *reserved* (never gave to the US) use and access to their fish, game, and plants. Throughout the document this off-reservation right of the tribes is inadequately and sometimes erroneously described. Only at page 133 is the discussion adequate. *Yet there are numerous references to tribes well before page 133, and no explanation of why these 8 tribes should matter, within Park boundaries.* We hope it is because the sections were drafted by different persons with varied levels of education on this matter. However, it is important for staff and the public who read this document to fully grasp just why tribes are involved. It is because the treaty tribes' rights extend into the Park, beyond their reservations, throughout the extent of their respective treaty boundaries. *The entire Park is overlain by treaty rights of the various tribes on the Olympic Peninsula.*

We refer you page 4, where the drafter briefly discusses the tribes' relation to lands in the park (and we would add "waters"). It is more than a relationship. It is shared ownership of the resources, off-reservation. It is vital the public and the staff know this. See also p. 12, first column. As you engage in all the processes discussed in Alternative D (or any other alternative selected), please recognize the duty to consult with the affected tribe(s) with U&A in your boundaries.

On page 48 the author describes affecting trust assets on the reservation. This author does not grasp the unique situation of Washington Treaty Tribes with off-reservation reserved rights. It is possible that the Park, although mostly wilderness and not managed land, may impact *trust* assets (tribally owned lands)—perhaps with fire or a spill in the upper reaches of a creek, or some event that impacts adjacent ownership. However, the bigger issue is the *Usual and Accustomed Areas*. Olympic National Park lies *entirely within tribal Usual and Accustomed Area where the eight tribes have off-reservation rights to treaty resources*. The way the Park relates to the tribes and gives or does not give them access to harvest their treaty resources is the far bigger issue. Most of the treaty tribes are having access disputes with the Park and this issue needs to be corrected.

Under *US v Winans*, 198 U.S. 371, 25 S.Ct. 662, 1905, a case which is still cited favorably by the US Supreme Court and federal district courts when addressing treaty rights, the right of tribes to harvest fish on private lands as well as public ones, throughout their U&A, was affirmed. Olympic National Park's enabling statute never abrogated this right (and only Congress can abrogate treaty rights). This right continues to this day and is a huge reason why the tribes have a relationship with the Park. That needs to be addressed up front on page 48, not just potential impact on neighboring trust lands external to Park boundaries.

See p. 142 where the author states that “fishing is regulated.” Only non-treaty fishing is regulated. The treaty fishing in the rivers, lakes, and tidelands is not, or at least, not by the Park. (Treaty Tribes have their own fishing regulations and are recognized by state and federal authorities as self-regulatory.) This needs to be clarified for the public and staff and the paragraph on pa. 142 is a good place to do it.

3. The Treaty Fishing Right Includes Rivers and Lakes, Not Just Intertidal Zones.

Throughout the document, where intertidal zones are discussed, the treaty right to rivers (and lakes) is not recognized. (See, e.g., Table 1, page 57; zone discussion on pp. 72-73 where no treaty rights are mentioned under “Rivers”). Yet the treaty use of the rivers and lakes for fishing must be fully acknowledged and spelled out for staff and public eyes, as well. We are uncertain why authors only focused on the intertidal fishing. Perhaps it is because the Park and the Olympic Coast National Marine Sanctuary worked together on a committee for intertidal zoning on behalf of the latter entity. However, tribal access to rivers and lakes for treaty fishing is absolute. Further, the tribes have marine rights in the ocean parts of their Usual and Accustomed Areas, well beyond the intertidal zones. We refer the Park’s authors of this document to *US v. Washington*, 384 F. Supp. 312 (W. D. Wash. – 1974), affirmed by the Supreme Court in 1979, and left open for subproceedings to further define treaty fishing rights. Those are the primary source documents but a host of articles may also serve to explain the issue further.

4. Treaties Are the Highest Law of the Land—Article VI, US Constitution. The drafters of the document do not discuss treaties in the same section as the laws (statutes) that govern the Park. Treaties are discussed only in sections regarding Native American rights and relations with the Park. Yet treaties are right up there with the statutes, and unless they are at least mentioned in the same breath with them, even if discussed later, Park management and the public will fail to appreciate their rank and role. See, for example, pages 11, 40, 78,

On page 135, there is an error in citation of the Treaty of Olympia, which was signed in January of 1856, not in 1855. It was the predecessor document, Treaty of Quinault River, which was signed in 1855. The Treaty of Olympia was a reauthorization of the prior one to correct signatory omissions of the member tribes. There is also an omission in description of the Quileute Tribe’s jurisdiction over islands. Not only James Island, but also, all the smaller islands near it that are connected to the reservation during periods of low tide (because the land bridges are entirely exposed), are part of the Quileute reservation.

5. Environmental Justice. The Park discusses environmental justice at page 47, 48, and page 163. There should not be adverse health or environmental effects on a particular minority or low-income group because of agency policy. This concept derives from the equal protection clause of the US Constitution. We ask the Park to heed this when the tribe seeks to exercise its treaty rights within Park boundaries, throughout the Quileute U&A. Further, the Park might consider the safety issues when planning what parking lots to enlarge. We found not a word about improving the Third Beach facility, for example. Yet in the summer cars not only fill that lot but park all over the roadside of

State Highway 110, and create a traffic risk for passing cars en route to and from La Push. See, e.g., pages 328 and pages 336-347. While other parking lots within the Park might need improvement, we doubt any of them creates as much of a traffic hazard as the one at Third Beach. This is because those lots are off the main highway. The one for Third Beach is not—it is adjacent to 110. For public safety reasons of visitors to the Park and the Tribe, consider improving that lot as well. [While the lot for Second Beach is part of the Quileute-Park boundary dispute at present, should that be resolved, know that Second Beach's parking is as much a traffic hazard as that for Third Beach.]

6. Archeology, Ethnology, and Native vs. European Definitions; or, Not All Tribal Culture Fits in a Museum. Throughout the document, discussions of tribal culture are focused on artifacts and religion, without apparent acknowledgement that the fish, plants and wildlife living in the Park are every bit as much of the tribal culture as the bones, basket fragments, lithographs, and sacred places. If the Park, like many other federal and state agencies, chooses to confine itself to certain specific statutes related to archeology, it will continue to run aground with tribal relations. How, in the face of public ceremonies like Seattle's Salmon Homecoming, and those more confined to reservations such as welcoming the return of the first salmon runs, agencies fail to grasp such ideas, is puzzling. (We note that many tribal funerals and important celebrations also include elk. Selection of cedar trees for canoes is another sacred process. *The list is extensive, of how living things are integral not only to past, but also to modern-day, tribal culture.*) The Park participated in the Pilot Watershed Analysis of the Sol Duc Watershed in 1995-1996, and should recall that an appendix to that published document (by USDS FS) includes a lengthy list of plants important to the Quileute Tribe.

We recommend that you do a global search throughout the document wherever "culture", "ethnology", and "archeology" are discussed and include a discussion of how important the living resources are to the 8 tribes of the Peninsula, who use the resources for subsistence, ceremony, medicine, clothing, and in the case of fisheries—commerce. All of the above have ceremonies, song, and dance involving their use and are integral parts of the living (not dead, not artifacts) culture. Pages 28, 31, 40, 45, 80, 127, 130, 132, 213, and 249 are some of the places where this broad subject is discussed. While we can appreciate that a full discussion of the issue cannot occur in every section of the document, some cross-referencing or footnotes to show the subject is fleshed out elsewhere will be instructive.

7. Education and Outreach. Most of the discussion on these topics, with respect to visitors, does not include tribal participation. The public would probably enjoy learning about tribal use of resources from tribal elders and leaders. This would also be an opportunity for the Park to make use of supplemental staff via natural resources biologists and other experts, who may have knowledge of specific regions within the Park or just outside its boundaries. We note the subject discussed at pages 33, 67 and 148, to name just some. One time a few years back the Park invited tribal representatives to help train its staff. This is not a bad idea and could be revived. However, improved signage throughout the Park regarding tribal treaty rights would also be welcome, as would tribal participation in the Park's outreach centers. We also note that some of the Park

volunteers misunderstand their role as enforcement and have on some instances acted as if “police” with tribal members within the Park. All volunteers need to be properly trained as to the limits of their role.

7. Regarding Fish Species within the Park: On page 110 native species are mentioned. Not until page 320 are invasive exotics discussed (we omit Options A-C which are unlikely to prevail). In any discussion about what species are in the Park it is important to mention the invasive species and how they impact the native ones. The public is probably the offender and needs to be informed about this up front. The Management Plan might be the only document about the Park that is widely reviewed.

8. Management of Invasive Species. While the Park discusses the need to manage invasive species in a number of places (see, e.g., p. 75), it has not addressed that rivers are often the vectors of such species, such as knotweed, a plant group that the Park has already spent a great deal of money and effort to eradicate in the Upper Sol Duc and Lower Dickey Rivers (estuary near Rialto Beach). More attention needs to be given to river management than Plan D provides. Further, there is only brief mention of exotic fish at page 320. Warm water species are being brought in by members of the public and are out-competing the native juveniles in the streams and lakes. The Park would do well to actually name the invasive species on the same page as it names the native species of fish; and it would be illustrative to see how many invaders are now in Park waters. Finally, we find it unnecessary for the Park to introduce non-native plants for ‘cultural’ reasons as stated on page 318. That is how knotweed got started—as a decorative plant. There are many attractive native plants. The Park has made good use of them in the gardens surrounding its primary tourist center on Race Street. It should avoid use of any decorative plants that are non-native and only use native ones.

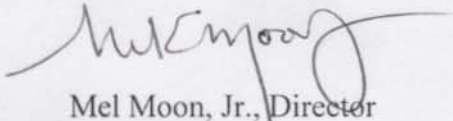
9. Park Expansion of Area/ Local Economy. Boundary expansion is discussed at pages 34, 36, 48, 81, and 245 to list just some sites. Before engaging in any expansion, or firming it up in a “Plan”, the Park should initially engage in consultation about the feasibility and impact of such expansion. Formalizing it before these steps are taken is inappropriate. For tribes, Executive Order 13175 should be implemented *well before* purchase of property in the respective tribe’s treaty area is noticed publicly. All potential impacts on the tribe should be explored, and alternatives considered. We also note that removing property from the public tax rolls has a negative impact on the rural counties involved and they are acutely aware of it. Grey’s Harbor is impacted adversely, for example, by Park purchases of homes along Lake Quinault. Clallam County will be hurt by purchases on Lake Ozette. Hurting a county’s economy impacts all its citizens in a number of ways, such as cutting back on services. The Park should have a compelling reason for its expansion and not take it as a matter of right.

10. Hazards. The Park discusses hazardous trees on page 180 but does not discuss hazardous rocks. Along US 101 are several places where curtains have been put up to protect passing cars from falling rocks. We notice some ominous boulders on the highway as it goes through Lake Crescent. The Park should pay attention to this hazard as well as trees.

Further, at the risk of overlapping with Quileute Tribe boundary issues, we notice very little mention of tsunami risk to visitors and protection from this hazard. There is brief reference at pages 263, and 330, for example, discussing what might happen to access to Rialto Beach. The word "tsunami" is not used. It should be. There should be signage, visitor advice, and directions. The Park does this for cougars and bears. It should also do this for tsunamis.

Summary: Tribes often have the sense that agencies receive the comments and then do as they planned anyway. We remind the Department of Interior that it has a trust relationship with the treaty tribes. Our comments should be considered with the highest level of care for our welfare, in a true trustee-beneficiary relationship. They have been made with the expectation that the Park will receive them that way and we look forward to improvement in the relationship between the Park and the Quileute Tribe.

Sincerely,



Mel Moon, Jr., Director
Quileute Natural Resources
(360) 374-3133
mel.moon@quileutenation.org

cc: Richard Laitner, Superintendent, Olympic National Park
Senator Patty Murray
Senator Marie Cantwell
Congressman Norm Dicks
Governor Christine Gregoire
State Senator James Hargrove
State Rep. Lynn Kessler
State Rep. Jim Buck
Bureau of Indian Affairs, Portland
Quileute Nation Council
Quinault Indian Nation Council/NRD
Hoh Tribal Council/NRD
Makah Tribal Council/NRD
Jamestown S'Klallam Tribal Council/NRD
Lower Elwha Klallam Tribal Council/NRD
Port Gamble S'Klallam Tribal Council/NRD
Skokomish Tribal Council/NRD
Point No Point Treaty Council
Northwest Indian Fisheries Commission
Cmr. Mike Doherty, Clallam County
Mayor of Forks Nedra Reid