Case No. 21-35185

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

METLAKATLA INDIAN COMMUNITY, a Federally-Recognized Indian Tribe,

Plaintiff-Appellant,

v.

MICHAEL J. DUNLEAVY, Governor of the State of Alaska, et al.,

Defendant-Appellees.

Appeal from the United States District Court for the District of Alaska,
Case No. 5:20-cv-00008-JWS

PLAINTIFF-APPELLANT'S OPENING BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes and Regulations

Other Authorities

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure (FRAP) 26.1(a), the Metlakatla Indian Community states that it is a federally-recognized sovereign Indian Tribe, a governmental entity to which the FRAP 26.1 disclosure requirement is inapplicable.

DATED this 9th day of June, 2021.

/s/Julie A. Weis
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I. INTRODUCTION.

This is an Indian fishing rights case in which an Indian tribe, the Metlakatla Indian Community (Community), seeks recognition of its implied right to fish in common with others in certain waters of Southeast Alaska. The district court dismissed the Community's amended complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure (Rule 12(b)(6)) for a purported failure to state a claim for relief, despite the Community having alleged facts demonstrating a more than plausible claim for relief, and without assessing the Community's allegations through the lens of the trust relationship governing the United States' obligations towards a dependent Indian people. In so doing, the district court erred.

In 1887, a band of Tsimshian Indians called Metlakatlans, a fishing people, arrived on the Annette Islands in Southeast Alaska with the encouragement of the United States to create a new, self-sufficient Indian community. The Indians were immigrants from British Columbia, whose border with the then-Territory of Alaska was a mere 20 miles to the Territory's north. By 1890, a growing community of 820 members, including 103 native Alaskans, had constructed a promising cannery which served as the core of the community's economic plans for the future.

The Metlakatlans had been a fishing people for thousands of years, and they continued that tradition on the Annette Islands where they fished throughout the nearby waters now designated by the State of Alaska as Districts 1 and 2. In 1891,

Congress exercised its plenary powers over United States lands and waters to reserve the Annette Islands as an Indian reservation (the Annette Islands Reserve) for the Metlakatla Indian Community, to "safeguard[] and advance[e] a dependent Indian people dwelling within the United States." *Alaska Pac. Fisheries Co. v. U.S.*, 248 U.S. 78, 88 (1918). In doing so, Congress intended to reserve the Community's right to continue its practice of fishing outside of the Reserve in contiguous waters that were and still are essential to the Community's existence and success as a dependent Indian nation. As the Supreme Court recognized more than a century ago, the "Indians could not sustain themselves from the use of the upland alone. The use of the adjacent fishing grounds was equally essential. . . . The Indians naturally looked on the fishing grounds as part of the islands . . . ." *Id.* at 89.

The State of Alaska's current position is that the Community has no off-reservation fishing rights. But as explained in this brief, that position displays a fundamental misunderstanding of the applicable law and circumstances surrounding the creation of the Community's reservation. The district court erroneously endorsed the State of Alaska's misguided arguments by granting its Rule 12(b)(6) motion. The district court did so without even affording the Community an opportunity for oral argument.

The legal principles that guide this Court's substantive review of the district court's decision include well-established federal Indian law principles. These principles require an examination of Congress' purpose in creating the reservation, the culture of the people for whom the reservation was created, and the practice of those people before, during and after creation of the reservation. *See, e.g.*, *Confederated Tribes of Chehalis Indian Reservation v. State of Wash.*, 96 F.3d 334, 342 (9th Cir. 1996); *Colville Confederated Tribes v. Walton*, 647 F.2d 42, 47 (9th Cir. 1981). The guiding principles recognize that the extent of an Indian tribe's rights associated with the creation of a reservation often was unarticulated, particularly when a reservation was established through an executive order or statute, as was the case here where Congress established the Annette Islands Reserve through legislation. The analytical principles are grounded in the legal tenet that when the United States establishes an Indian reservation for the benefit of an Indian tribe, it undertakes the solemn duty to care for the tribe's well-being. The resulting trust relationship elevates any analysis of resulting rights above one that is simply transactional in nature and demonstrates that an Indian tribe has an implied off-reservation right to access the natural resources essential to achieving Congress' objective in creating its reservation.

In the case of the Metlakatla Indian Community, long-term tribal success was paramount to Congress' creation of the Annette Islands Reserve as the

Community's new and permanent home. Because the Community was comprised of native peoples who always had been dependent on fishing in the waters in and around what is now Southeast Alaska for subsistence and commerce, access to proximate fisheries was critical to fulfilling Congress' purpose in creating the reservation, and Congress intended to provide for such access. As set forth below, the guiding legal principles make abundantly clear that the Community stated a claim for relief in the district court – certainly a plausible claim under the governing Rule 12(b)(6) standard – that Congress, in creating the Annette Islands Reserve in 1891, necessarily reserved for the Community the right to fish in off-reservation waters adjacent to and surrounding the reservation. The district court's dismissal of the Community's claim for relief under Rule 12(b)(6) thus was in error and should be reversed.

II. STATEMENT OF JURISDICTION.

A. Basis for Jurisdiction in the District Court.

The Metlakatla Indian Community's claim against Michael Dunleavy, the Governor of the State of Alaska, Doug Vincent-Lang, the Commissioner of the State of Alaska Department of Fish and Game, and Amanda Price, the Commissioner of the State of Alaska Department of Public Safety (collectively the State) arose under 28 U.S.C. §§ 1331 (federal question) and 1362 (Indian tribes). Excerpts of Record (ER) ER-29 (Amended Complaint (Compl.) ¶ 7).

B. Basis for Jurisdiction in this Court.

The Metlakatla Indian Community's appeal is from the district court's February 17, 2021 Order granting the State's motion to dismiss, ER-4-22 (Order), on which judgment was entered February 22, 2021. ER-3 (Judgment). The Community filed a timely notice of appeal on March 11, 2021, ER-57-63, and this Court has jurisdiction pursuant to 28 U.S.C. § 1291.

III. ISSUE PRESENTED FOR REVIEW.

Where the Metlakatla Indian Community alleged sufficient facts to state a plausible claim for an implied off-reservation fishing right based on the circumstances surrounding Congress' creation of the Community's Annette Islands Reserve and the nature and history of the fishing people for whom the Reserve was created, did the district court err in dismissing the Community's complaint pursuant to the State's Rule 12(b)(6) motion, which required the district court to accept factual allegations in the complaint as true and construe those allegations and reasonable inferences therefrom in the light most favorable to the Community, and where Indian canons of construction required the district court to interpret the statute creating the Reserve as the Community would have understood it and to liberally construe the statute in favor of Indian rights?

IV. STATEMENT REGARDING ADDENDUM.

Pursuant to Federal Rule of Appellate Procedure 28(f) and Ninth Circuit Rule 28-2.7, pertinent legal authorities are reproduced in an addendum to this brief.

V. STATEMENT OF THE CASE.

On August 7, 2020, the Metlakatla Indian Community sued the State for illegally restricting Community members' right to fish in certain waters of Southeast Alaska pursuant to the Community's off-reservation, non-exclusive reserved fishing right. ER-65 (Court Record (CR) 1). The Community filed its operative amended complaint (complaint) against the State on October 1, 2020. ER-25-56 (Compl.). The complaint sought a declaration that Congress' 1891 reservation of the Annette Islands Reserve for the Metlakatla Indian Community included the non-exclusive right to fish in nearby waters currently designated by the State as Districts 1 and 2. ER-45-46 (Compl. Prayer for Relief); ER-44-45 (Compl. ¶¶ 53-58). The complaint also sought to enjoin the State from unreasonably interfering with the Community's exercise of its reserved fishing rights in those waters. ER-45-46 (Compl. Prayer for Relief).

On October 15, 2020, the State moved the district court to dismiss the Community's complaint for failure to state a claim pursuant to Rule 12(b)(6). ER-67 (Court Record (CR) 22). The Community opposed the State's motion on November 5, 2020 and requested oral argument on the motion. ER-67 (CR 23).

The State replied on November 19, 2020, ER-67 (CR 24), after which the court on February 17, 2021 granted the State's motion to dismiss without affording the Community an opportunity for oral argument. ER-4-22 (Order); ER-3 (Judgment). The Community commenced this appeal on March 11, 2021. ER-57-63.

VI. STATEMENT OF FACTS.

The Metlakatla Indian Community is a federally-recognized Indian tribe that occupies the only federal Indian reservation in Alaska. The Community's reservation is comprised of the Annette Islands Reserve in the Alexander Archipelago of Southeast Alaska about 20 miles south of Ketchikan.[1] ER-50-52 (Compl. Ex. B). Congress created the Reserve in 1891 to allow Metlakatlans, including Tsimshian Indians from British Columbia and "such other Alaskan natives as may join them," to achieve economic self-sufficiency and establish a

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[1] The Reserve is defined more particularly as

> the Annette Islands in Alaska, as set apart as a reservation by section 15 of the Act of March 3, 1891 (26 Stat. 1101, 48 U.S.C. sec. 358), and including the area identified in the Presidential Proclamation of April 28, 1916 (39 Stat. 1777), as the waters within three thousand feet from the shore lines at mean low tide of Annette Island, Ham Island, Walker Island, Lewis Island, Spire Island, Hemlock Island, and adjacent rocks and islets, located within the broken line upon the diagram attached to and made a part of said Proclamation; and also the bays of said islands, rocks, and islets.

25 C.F.R. § 241.2(a).

self-sustaining community in their new homeland. Act of March 3, 1891, ch. 561 § 15, 26 Stat. 1095, 1101 (codified at 25 U.S.C. § 495 (omitted)) (hereinafter cited as 25 U.S.C. § 495).

Prior to emigrating to the Annette Islands with the encouragement of the United States government, 21 CONG. REC. 10,092 (1890), the Tsimshian Indians from British Columbia were no strangers to the fisheries at issue in this case – they were "'natives of and residents within the limits of British Columbia, about 20 miles from the line of Alaska.'" *Territory v. Annette Island Packing Co.*, 6 Alaska 585, 601 (D. Alaska 1922) (quoting 1887 U.S. Attorney General opinion), *aff'd*, 289 F. 671 (9th Cir. 1923). Although unique, the fact that some of the Metlakatlans were "foreign born" is substantively irrelevant. The Supreme Court stated more than a century ago that the action of Congress in creating the Reserve "has made that immaterial . . . ." *Alaska Pac. Fisheries*, 248 U.S. at 89. What *is* relevant is that the Community is and always has been comprised of fishers reliant on commercial and subsistence fishing as the primary means to support themselves and their families. ER-31 (Compl. ¶ 16). *See also* ER-28-29 (Compl. ¶ 3) (alleging that the "the Metlakatlan people's very existence – economic, cultural, and spiritual – was and remains dependent on fishing").

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A. Emigration to the Annette Islands.

In 1887, a group of approximately 820 Tsimshian Indians, facing conflict with the Canadian government over such things as tribal sovereignty, emigrated from "Old" Metlakatla (which means "place beside calm water" in Tsimshian) in British Columbia to what is now the Annette Islands Reserve. ER-30 (Compl. ¶ 11). The Tsimshian people's emigration to the Annette Islands occurred at the invitation, and with the permission, of President Grover Cleveland and the United States Congress and was aided by an Anglican missionary named Father William Duncan who had been living with the Indians at Old Metlakatla. *Id.*

From time immemorial, fishing had been the bedrock of the Indians' culture and way of life. ER-30-31 (Compl. ¶ 13). Tsimshian fishermen migrated with the fish runs, establishing temporary fishing villages along the coast and rivers from which they fished throughout the waters of what is now Southeast Alaska, including as far north as 50 miles from the Annette Islands. *Id.* The selection of the Annette Islands as the Indians' new home was intended to facilitate the Indians' fishing way of life by providing good access to adjacent and nearby fishing areas, with the goal being to "build up a self-supporting people by honest craft and consequently to render the community independent of all outside aid." ER-31 (Compl. ¶ 14) (quoting S. MISC. DOC. NO. 55-275, at 6 (1898)). *See also Alaska Pac. Fisheries*, 5 Alaska 484, 486 (D. Alaska 1916) (stating in the context

of the Reserve that "[Congress] must be held to have known that without the food yield of the sea these Indians could not survive"), *aff'd*, 240 F. 274 (9th Cir. 1917), *aff'd*, 248 U.S. 78 (1918).

B. Congress' Creation of the Annette Islands Reserve.

Congress established the Annette Islands Reserve in 1891 "for the use of the Metlakahtla [sic] Indians . . . and such other Alaskan natives as may join them."[2] 25 U.S.C. § 495 (the Act). When introducing the bill, Senator Manderson of Nebraska stated that the purpose was "to allow this band of Indians to remain [on the Annette Islands] under such rules and regulations as the Secretary of the Interior may impose, and give them some recognized footing at that place." 21 CONG. REC. 10,092 (1890). The Supreme Court in 1918 acknowledged that Congress' creation of the Reserve constituted "a setting apart . . . of designated public property for a recognized public purpose-that of safeguarding and advancing a dependent Indian people dwelling within the United States." *Alaska Pac. Fisheries*, 248 U.S. at 88.

In establishing the Reserve, Congress knew its action would establish a secure home for a community of fishers on an island in the Territory of Alaska, where people were scarce but aquatic natural resources abundant. ER-33 (Compl.

[2] The alternate spelling of Metlakatla in historical documents is not noted through the use of [sic] in the remainder of this brief.

¶ 22). *See also Alaska Pac. Fisheries*, 5 Alaska at 486 ("In passing this Act, Congress must be held to have known (what every one [sic] else knew) that the Indians of Alaska are fisher folk and hunters and trappers, and largely, if not entirely, dependent for their livelihood upon the yield of such vocations."); *Alaska Pac. Fisheries*, 240 F. 274, 281 (9th Cir. 1917) ("These Indians are fishermen and hunters, and they obtain their living by fishing and hunting, mainly by fishing . . . . The island was then reserved for the habitation of these Indians and for their use in obtaining their food supply from the waters immediately surrounding the island."), *aff'd*, 248 U.S. 78 (1918).

Congress also knew that the Community viewed the United States as its benefactor which would protect the Community's fishing activities and practices. ER-33 (Compl. ¶ 22). *See also Alaska Pac. Fisheries*, 5 Alaska at 488 (referring to the United States as the "'Great White Father'" who invited the Metlakatlans to the Annette Islands so that they could safely make their homes on, and pursue their livelihoods from, the Reserve). Congress placed no statutory limitations on the Community's right or ability to fish in adjacent fishing grounds because to do so would have compromised Congress' purpose in establishing the reservation. ER-33 (Compl. ¶ 23). *Accord Alaska Pac. Fisheries*, 248 U.S at 89 ("The Indians could not sustain themselves from the use of the [reservation's] upland alone. The use of the adjacent fishing grounds was equally essential. . . . The Indians naturally

looked on the fishing grounds as part of the islands . . . ."). Instead, Congress gave the Secretary unprecedented authority to help Metlakatlans achieve a self-sufficient homeland, which would require the continued exercise of their historic fishing practices for commercial, cultural and subsistence purposes. ER-33 (Compl. ¶ 23).

C. The U.S. Supreme Court's Affirmation that the Reserve Includes a Proximate Exclusive Fishing Zone.

In late April 1916, President Woodrow Wilson enhanced the Metlakatla Indian Community's fishing rights by proclaiming a 3,000-foot *exclusive* fishing zone around the Reserve (Exclusive Fishing Zone, or Zone). PRESIDENTIAL PROCLAMATION OF April 28, 1916, 39 Stat. 1777. *See also* ER-52 (Compl. Ex. B at 2) (depicting the Community's Exclusive Fishing Zone). President Wilson declared that "the Secretary of the Interior, with a view of assisting Metlakahtlans to self-support, has decided to place in operation a cannery on Annette Island," as a result of which it was "necessary that the fishery in the waters contiguous to the hereinafter described group comprising the Annette Islands be reserved for the purpose of supplying fish and other aquatic products for said cannery." *Id.*

Earlier that same month, a private company not affiliated with the Community had erected a fish trap "within 3,000 feet from" the Reserve to supply its own cannery with salmon. *Alaska Pac. Fisheries*, 240 F. at 277. The purpose of the Zone thus was to safeguard the Community from non-Community fishers'

encroachment on the Reserve's close-in fisheries to help Metlakatlans fulfill Congress' promise of self-sufficiency.

The lawfulness of the Exclusive Fishing Zone was established via litigation after the private company challenged the United States' right to force it to remove its fish trap, which again had been placed less than 3,000 feet from Annette Island proper. In upholding the Zone, the Supreme Court found that Congress' creation of the Annette Islands Reserve necessarily encompassed "the intervening and surrounding waters" because Congress' purpose in creating the Reserve was "to encourage, assist and protect the Indians in their effort to train themselves to habits of industry, become self-sustaining and advance to the ways of civilized life." *Alaska Pac. Fisheries*, 248 U.S. at 89. That could only happen with the Community's access to proximate fisheries as part of the Reserve. *Id.* (construing the term "Annette Islands" as "embracing the intervening and surrounding waters as well as the upland").

D. Historical Fishing Practices of the Metlakatlans Before and After Congress' Creation of the Reserve.

Metlakatlans are a fishing people. ER-30-31 (Compl. ¶ 13). Prior to Congress' creation of the Reserve, Metlakatlans fished predominantly in areas within a day's travel of the Annette Islands,[3] including in areas currently

[3] As a practical matter, freshly-harvested fish would remain fresh for only a

designated by the State as Districts 1 and 2.[4] ER-32 (Compl. ¶ 17). *See also* ER-47-49 (Compl., Ex. A) (depicting District 1 waters in pink and District 2 waters in green, with the Reserve located in the center of District 1); ER-53-55 (Compl., Ex. C) (depicting the Community's historical fishing locations in Districts 1 and 2). Approximately contemporaneously with the creation of the Reserve, Metlakatlans on the Annette Islands had built and begun operating a cannery. *See* ER-31 (Compl. ¶ 14) (citing S. MISC. DOC. NO. 55-275 (1898), which recounts at page 4 (on the later occasion of responding to why the Reserve should not be opened to settlement) the Metlakatlans' construction of a cannery). *See also Alaska Pac. Fisheries*, 248 U.S. at 88-89 ("After their settlement and before the reservation was created, the Indians . . . installed an extensive establishment where they canned salmon for the market."); ER-24 (citing 1890 census information available online, which documents at page 220 a shipment of canned salmon from Metlakatla in December of that year).

After Congress' creation of the Reserve, and continuing after the Supreme Court's acknowledgment that the Reserve included a 3,000 foot Exclusive Fishing

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limited time. Historical evidence that the Community never had an opportunity to present to the district court made note of this fact.

[4] Districts 1 and 2 are only two of the many fishing districts in the so-called Southeastern Alaska Area. ALASKA ADMIN. CODE tit. 5, § 33.100. *See also id.* § 33.200 (describing the various fishing districts).

Zone, Community members regularly fished in those same waters, a fact well known to the Territorial, State and federal authorities. ER-32 (Compl. ¶ 17). In 1921, the Territory of Alaska admitted as much in its answer to a complaint in intervention in a case involving the Territory's unsuccessful attempt to tax the Annette Island Packing Company, which was canning salmon (including salmon harvested outside of the Zone) on the Reserve. *See generally Annette Island Packing*, 6 Alaska 585.

In *Annette Island Packing*, the Territory alleged in response to the Secretary of the Interior's motion to intervene that since their arrival to the Annette Islands, Community members:

> have been and yet are in the habit of fishing outside of said reserve, and a large percentage of the fish canned from year to year by the defendant company was caught in waters outside of said reserve . . . . the right of the inhabitants of said Annette Island reserve to catch fish outside of the reserve . . . has always been and is now recognized by the intervenor [Secretary of the Interior] and by the Government of the United States, and such right is and at all times has been claimed by the said Metlakatla people.

ER-35 (Compl. ¶ 26) (quoting Territory's answer to the complaint in intervention). The agreed statement of facts in the case further established that "for more than 10 years prior to 1917 . . . fish were secured from any waters [to supply the Community's salmon cannery and that] during the season of 1919 . . . approximately 130,000 salmon caught by Indian residents of Metlakahtla outside

of the Annette Indian reserve and its reserved waters" were canned by the Community's cannery. *Annette Island Packing*, 6 Alaska 585.[5] No party to the case, including the Territory, challenged Community members' right to fish outside of the Zone. ER-35 (Compl. ¶ 28).

The Community's complaint set forth detailed historical evidence of Community members fishing without objection outside of the Zone during the Reserve's formative years and beyond. *See generally* ER-38-41 (Compl. ¶ 35). Community members did so not just to support themselves and their families, but also to remain connected with their tribal heritage and traditional culture. ER-28-29 (Compl. ¶ 3).

For example, in 1891, approximately contemporaneously with Congress' establishment of the Annette Islands Reserve, the Community's spiritual leader Father Duncan wrote regarding a Metlakatlan who had been fishing at Naha Bay, approximately 35 miles north of the Annette Islands. ER-38 (Compl. ¶ 35(a)). The Indian had experienced difficulties while fishing at Naha Bay, even though he had "a perfect right to fish at" the location. *Id.*

A year later, Father Duncan corresponded with his Portland, Oregon attorney regarding the Community having acquired a steamer, which would help

[5] The decision's recitation of the agreed statement of facts lacks page numbers, but the quoted material appears at page 6 of the printed Westlaw document.

Community members obtain salmon from the "farthest fishing station" located 35 miles from the Reserve. ER-39 (Compl. ¶ 35(b)). Additional correspondence documented Community members fishing on and around Prince of Wales Island, located many miles beyond the Exclusive Fishing Zone, among other places. *Id.* *See also* ER-53-55 (Compl. Ex. C) (depicting historical fishing locations, including on Prince of Wales Island, the body of land shown on the left of the map); ER-47-49 (Compl. Ex. A) (showing that the waters proximate to the western shore of Prince of Wales Island are located in what is now designated as District 2).

The complaint set forth evidence documented by a variety of sources, including official reports of the federal government, regarding Community members' historical fishing practices beyond the Reserve. For example, an 1896 "Report on the Salmon Fisheries of Alaska," prepared by the inspector of salmon fisheries five years after Congress had established the Reserve, acknowledged Community members' use of fishing grounds at locations like Naha Bay (again, 35 miles north of the Reserve), Karta Bay on Prince of Wales Island, and Kah Shakes Cove (35 miles southeast of the Reserve). ER-39 (Compl. ¶ 35(c)). Regarding the latter, the report noted that Community members "had equal fishing rights" with others at Kah Shakes Cove, "within the limits prescribed by the law as to distances between nets, etc." *Id.*

Another government report – an 1899 report to the Secretary of the Treasury – commented positively on the Community's cannery and noted that Community members fished not only around the Annette Islands, but also in Quadra Bay (35 miles from Annette Island) and around Prince of Wales Island at locations like Karta Bay and Moira Sound. ER-39 (Compl. ¶ 35(d)). Similarly, official reports circa 1900 from Commander Jefferson Moser, United States Navy, documented Community members fishing in such off-Reserve locations as Tamgas, Quadra Bay, Karta Bay, Kithraum, Peter Johnson, Nowiskay, Old Johnson and Kegan. ER-39-40, ER-53-55 (Compl. ¶ 35(e) and Ex. C (showing locations of same)). A later government document authored after the Supreme Court had affirmed the Community's 3,000 foot Exclusive Fishing Zone confirmed that "Metlakatla natives did, as they have from time immemorial, go beyond the three-mile-limit to seine fish." ER-40 (Compl. ¶ 35(f)).

Additional evidence of Community members' historical practice of fishing both on and well beyond the Reserve came from Father Duncan. *See, e.g.*, ER-40 (Compl. ¶ 35(g)) (discussing 1898 correspondence regarding Community fishing efforts at Naha Bay); ER-40 (Compl. ¶ 35(h)) (same for 1899 correspondence regarding Community fishing efforts at Moira Sound); ER-40 (Compl. ¶ 35(i)) (same for 1900 correspondence regarding an incident involving Community members fishing in Karta Bay); ER-40 (Compl. ¶ 35(j)) (same for a 1903 report to

a U.S. Fish Commission agent describing the Community's earlier cannery work and sources of fish, which included such locations as Nowaskay's Fishing Station, W. Keghan Fishing station, Johnson's fishing station, and Pete Johnson's fishing station at Moira Sound, all on or around Prince of Wales Island; Shaholan's fishing station at Duke Island; Annette Island fishing stations like Kag-ah-een, Tongass Harbor, Nadzaheen and Tain; and Boca de Quadra Inlet, located east of the Reserve). *See also* ER-52 (Compl. Ex. B at 2) (showing the location of Duke Island south of the Reserve).

Finally, the Community's complaint provided evidence from Community members regarding historical fishing practices in the waters at issue. *See, e.g.*, ER-40 (Compl. ¶ 35(k)) (alleging that numerous Community members have told of their families' historical fishing practices that consistently included fishing in areas beyond the Zone); ER-41 (Compl. ¶ 35(l)) (describing vessel fishing logs documenting Community fishing activities from 1954 through 1957 at locations like Cape Chacon, south of Prince of Wales Island; west of Dall Island, which is itself west of Prince of Wales Island; near Ham and Mary Islands, located to the east of the Reserve; and around Percy Islands, located to the south of the Reserve).

Moving forward in time, the complaint alleged that from the time Alaska entered statehood to the establishment of Alaska's limited entry program (1959 – 1973), no governmental entity, whether State or federal, took any action to suggest

that Community members' right to fish in waters beyond the Reserve was limited or diminished in any respect, including in the waters currently designated by the State as Districts 1 and 2. ER-41 (Compl. ¶ 36).

In sum, at no time prior to the State's limited entry program did the United States, the Territory of Alaska or the State ever dispute Community members' right to fish outside of the Exclusive Fishing Zone. ER-41 (Compl. ¶ 37).

E. The State's Limited Entry Program and Its Interference with the Metlakatla Indian Community's Exercise of Off-Reservation, Non-Exclusive Reserved Fishing Rights.

Alaska became a state in 1959, after which "the waters outside of the Reserve became state-managed fisheries."[6] ER-7 (Order at 4). In 1972, Alaskans adopted a constitutional amendment permitting the State to limit the entry of new participants to Alaska's fisheries for economic and, to a lesser extent, conservation purposes. ALASKA CONST. art. VIII, § 15. *See also* ER-43 (Compl. ¶ 48). One year later, the State enacted a limited entry program for commercial fishing in Alaskan waters. ER-43 (Compl. ¶ 47). *See also* ALASKA STAT. § 16.43.010 (purpose and findings of fact for the Limited Entry Act).

The original issuances of limited entry permits were intended to benefit those who were the most economically dependent on commercial fishing. *See,*

[6] The State's ability to regulate its fisheries is limited by Indian fishing rights, ER-7-8 (Order at 4-5), subject to sound conservation principles. ER-45 (Compl. ¶ 57).

e.g., ALASKA ADMIN. CODE tit. 20, § 5.620. But because the original issuances were tied to fishers being State gear license holders, *id.* § 5.610, Community fishing activities within the Reserve where the State necessarily lacks regulatory authority did not implicate State gear licenses. As a result, the original issuances of limited entry permits did not count Community members' fishing activities within the Reserve when assessing historical dependence on fishing, ER-43 (Compl. ¶ 49), even though the Reserve is located in and contiguous to the waters regulated by the State's limited entry program. ER-47-49 (Compl. Ex.. A) (showing the Reserve in the middle of District 1, which is contiguous to District 2). Thus, while the State's limited entry program was intended to benefit those who were most dependent on fishing for their livelihoods, it disadvantaged Community members who had always fished in the waters at issue to meet their essential needs, pursuant to a federal reserved right and their belief in same. ER-43 (Compl. ¶ 49).

The limited entry program effectively excluded many Community members from fishing in Districts 1 and 2, waters contiguous to the Reserve where Metlakatlans had fished before and after the Reserve's 1891 creation. *Id.* Community members who nonetheless continued their historical practice of fishing in Districts 1 and 2 risked State prosecution, criminal and/or civil, even though they possessed a federal reserved right to fish in the waters. ER-45 (Compl. ¶ 56). Districts 1 and 2 are but two of the many fishing districts in the Southeastern

Alaska Area, ALASKA ADMIN. CODE tit. 5, § 33.200 (describing the many districts), yet the only two in which Community members historically fished and seek to continue fishing pursuant to their implied off-reservation fishing right.

F. The Inadequacy of the Exclusive Fishing Zone Under Current Circumstances.

The Exclusive Fishing Zone does not meet the Community's needs, which further supports the conclusion that the Community possesses an implied off-reservation fishing right.[7] Since time immemorial, Community members' ancestors fished the waters of Southeast Alaska, including the areas surrounding the Annette Islands that are now designated by the State as Districts 1 and 2. ER-41 (Compl. ¶ 38). Like their ancestors, Community members rely on multiple fish species for both subsistence and commercial purposes, including salmon, halibut, cod, rockfish and herring. *Id.* But currently, access to some fishery resources is limited or unavailable within the Zone. ER-41 (Compl. ¶ 39).

The Community's salmon fisheries, which include a broad mix of stocks, are its most important economic resource. ER-41-42 (Compl. ¶ 40). Salmon are migratory fish whose migratory routes are affected by environmental factors,

[7] The Court's inquiry regarding the purpose for which Congress created the Reserve implicates the Community's need to maintain itself not only at the time the Reserve was created but also "under changed circumstances." *Colville Confederated Tribes*, 647 F.2d at 47 (considering an Indian Tribe's needs across the continuum of time). *See infra* part IX.A.1.

including climate change. *Id.* When environmental conditions cause migratory salmon to not enter the Exclusive Fishing Zone, Community fishermen need to be able to respond by redirecting their fishing efforts. *Id.* Absent recognition of the Community's implied off-reservation fishing rights, however, Community members lack the flexibility to do so, which significantly disadvantages them. *Id.* During any given season, salmon runs may avoid Reserve waters even when they are plentiful outside Reserve waters. ER-44 (Compl. ¶ 50).

Fishing practices of non-Community members also can prevent important fish species from passing through the Exclusive Fishing Zone. The Reserve is surrounded on all sides by State-managed fishing areas, making the Community's fisheries vulnerable to State-licensed anglers intercepting fish before they reach the Zone. ER-42 (Compl. ¶ 41). At times, State-licensed anglers have intercepted salmon that otherwise would have passed through Reserve waters, thereby reducing the Community's access to this important fishery resource. *Id.*

The Reserve boundary also is not compatible with the behavior of herring, the Community's second most important fishery resource. ER-42 (Compl. ¶ 42). The Community has adopted a conservative harvest strategy that has increased herring biomass to more than 20,000 tons. *Id.* But when Community-managed herring exit the Reserve's waters, Community fishers lack the flexibility to harvest

the fish, and the Community-managed herring resource instead provides State-licensed fishermen with a windfall. *Id.*

Halibut is another species of considerable importance to the Community, both as a commercial and subsistence fishery, but there are few halibut within the Reserve. ER-42 (Compl. ¶ 43). Due to the small size of the halibut fishery, the Community must give priority to its commercial fishery, leaving subsistence users with little or no access to this species. *Id.*

The State's failure to acknowledge the Community's implied right to fish beyond the Reserve has denied the Community access to aquatic natural resources that the Community needs and was fully dependent on historically. ER-43 (Compl. ¶ 45). It also is inconsistent with important aspects of fish biology and fisheries management. *Id.* Recognizing the Community's implied right to fish outside the Zone would promote the joint and equitable management of fishery resources of great importance to both the Community and the State. ER-42 (Compl. ¶ 44).

Since before recorded history, Community members' ancestors exercised their right to fish throughout the waters of Southeast Alaska. ER-44 (Compl. ¶ 51). In establishing the Annette Islands Reserve, Congress intended for Community members to retain the right to fish in the waters surrounding the Reserve so that they could thrive on their reservation. *Id.* Without recognition of that right, the

Community has been and will continue to be deprived of its primary economic opportunity and the natural resources at the center of its culture. *Id.* Instead of benefitting the Community, the Exclusive Fishing Zone now acts as a cage that threatens the Community's ability to be self-sustaining, contrary to Congress' intent in creating the Annette Islands Reserve in 1891. ER-44 (Compl. ¶ 52).

VII. SUMMARY OF ARGUMENT.

The district court erred in dismissing the Metlakatla Indian Community's amended complaint under Rule 12(b)(6). The Community's complaint set forth well-pleaded facts in support of its claim that Congress intended the Community to have access to the fishing grounds that were and are essential to its existence as a self-sufficient Indian tribe when Congress created the Annette Islands Reserve.

Despite the Community having established a more than plausible claim for judicial recognition of its off-reservation, non-exclusive reserved right to fish in waters now designated by the State as Districts 1 and 2, the district court failed to take as true the Community's well-pleaded factual allegations and draw all reasonable inferences therefrom in the Community's favor. The district court further erred by endorsing alternate inferences proffered by the State. The court also ignored relevant Indian canons of construction, which stem from the unique trust relationship between the United States and a dependent Indian people and strongly favor a finding of Indian rights where the circumstances demonstrate a

tribe's belief that they were provided. *Parravano v. Babbitt*, 70 F.3d 539, 544 (9th Cir. 1995).

The legal framework for evaluating a claim of implied off-reservation fishing rights requires a reviewing court to examine the purpose of a reservation's establishment, keeping in mind that such purpose need not be express and often was unarticulated. Under the governing legal framework, the reviewing court considers not only the document creating the reservation but also "the circumstances surrounding [its] creation, and the history of the Indians for whom [it was] created." *Chehalis*, 96 F.3d at 342. The inquiry also considers a Tribe's need to maintain itself not only at the time its reservation was created but also moving forward "under changed circumstances." *Colville Confederated Tribes*, 647 F.2d at 47.

The Indian law principles guiding judicial review show that Congress' creation of the Annette Islands Reserve encompassed those off-reservation fishing rights needed for this dependent Indian Community to be self-sustaining on its new island homeland in Southeast Alaska. The complaint sets forth well-pleaded allegations regarding Metlakatlans having been dependent on fishing in the waters at issue before, during and after Congress' creation of the Reserve in 1891, including to supply their cannery which was constructed approximately contemporaneously with passage of the Act establishing the reservation. From

1887 until the 1970s when the State began its limited entry program, Community members fished openly in the waters at issue with the knowledge of and acquiescence in the practice by Territorial, State and federal authorities. This shows that Community members believed they had the right to fish in the waters at issue and needed to do so to survive, and that the governing authorities likewise believed the Community possessed such off-reservation fishing rights.

Congress was well-acquainted with the history of the Metlakatlans when it formed a trust relationship between the United States and the Community by creating the Reserve. Commonsense tells us today, just as Congress knew in 1891, that an Indian people of fishers who always had fished in waters now designated as Districts 1 and 2 believed the reservation afforded them the right to fish in those same locations after the Reserve's creation. It is inconceivable that an Indian in Southeast Alaska, particularly more than a century ago, could have imagined an invisible line surrounding the reservation beyond which it could not fish. Nor is it conceivable that Congress, being well-acquainted with the history of this fishing people, would have intended in 1891 to limit the Community's access to essential fishing grounds.

Because the district court erred by dismissing the Community's well-pleaded claim pursuant to Rule 12(b)(6), this Court should reverse.

VIII. LEGAL STANDARDS.

A. Standard of Review.

The Court reviews de novo the district court's grant of the State's Rule 12(b)(6) motion. *Lacey v. Maricopa County*, 693 F.3d 896, 911 (9th Cir. 2012) (en banc). The Court thus takes all allegations of material fact in the Community's complaint as true and construes them in the light most favorable to the Community. *Dent v. National Football League*, 968 F.3d 1126, 1130 (9th Cir. 2020). The Court also draws all reasonable inferences from the facts alleged in favor of the Community. *Odom v. Microsoft Corp.*, 486 F.3d 541, 545 (9th Cir. 2007) (en banc).

To defeat a motion to dismiss, a complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The plausibility standard is met where the complaint "pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 679. Plausibility is not to be equated with probability but requires more than mere possibility. *Id.* (citing *Twombly*, 550 U.S. at 556).

The Court reviews de novo the district court's interpretation of the statute creating the Reserve. *Chehalis*, 96 F.3d at 340.

Finally, the Court reviews the district court's findings of historical fact for clear error. *United States v. Lummi Indian Tribe*, 841 F.2d 317, 319 (9th Cir. 1988).

B. Indian Canons of Construction.

Indian canons of construction "are rooted in the unique trust relationship between the United States and the Indians." *Oneida County v. Oneida Indian Nation*, 470 U.S. 226, 247 (1985). That trust relationship applies with full force to the Metlakatla Indian Community. *See, e.g.*, *Alaska Pac. Fisheries*, 5 Alaska at 492 (stating that the "sacred faith of the nation is pledged to these Indians," who were "invitees of the government").

As here, where a statute "touches on federal Indian law," an Indian canon of construction requires that the statute "'be construed liberally in favor of the Indians . . . .'" *Swinomish Indian Tribal Cmty. v. BNSF Ry. Co.*, 951 F.3d 1142, 1156 (9th Cir. 2020) (quoting *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766 (1985)). The statute creating the Reserve thus "must be liberally construed in favor of establishing Indian rights." *Chehalis*, 96 F.3d at 340.

When a reservation is established by statute, "the quality of the rights thereby secured to the occupants of the reservation depends upon the language or purpose of the congressional action." *Hynes v. Grimes Packing Co.,* 337 U.S. 86, 103 (1949). In evaluating those rights, the document creating the reservation

"must be interpreted as the Indians would have understood them . . . ." *Parravano*, 70 F.3d at 544.

In interpreting the statute creating the Reserve, the Supreme Court long ago recognized that Congress' purpose in doing so necessarily included the protection of appurtenant fishing rights. *Alaska Pacific Fisheries* acknowledged that the Community was a fishing people who "could not sustain themselves" without fishing rights. 248 U.S. at 89. The Supreme Court held that the "[t]he use of the adjacent fishing grounds was equally essential" to the purpose of the Annette Islands Reserve, a conclusion reached without mention of any limitation on the extent of the Indians' reserved fishing rights. *Id.* (upholding the narrow issue presented on appeal, which was the legality of the Community's 3,000-foot Exclusive Fishing Zone).

IX. ARGUMENT.

A. The Metlakatla Indian Community Stated a Claim for an Implied Off-Reservation Fishing Right.

The Metlakatla Indian Community stated a more than plausible claim under well-settled Indian law principles for an implied right to fish off-reservation. The district court thus erred in dismissing the Community's amended complaint for a purported failure to state a claim for relief under Rule 12(b)(6).

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1. Well-Settled Indian Law Principles, Including the Indian Canons of Construction, Provide the Legal Framework for this Court's Reversal of the District Court's Rule 12(b)(6) Dismissal.

The question at issue is whether the Metlakatla Indian Community plausibly alleged that Congress impliedly reserved for the Community an off-reservation right to fish in waters surrounding the Annette Islands Reserve, particularly in waters designated by the State as Districts 1 and 2. The answer to that question, which is yes, must be informed by Indian law principles arising from the trust relationship between the United States and the Community, including the Indian canons of construction that favor findings of Indian rights. The answer also must be informed by the Rule 12(b)(6) standard of review regarding the meaning of a "plausible" claim at the motion to dismiss stage.

This Court set forth the legal framework for evaluating a claim of implied off-reservation fishing rights in *Chehalis*, 96 F.3d at 342. There, the Court was tasked with assessing whether two Indian tribes – the Confederated Tribes of the Chehalis Indian Reservation and the Shoalwater Bay Tribe – possessed such implied fishing rights under the Executive Orders creating their reservations.[8]

[8] As described more fully in part IX.B of this brief, *Chehalis* ultimately upheld the district court's summary judgment decision that neither Tribe had implied fishing rights under the executive orders creating their reservations. 96 F.3d at 343. Unlike this case, the facts in *Chehalis* showed that the Tribes did not intend to leave their reservations for fishing purposes because they were being provided with

The Court first explained that the "specific purposes of executive-order reservations [like those created by statute] were often unarticulated." *Id.* (concluding that the district court had erred by finding that "off-reservation fishing rights must be expressly reserved"). Where the document creating a reservation says little or nothing about the purpose of a reservation's establishment, ascertaining such "purposes and the rights associated with them" requires a reviewing court to consider not only the documents creating such reservations but also "the circumstances surrounding their creation, and the history of the Indians for whom they were created," *id.* – essentially a totality of the circumstances inquiry. The inquiry is not blind to a Tribe's future needs. *Colville Confederated Tribes*, 647 F.2d at 47. Rather, it considers a Tribe's need to maintain itself both at the time its reservation was created and also moving forward "under changed circumstances." *Id.*

The legal framework described in *Chehalis* derives from that in *Colville Confederated Tribes*, another implied rights case, though one involving water rather than fish. *Chehalis*, 96 F.3d at 342 (citing *Colville Confederated Tribes* and stating with approval that the district court had "conducted the inquiry required" by

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farming lands. And again, the district court's decision was rendered on summary judgment, 96 F.3d at 337, not on a motion to dismiss.

that case). In *Colville Confederated Tribes*, the Court held that the Indian tribe at issue had implied reserved water rights in light of the government's understanding and intent that "the Indians [would] maintain their agrarian society." 647 F.2d at 47. The tribe's predecessors had been "'good farmers,'" *id.* at 44, and given that the tribe was expected to continue farming on its reservation in arid eastern Washington, water was impliedly "reserved when the Colville Reservation was created." *Id.* at 47. Indeed, the Court observed, "Congress intended to deal fairly with the Indians by reserving waters without which their lands would be useless." *Id.*

Colville Confederated Tribes' analysis of implied rights in turn relied on the so-called *Winters* doctrine. *See generally United States v. Winters,* 207 U.S. 564, 576 (1908). The Court summarized *Winters* as holding that "[w]here water is needed to accomplish" a purpose for which lands are "withdrawn from the public domain," as is the case when an Indian reservation is created, "a reservation of appurtenant water [to accomplish the purpose] is implied." *Colville Confederated Tribes*, 647 F.2d at 46. *See also id.* (citing *Arizona v. California*, 373 U.S. 546, 599 (1963), which found "an implied reservation . . . where water was 'essential to the life of the Indian people'"). The Court then turned to the "more difficult question" regarding the quantity of water reserved for the Tribe, where it set forth the framework now found in *Chehalis*, namely that to identify the purpose for

which a reservation was created, the reviewing court considers "the document and circumstances surrounding its creation, and the history of the Indians for whom it was created." *Id.* at 47 (stating also that the court considers the Indians' "need to maintain themselves under changed circumstances").

Winters, a seminal implied reserved rights case, holds that implied reserved rights flow from the purpose of a reservation. *Winters,* 207 U.S. at 576-78. In *Winters*, the Supreme Court determined that the government's purpose in creating the reservation at issue was to give the Gros Ventre and Assiniboine bands of Indians a permanent place to live, where they would give up their prior lives as hunter-gatherers and embrace agriculture. *Id*. at 576-77. Achieving that purpose would have been impossible on the arid plains of eastern Montana without water rights. *Id*. Thus, the government had impliedly reserved water rights for the Indians based on the purpose of their reservation, despite there being no reference to such rights in the written document creating the reservation. *Id.*

A district court in the Sixth Circuit applied *Winters* in the implied off-reservation fishing context and found that two treaty tribes, the Ottawa and Chippewa, had implied reserved rights to fish in Lake Michigan based on the circumstances surrounding the creation of their reservation. *United States v.*

Michigan, 471 F. Supp. 192, 257-58 (W.D. Mich. 1979).[9] The court, in a detailed merits decision, found that "the Indians were absolutely dependent upon fishing for subsistence and their livelihood," *id.* at 253, and that the United States intended for them to remain so. *Id.* at 234. Given those circumstances and the United States-Indian tribe trust relationship, the Indians had implied off-reservation fishing rights, *id.* at 258, in addition to their previously-acknowledged exclusive fishing rights in certain other areas. *Id.* at 234 (noting that the "willingness of the United States to give exclusive fishing rights" in certain areas did not undermine the existence of additional, implied fishing rights in other areas).[10]

The holdings in the foregoing cases are consistent with well-settled Indian canons of construction which, among other things, strongly favor finding Indian rights where the circumstances demonstrate the tribe's belief that they were provided. *See, e.g.*, *Parravano*, 70 F.3d at 544 (a document creating a reservation "must be interpreted as the Indians would have understood them," with the benefit of any doubt inuring to the Indians' favor). *See also id.* (noting that the Ninth

[9] The case, later consolidated with two other Indian fishing rights cases, was appealed to the Sixth Circuit but remanded after the federal government developed "comprehensive regulations governing Indian fishing in the Great Lakes." *U.S. v. State of Mich.*, 623 F.2d 448, 449 (6th Cir. 1980).

[10] Similarly, the Community's 3,000 foot Exclusive Fishing Zone in no way undermines its claim for implied, off-reservation fishing rights beyond the Zone.

Circuit has "long held that when it comes to protecting tribal rights against non-federal interests, it makes no difference whether those rights derive from treaty, statute or executive order"). There also is a strong presumption that Indians retained the rights they possessed prior to creation of their reservation. Congressional action does not destroy tribal property or sovereign rights unless Congress' intent to do so is clear and unambiguous. *See, e.g.*, *United States v. Santa Fe Pac. R.R. Co.*, 314 U.S. 339, 346 (1941).

The analyses in the implied rights cases discussed above rightly focused on reasonable inferences drawn from the circumstances surrounding the creation of the reservations and the histories of the Indian tribes for whom the reservations were created. In *Winters*, for example, the Supreme Court inferred that Congress intended to reserve the water rights necessary for the Indians to become farmers as Congress intended, which would have been impossible without access to water. 207 U.S. at 577. Similarly, in the context of the Community, the Supreme Court inferred that Congress intended to protect Community members' fishing rights based on the congressional purpose in creating the Annette Islands Reserve. *Alaska Pac. Fisheries*, 248 U.S. at 88-89. Like the water that was "'essential to the life of the Indian people'" in *Arizona v. California*, 373 U.S. at 599, so too here was access to fisheries essential to sustaining the Community of fishers.

Although the issue before the Supreme Court in *Alaska Pacific Fisheries* was the legality of the Community's 3,000 foot Exclusive Fishing Zone,[11] not implied fishing rights in what are now Districts 1 and 2, the Supreme Court recognized that Congress' intent in creating the Reserve "was to encourage, assist and protect the Indians in their effort to . . . become self-sustaining . . . ." *Id.* at 89. To accomplish that purpose, the "Indians could not sustain themselves from the use of the upland alone. The use of the adjacent fishing grounds was equally essential." *Id.* Not surprisingly, the "Indians naturally looked on the fishing grounds as part of the islands . . . ." *Id.*

The same reasoning applies with full force today to the Community's use of the fishing grounds in Districts 1 and 2, which the Community has always viewed as within its rights to access without undue interference from the State. Notably, this Court in *Colville Confederated Tribe*s cited the Supreme Court's *Alaska Pacific Fisheries* decision as an example of a court having recognized that Congress created implied reserved fishing rights for an Indian tribe. *Colville Confederated Tribes,* 647 F.2d at 47 n.10 (stating that *Alaska Pacific Fisheries* found implied fishing rights because such rights were "necessary" for the

[11] Unlike today, *see supr*a part VI.F, at the time of the Supreme Court's decision, the Exclusive Fishing Zone was frequented by an abundance of fish. *Alaska Pac. Fisheries*, 248 U.S. at 88.

Community to be "self-sustaining"). Like the water rights in *Winters,* achieving Congress' goal that the Community be self-sustaining would have been impossible without access to sufficient numbers of fish. As the Supreme Court said of its *Alaska Pacific Fisheries* decision three decades later, access to fisheries gave the Reserve value, and without the "'use of the adjacent fishing grounds,'" the Community "'could not prosper in that location.'" *Hynes*, 337 U.S. at 113.

Alaska Pacific Fisheries did not define the full scope of the Community's fishing rights given the discrete issue that was before the Court. This Court in fact recognized in the course of that litigation that the Community was not a party to the action, as a result of which Community members' "rights under the reservation are not involved in this controversy." *Alaska Pac. Fisheries*, 240 F. at 283. Here, in contrast, the Community *does* seek an opportunity to define the scope of its implied fishing rights, particularly in the waters now designated as Districts 1 and 2. *Compare* ER-47-49 (Compl., Ex. A) (depicting Districts 1 and 2 waters) *with* ER-53-55 (Compl., Ex. C) (depicting Metlakatlans' historical fishing locations, including in Districts 1 and 2). The district court denied the Community an opportunity to do so by dismissing the Community's well-pleaded claim pursuant to the State's Rule 12(b)(6) motion, which decision should be reversed.

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2. The Community Alleged Ample, Well-Pleaded Facts to State a Claim for an Implied Off-Reservation Fishing Right.

The Indian law principles guiding the analysis in this case arise from the trust relationship between the Community and the United States and show that Congress' creation of the Reserve encompassed those fishing rights needed for the Community to be self-sustaining on the Annette Islands. The Community's trust relationship with the United States is well-settled, and the creation of the Reserve must be viewed in that light. *See, e.g.*, *Annette Island Packing*, 289 F. at 674. When viewed in the proper trust relationship context, the Community's detailed complaint presents a more than plausible claim under the rules summarized in *Chehalis* for an implied off-reservation fishing right in waters now designated as Districts 1 and 2, where Metlakatlans fished both before and after Congress' creation of the Reserve. The district court thus erred by dismissing the Community's complaint despite the Community having met or exceeded the plausibility standard for defeating a Rule 12(b)(6) motion.

The well-pleaded factual allegations in the Community's complaint demonstrate at least the following: (1) off-reservation fishing is and always has been essential to the life of the dependent Indian Community on the Annette Islands Reserve; (2) before, during and after Congress' creation of the Reserve, Metlakatlans fished openly in waters far beyond the Annette Islands and the 3,000

foot Exclusive Fishing Zone affirmed by the Supreme Court in 1918, including in what are now Districts 1 and 2 waters; (3) Congress intended to create a permanent island homeland for this dependent Indian fishing people where the Indians would become a self-sufficient Community; (4) Community members' historical off-reservation fishing activities in waters now designated as Districts 1 and 2 were known to and acquiesced in by the Territorial, State and federal authorities; and (5) current Reserve fishery conditions do not meet the Community's needs and require that Community members be able to fish in Districts 1 and 2 waters. When the Court reviews the Community's allegations in the proper context and "draw[s] on its judicial experience and common sense," it should conclude that the Community's factual allegations "plausibly give rise to" a claim for relief. *Iqbal*, 556 U.S. at 679.

Consider, for example, the following well-pleaded allegations in the Community's complaint:

- Since time immemorial, the Metlakatlans' ancestors fished in the waters surrounding the Annette Islands, including in waters now designated by the State as Districts 1 and 2. ER-41 (Compl. ¶ 38);

- Congress created the Annette Islands Reserve in 1891 following public pleas that it do so to safeguard the Community's advancement, and it intended to create a permanent island homeland for the dependent Indian people where they would become a self-sufficient, thriving Community of Indians. ER-25-28, ER-33 (Compl. ¶¶ 1, 21);

- Congress was well-acquainted with the history of the Metlakatlans, 21 CONG. REC. 10,092 (1890) – it knew they were a fishing people, and that they intended and necessarily needed to continue their reliance on fishing to support themselves on an island homeland in Southeast Alaska, in order to fulfill Congress' intention that the Community succeed on its reservation. ER-25-28, ER-33 (Compl. ¶¶ 1, 22);

- In forming a trust relationship between the United States and the Metlakatlans, Congress reserved their access to fish in order to achieve its intended goal of creating a permanent home for the Community, which needed access to fish to survive. ER-33, ER-44 (Compl. ¶¶ 22-23, 51);

- From 1887 until the 1970s, the Metlakatlans continued to fish in the waters proximate to the Annette Islands and outside of the Reserve, including in Districts 1 and 2 waters, as they had always done. ER-31, ER-38-41 (Compl. ¶¶ 16, 35);

- The Territory, State and United States governments all were aware that Community members were continuing to fish outside of the Reserve and acknowledged Metlakatlans' right to do so from the time of the Reserve's creation in 1891 to the 1973 establishment of the State's limited entry program. ER-34-35, ER-39-40 (Compl. ¶¶ 25-28, 35(c)-(f)); and

- Current fishery conditions in the Reserve do not meet the Community's fishing needs due to both environmental and human factors, such that Community members need fishing access to waters in Districts 1 and 2. ER-41-42, ER-43, ER-44 (Compl. ¶¶ 39-43, 45, 50). *See also Alaska Pac. Fisheries*, 248 U.S. at 89 ("Congress intended to conform its action to [the Community's] "situation and needs.")

Taking such well-pleaded factual allegations and reasonable inferences therefrom as true, and also considering the allegations in the context of the purpose of the Act creating the Reserve, the circumstances surrounding the Reserve's

creation, and the history of the Indian fishers for whom it was created, *Chehalis*, 96 F.3d at 342, the Community's complaint establishes a more than plausible claim that Congress intended to reserve for the Community an off-reservation fishing right. ER-44-45 (Compl. ¶¶ 53-58) (claim for relief). Commonsense tells us that an Indian people of fishers, who had always fished in waters now designated by the State as Districts 1 and 2, would have believed their reservation afforded them the right to fish in those same locations, all of which are contiguous to the reservation. To the Indian in Southeast Alaska, particularly more than a century ago, there would be no invisible fence beyond which its reservation disallowed Community members to travel. *Compare* ER-47-49 (Compl., Ex. A) (depicting Districts 1 and 2 waters) *with* ER-53-55 (Compl., Ex. C) (depicting Metlakatlans' historical fishing locations, including those in Districts 1 and 2). Nor would Congress, being well-acquainted with the history of the Metlakatlans, who contemporaneously with the creation of the Reserve had built and begun operating a cannery, *see supra* part VI.D, have intended to limit the Community's access to the fish that were essential to sustaining the Community.

Like the tribes in *Colville* and *Winters* who needed water to survive as farmers on their reservations, the Community needed (and still needs) access to enough fish to survive and be self-sustaining on its Annette Islands Reserve. To

meet this need, Community members seek to exercise their reserved, non-exclusive right to fish outside the boundaries of their reservation.

3. The Community's Well-Pleaded Allegations Regarding Members' Open and Widespread Off-Reservation Fishing in the Waters at Issue Give Rise to Reasonable Inferences that Support Its Claim.

The complaint's allegations regarding the Community's history of fishing off-reservation provide additional contextual support for the Community's claim. *See, e.g.*, ER-31, ER-38-41 (Compl. ¶¶ 16, 35); *see also supra* part VI.D (providing a detailed factual overview of the Metlaktlans' widely known fishing practices both before and after Congress' 1891 creation of the Reserve). Those allegations and the reasonable inferences that flow from them demonstrate that the Community stated a more than plausible claim for relief. The district court's contrary conclusion is inconsistent with the evidence of Community members' historical fishing practices and the inferences that can be drawn therefrom, particularly when the evidence and inferences are assessed in the proper Indian law framework.

First, the Community's practice of fishing off-reservation before and after 1891 is the best evidence that the Community needed access to off-reservation fishing grounds to be self-sufficient on the Annette Islands, including by supplying its cannery with fish. Second, the Community's practice of fishing off-reservation,

including in waters now designated as Districts 1 and 2, demonstrates the Community's belief that it possessed the right to fish in those waters. *Parravano*, 70 F.3d at 544. Third, since "Congress intended to conform its action to [the Community's] situation and needs," Community members' fishing practices also serve as the best evidence of what rights Congress intended to reserve for the Community to encourage its success as a dependent Indian tribe. *Alaska Pac. Fisheries*, 248 U.S. at 89. Fourth, the fact that governmental authorities in Alaska were aware of, acquiesced in and even supported the Community's off-reservation fishing long after 1891 supports the reasonable inference that those governmental authorities shared the Indians' belief that Congress had reserved for the Community an off-reservation fishing right.

Regarding the fourth point, as discussed above in part VI.D., no governmental entity, including the Territory of Alaska or the State, disputed the Community's exercise of its right to fish in waters now designated as Districts 1 and 2 prior to the establishment of Alaska's limited entry program in 1973. ER-41 (Compl. ¶ 36). The Territory, in fact, admitted in litigation (in an answer filed in approximately 1921) that since the time of their arrival to the Annette Islands, Community members had fished outside of the Reserve pursuant to a fishing right acknowledged by the United States and at all times claimed by the Community. ER-35 (Compl. ¶ 26). *See generally Annette Island Packing*, 6 Alaska 585

(opinion in case where the Territory filed its answer to the federal government's complaint in intervention). Nor is there any question that the United States was fully aware of the Community's off-reservation fishing – the Community not only openly and extensively fished off-reservation, it also reported its fishing activities to the government. ER-40 (Compl. ¶ 35(j)).

The Community alleged in its complaint that the knowing acquiescence of the federal government, the Territory and the State in Community members' "practice of fishing outside of the Reserve from the 1890s through the mid-1970s" constituted evidence of the Community's implied right to fish off-reservation. ER-21 (Order at 18). *See also* ER-35 (Compl. 28). The district court disagreed in conclusory fashion, stating it instead agreed with the State "that the failure of the *federal government* to regulate or limit the Metlakatlans off-reservation fishing was due not to some recognized right granted to the Community in 1891, but rather due to the minimal regulation of the areas' fisheries in general." ER-21-22 (Order at 18-19) (emphasis added). The district court said nothing about the Territory and State's acquiescence in Community members' widely known off-reservation fishing practices, or the consequent inference that the Territory and State acknowledged Community members' right to fish off-reservation.

The district court's holding regarding the federal government's acceptance of the Community's off-reservation fishing practices ignored the reasonable

inference flowing from the facts alleged by the Community (i.e. that the federal government acknowledged Community members' right to fish off-reservation) and instead endorsed an alternate conclusion asserted by the State. But on a Rule 12(b)(6) motion, the Community was due the benefit of the doubt on reasonable inferences flowing from well-pleaded facts. *Microsoft Corp.*, 486 F.3d at 545. The district court's holding also ignored the equally or more likely inference that the asserted evidence demonstrated the Community's belief that the Act implied a right to fish in off-reservation waters, on which question the Community should have been afforded the benefit of the doubt. *Parravano*, 70 F.3d at 544 (a document creating a reservation "must be interpreted as the Indians would have understood them," with the benefit of any doubt given to the Indians). The asserted evidence further supports the Community's allegation that such off-reservation fishing was (and is) necessary to sustain the Community on the Reserve as Congress intended at the time it created the reservation. *See, e.g.*, ER-31, ER-33, ER-36 (Compl. ¶¶ 15, 22-23, 30). Again, the district court failed to give the Indians the benefit of the doubt when assessing the Community's evidence, which was legal error both under the standard of review for a Rule 12(b)(6) motion and under Indian law canons of construction. *Parravano*, 70 F.3d at 544.

In sum, this is not a case where a Rule 12(b)(6) dismissal was warranted. Nor was it a close call. The Metlakatla Indian Community's well-pleaded factual assertions in the complaint established a plausible (at minimum) claim for relief. The district court erred, and the Court should reverse.

B. The District Court Erred by Equating this Case with the Fact-Specific Merits Outcome in *Chehalis*.

The Community's well-documented record of off-reservation fishing and Congress' intent that Community members would continue to fish for their livelihoods after creation of the Reserve create a far stronger case for off-reservation fishing rights than the facts in *Chehalis*. The district court thus erred by relying on *Chehalis* to support its dismissal of this case. ER-19 (Order at 16).

First, unlike here, the facts in *Chehalis* indicated that members of the Confederated Tribes of the Chehalis Indian Reservation did not intend to leave their reservation for fishing purposes. Rather, the Indians intended to settle on the reservation and "'abandon their roving life'" to "'cultivate their lands.'" *Chehalis*, 96 F.3d at 343 (quoting record evidence that supported the district court's merits decision). *See also id.* (same for the proposition that the Indians "'seem desirous . . . of cultivating lands and raising stock'"). In contrast, the Community's factual allegations discussed above show it had no intention of becoming an agrarian Community or otherwise restricting members' activities to the reservation. A

Territory of Alaska court recognized as much in 1916. *Alaska Pac. Fisheries*, 5 Alaska at 486-87 (stating that Congress "must be held to have known that without the food yield of the sea these Indians could not survive, for the Annette Islands would not . . . afford a subsistence . . . there being little or no agricultural land on the islands, or for that matter in all Southeastern Alaska"). As for the Shoalwater Bay Tribe, *Chehalis* cited "'no evidence or indication that any Indians'" understood their reservation to encompass off-reservation rights. *Chehalis*, 96 F.3d at 343 (quoting the district court's merits decision, which was being reviewed under "the highly deferential clear error standard"). Those also are not our facts.

Second, also unlike *Chehalis*, the Community's allegations that its implied right to access fish off-reservation was essential to achieving Congress' purpose in creating the Reserve supports the inference that Congress intended to reserve such a fishing right for these Indians. In contrast, the evidence in *Chehalis* showed that the intent for one of the reservations "was to provide farmlands for the Indians," *id.*, whereas the other reservation was meant to provide the Indians with "'fishery and potatoe [sic] grounds.'"[12] *Id.* (quoting record evidence regarding the Shoalwater Bay Indians). *Id.* Whereas off-reservation fishing was not essential to

[12] The evidence regarding the lack of implied fishing rights for the Shoalwater Bay Tribe was less definitive, but under the highly deferential standard of review in that case, this Court did not disturb the district court's merits decision. *Chehalis*, 96 F.3d at 343.

sustaining the Indian tribes in *Chehalis* because their reservation lands supported agriculture, access to adequate fishing grounds, including off-reservation fisheries, was and remains essential to the Metlakatla Indian Community due to the lack of agricultural land on the Annette Islands. *Alaska Pac. Fisheries*, 5 Alaska at 487. Congress cannot have intended that this dependent Indian Community both support itself through commercial fishing and be confined to the Annette Islands Reserve – the two are incompatible. To conclude otherwise would unreasonably suggest Congress intended to deal unfairly with these Indians by not reserving the fishing rights they needed to prevent their reservation from being "useless." *Colville Confederated Tribes*, 647 F.2d at 47. Such a conclusion would be inconsistent with the Supreme Court's conclusion that the Reserve was created to safeguard and advance a dependent Indian Community. *Alaska Pac. Fisheries*, 248 U.S. at 88.

The Community's claim for an implied right under the *Chehalis* framework finds strong support in the Supreme Court's *Alaska Pacific Fisheries* decision, even though the Community was not a party to the case, and despite the Supreme Court having not construed the full scope of the Community's fishing rights as that question was not before it. There, the Supreme Court concluded that the purpose of the Indians in going to the Annette Islands "was to establish an Indian colony which would be self-sustaining," that the "Indians naturally looked on the fishing grounds as part of the islands and proceeded on that theory in soliciting the

reservation," and that Congress' purpose in "creating the reservation was to encourage, assist and protect the Indians in their effort to . . . become self-sustaining" on an island homeland where "the use of the adjacent fishing grounds was . . . essential" to the Indians' prosperity. 248 U.S. at 88-89. These findings fit squarely within the *Chehalis* framework and support the Community's claim for relief.

The district court observed that the Act is silent "with regard to fishing rights," ER-11 (Order at 8), which is true. But as the district court acknowledged, that is of no consequence. ER-14 (Order at 11). *Chehalis* made clear that writings creating reservations "often" did not articulate the purpose for which the reservations were established. 96 F.3d at 342.

Nor is it of consequence that some Indian treaties entered into at roughly contemporaneous times as the Act expressly granted off-reservation rights. ER-13-14 (Order at 10-11). This case instead asks whether a statute creating a reservation granted an Indian people implied rights essential to their existence. Nothing in the *Chehalis* framework suggests that the express invocation of "usual and accustomed grounds" language in some treaties creates an inference that the lack of such language in the Act wins the day for the State. To conclude otherwise would run afoul of *Chehalis*. 96 F.3d at 342.

To the extent the district court suggested the Act's legislative history in some way foreclosed the Community's claim for an implied right to fish off-reservation, ER-12 (Order at 9), that is not so. The Act's legislative history, though not abundant, shows that Congress in an expansive rather than limiting way intended to set the Reserve apart as a stable home for the Metlakatlans and to render the Indians "all the encouragement" possible. 21 CONG. REC. 10,092 (1890) (statement of Sen. Manderson). Congress sought to assure the Metlakatlans that the United States, as the Indians' benefactor, would protect their work and labor in their new homeland. *Id.* at 10,093 ("[I]t is one of those things that are due to the credit of this great nation that it should look after these Indians.") (statement of Sen. Blair). Viewing the legislative history in the context of the *Chehalis* framework, and keeping in mind that Congress was well-acquainted with the "history of the Metlakahtla Indians," *id.* at 10,092 (statement of Sen. Manderson), the legislative history supports the conclusion that Congress' passage of the Act was intended to protect the Community's progress to date and encourage the Community's continued progress towards self-sufficiency. The Community's historic use of fishing areas off-reservation before, during and after 1891, including to supply its cannery, demonstrates that achieving Congress' goal required protection of Metlakatlans' fishing practices and supports the Community's claim for relief.

C. The District Court Erred by Erroneously Characterizing the Purpose of the Act as a Grant of Land Rather than the Creation of an Indian Reservation.

The district court erroneously concluded, consistent with mistaken argument offered by the State, that the purpose of the statute creating the Annette Islands Reserve was "a land grant with a missionary-type purpose." ER-19 (Order at 16). *See also* ER-12 (Order at 9) (suggesting that Congress' purpose in creating the Reserve was simply to "aid Father Duncan in his efforts at forming a self-sufficient settlement in the United States for his community of 'christian Indians'"). In reaching that erroneous determination, the district court wrongly concluded that contract principles rather than the unique trust relationship between Indians and the federal government should inform the circumstances surrounding creation of the Reserve and hence Congress' purpose in establishing the reservation. *See, e.g.*, ER-17 (Order at 14) (approvingly quoting the State's assertion that the Community's claim "'caves and crumbles'" due to the Community having "'provided no consideration for the Annette Island Reserve'"); ER-21 (Order at 18) (stating that the Community "did not engage in negotiations" over the Annette Islands).

The premise that contract principles guide judicial review in this case is incorrect. Far from a transactional analysis under contract law, determining whether the document creating a reservation (here, the Act) includes implied rights

requires the reviewing court to look beyond the document itself to the "circumstances surrounding [its] creation, and the history of the Indians for whom [it was] created." *Chehalis*, 96 F.3d at 342. And because doing so implicates a touchstone of federal Indian law – the trust relationship between the United States and a dependent Indian tribe – the inquiry requires the Court to liberally construe the Act creating the Reserve "in favor of establishing Indian rights." *Id.* at 340.

By myopically characterizing the Act's purpose as a land grant rather than the creation of an Indian reservation with the United States' attendant trust obligation to the Community, the district court unduly minimized the importance of Congress' goal of encouraging a self-sufficient settlement for an Indian fishing people occupying islands in Southeast Alaska where there was "little or no agricultural land . . . ." *Alaska Pac. Fisheries*, 5 Alaska at 487. *See* ER-20 (Order at 17) (statement of the district court that it "disagrees that Congress' goal of encouraging a self-sufficient settlement means that Congress intended to grant the community extended fishing rights in the area or otherwise understood that such rights necessarily would be appurtenant to the reservation itself"). The falsity of the district court's analytical approach was recognized long ago in the *Alaska Pacific Fisheries* litigation. There, the Alaska district court rejected the argument that the creation of the Annette Islands Reserve conferred on the Indians a mere

"privilege" akin to a "grant of land." *Alaska Pac. Fisheries*, 5 Alaska at 488. To so hold, the court explained, would mean that

> Congress is engaged in the business of luring the unsuspecting, of cheating and deceiving them. The language is not to be construed in the strict, narrow, legal sense which obtains between equals dealing at arm's length, but in a broad and generous sense, in which words are to be taken when one of superior power, knowledge, and intelligence deals with an inferior. . . .
>
> To construe the invitation extended by the act with all the strictness of a legal conveyance of real estate would defeat the very object contemplated by the act.

Id.

On review, the Supreme Court agreed. The Annette Islands Reserve was "not in the nature of a private grant, but simply a setting apart . . . of designated public property for a recognized public purpose-that of safeguarding and advancing a dependent Indian people dwelling within the United States." *Alaska Pac. Fisheries*, 248 U.S. at 88. Rather than Congress merely gifting the Community with a grant of land to provide it with "a secure place to live and to encourage the establishment of a self-sufficient, Christian community that other Alaska natives would emulate," ER-19 (Order at 16), Congress through the Act welcomed the Community into a trust relationship with the United States by pledging "the sacred faith of the nation . . . to these Indians," who were "invitees of the government." *Alaska Pac. Fisheries*, 5 Alaska at 492.

The proper approach to analyzing the Community's claim for recognition of implied, off-reservation, non-exclusive fishing rights thus is not a transactional one grounded in principles of contract law. The analysis rather is governed by the trust relationship between Indians and the United States, keeping in mind the Indian canon of construction that Indian rights should be found when the circumstances demonstrate the Tribe's belief they were provided. *Chehalis*, 96 F.3d at 340 ("Courts have uniformly held that . . . statutes . . . must be liberally construed in favor of establishing Indian rights [a rule of construction] 'rooted in the unique trust relationship between the United States and the Indians.'") (quoting *Oneida County*, 470 U.S. at 247). On the facts of this case, the consistent conduct of Community members – a people rooted in a fishing culture – demonstrates the Indians' belief that they enjoy the right to fish in waters now designated by the State as Districts 1 and 2, just as they had done before the Reserve's creation, and for decades hence with the knowledge of, and without complaint from, governmental authorities. *See supra* part VI.D. Viewed through that proper lens, the Community stated a claim for an implied off-reservation fishing right that was more than plausible on its face. The district court thus erred by dismissing the Community's claim under Rule 12(b)(6).

///

D. The District Court Erred by Implying the Community's History Disqualifies It From Having an Implied Right to Fish Off-Reservation.

Finally, a misguided theme running throughout and undermining the district court's decision is the idea that the Community's history, which is unique in some respects though not others, somehow disqualifies the Community from having implied off-reservation fishing rights. This is incorrect.

To illustrate, consider the district court's reasoning in support of its conclusion that Congress neither intended to grant off-reservation fishing rights nor understood that such rights would be implied through creation of the Reserve. ER-20 (Order at 17) (stating its conclusion in terms of *disagreement* with the underlying concept rather than in terms of whether the Community had stated a claim *plausible* on its face). According to the district court, the Community is unlike all other Indian tribes because

> the Metlakatlans voluntarily emigrated to the United States a few short years before the creation of the reservation; they were not forcefully relocated and had no land claim to settle with the United States. They did not engage in negotiations from which some additional or implied intent could be inferred or understood.

ER-21 (Order at 18). The court similarly described the Community's history of being immigrants in the Order, ER-16-17, before quoting with approval the State's misguided contract law assertion that "'the fact that Metlakatlans provided no

consideration for the Annette Islands Reserve . . . serves as the initial fissure from which" the Community's claim "'caves and crumbles.'" ER-17 (Order at 14).

The Community's immigrant story does not strip it of all rights due a dependent Indian nation under the United States' trust relationship with Indian tribes. The trust relationship between the United States and Indian tribes is "one of the cornerstones of Indian law." COHEN'S HANDBOOK OF FEDERAL INDIAN LAW 412 (Nell Jessup Newton ed., LexisNexis 2012). That the Community enjoys a trust relationship with the United States is well-settled. The creation of the Annette Islands Reserve thus must be viewed in that light, though the district court did not do so.

This Court almost 100 years ago rejected the unwarranted notion "that the Indians on Annette Island" were "not and never have been" real Indians. *Annette Island Packing*, 289 F. at 674 (concluding that Community members, "being Indians, stand in the same relation to the United States as do Indians on other reservations. Nor is it material that the Metlakahtla Indians were British subjects before their immigration to the United States. Congress has made that fact immaterial here"). In addition to this Court concluding decisively that "the Metlakahtla Indians are wards of the government," *id.*, the Supreme Court likewise concluded (more than 100 years ago) that Congress created the Reserve for the purpose "of safeguarding and advancing a dependent Indian people dwelling

within the United States." *Alaska Pac. Fisheries*, 249 U.S. at 88. *See also Atkinson v. Haldane*, 569 P.2d 151, 156 (Alaska 1977) ("The Supreme Court thus held that the fact that the Metlakatlans were not native to the United States did not change their essential reservation status when Congress had exercised its authority to establish that reservation.").

Nor is the Community disqualified from having implied off-reservation fishing rights because it was "not forcefully relocated and had no land claim to settle with the United States." ER-21 (Order at 18). The Community actually is not unique in this regard. The Supreme Court has explained that Indians in Southeast Alaska "were never in the hostile and isolated position of many tribes in other States." *Metlakatla Indian Cmty., Annette Islands Reserve v. Egan*, 369 U.S. 45, 50-51 (1962). *See also id.* at 51 (observing that there were "no Indian wars in Alaska"). But the fact that there were no forced relocations in Alaska is irrelevant to the question of the Metlakatla Indian Community's implied right to fish off-reservation in common with others – the *Chehalis* framework for implied Indian rights does not start with the prerequisite that an Indian tribe was forcibly relocated. And in any event, the Alaska Supreme Court rightly concluded that the Community's trust relationship with the United States "sets them apart from other Alaska Natives" such that the "Community has always more closely resembled the status of the tribes" in the lower forty-eight states. *Atkinson*, 569 P.2d at 156.

The district court's reluctance to determine whether the Community stated a plausible claim for implied off-reservation fishing rights, and its express disagreement with the very idea of implied fishing rights for these Indians, was colored by acceptance of the State's erroneous premise that the Community's history disqualifies it from having such rights. In other words, like the argument rejected by this Court in 1923, the district court's decision rests on the foundation that these Indians are "not and never have been" real Indians because of their history. *Annette Island Packing*, 289 F. at 674. But that is a decided question, not one to be revisited in 2021. The district court thus erred by allowing the State's repackaging of a settled and distasteful argument to gain traction and, ultimately, unduly color the court's analysis.

X. CONCLUSION.

The Court should reverse the district court. Contrary to the district court's conclusion, when this Court takes all well-pleaded allegations of material fact in the Metlakatla Indian Community's operative complaint as true and construes those allegations, along with all reasonable inferences therefrom, in the Community's favor, the Community has alleged a claim for relief that is more than plausible on its face. This is particularly true where, as here, Indian canons of construction apply to the Community's claim for relief and require that the Act

creating the Reserve be liberally construed in favor of establishing the Community's right to an off-reservation, non-exclusive reserved fishing right.

This appeal is of great import to the Community. As it was in the beginning, and is ever more so under current circumstances, the Community's use of contiguous fishing grounds now designated by the State as Districts 1 and 2 is "essential." *Alaska Pac. Fisheries*, 248 U.S. at 89. Because the Community met its burden to defeat the State's Rule 12(b)(6) motion, the district court erred in dismissing the Community's complaint for a purported failure to state a claim and should be reversed.

DATED this 9th day of June, 2021.

/s/Julie A. Weis
Julie A. Weis
Christopher G. Lundberg
Christopher T. Griffith
HAGLUND KELLEY LLP

Attorneys for Plaintiff-Appellant Metlakatla Indian Community

STATEMENT OF RELATED CASES

Plaintiff-appellant is not aware of any related cases as defined in Ninth Circuit Rule 28-2.6.

DATED this 9th day of June, 2021.

/s/Julie A. Weis
Julie A. Weis
Christopher G. Lundberg
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Attorneys for Plaintiff-Appellant Metlakatla Indian Community

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because the brief contains 13,825 words, excluding the parts of the brief exempted by Fed R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word Version 1808, font size 14 and Times New Roman type style.

DATED this 9th day of June, 2021.

/s/Julie A. Weis
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Christopher G. Lundberg
Christopher T. Griffith
HAGLUND KELLEY LLP

Attorneys for Plaintiff-Appellant Metlakatla Indian Community

ADDENDUM

TABLE OF CONTENTS
[ADDENDUM]

United States Code Annotated
Title 25. Indians (Refs & Annos)
Chapter 14. Miscellaneous [Repealed, Transferred, and Omitted]
Subchapter VI. Indians of Alaska [Repealed and Omitted]

This section has been updated. Click here for the updated version.

25 U.S.C.A. § 495

§ 495. Annette Islands reserved for Metlakahtla Indians

Until otherwise provided by law the body of lands known as Annette Islands, situated in Alexander Archipelago in southeastern Alaska on the north side of Dixon's entrance, is set apart as a reservation for the use of the Metlakahtla Indians, and those people known as Metlakahtlans who, on March 3, 1891, had recently emigrated from British Columbia to Alaska, and such other Alaskan natives as may join them, to be held and used by them in common, under such rules and regulations, and subject to such restrictions, as may be prescribed from time to time by the Secretary of the Interior.

CREDIT(S)

(Mar. 3, 1891, c. 561, § 15, 26 Stat. 1101.)

25 U.S.C.A. § 495, 25 USCA § 495
Current through PL 117-15 with the exception of PL 116-283. Incorporation of changes from PL 116-283 are in progress. See credits for details.

End of Document

ADD 1

selling advantageously, and all persons so offending will be prosecuted criminally under Section 2373 of the Revised Statutes of the United States, which reads as follows:

"Every person who, before or at the time of the public sale of any of the lands of the United States, bargains, contracts, or agrees, or attempts to bargain, contract, or agree with any other person, that the last-named person shall not bid upon or purchase the land so offered for sale, or any parcel thereof, or who by intimidation, combination, or unfair management, hinders, or prevents, or attempts to hinder or prevent, any person from bidding upon or purchasing any tract of land so offered for sale, shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both."

Punishment for hindering, etc., sales. R. S., sec. 2373, p. 434. Vol. 35, p. 1099.

IN WITNESS WHEREOF I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this twenty-sixth day of April, in the year of our Lord nineteen hundred and sixteen and [SEAL.] of the independence of the United States the one hundred and fortieth

WOODROW WILSON

By the President:
ROBERT LANSING
Secretary of State.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

April 28, 1916.

A PROCLAMATION.

WHEREAS it is provided by section fifteen, of the act of Congress, approved March third, eighteen hundred and ninety-one, entitled "An Act To repeal timber-culture laws, and for other purposes," that "Until otherwise provided by law, the body of lands known as Annette Islands, situated in the Alexander Archipelago in southeastern Alaska, on the north side of Dixon's entrance, be, and the same is hereby, set apart as a reservation for the use of the Metlakahtla Indians, and those people known as Metlakahtlans, who have recently emigrated from British Columbia to Alaska, and such other Alaskan natives as may join them, to be held and used by them in common, under such rules and regulations, and subject to such restrictions, as may be prescribed from time to time by the Secretary of the Interior," and

Annette Island Fishery Reserve, Alaska. Preamble. Vol. 26, p. 1101.

WHEREAS the Secretary of the Interior, with a view to assisting the Metlakahtlans to self-support, has decided to place in operation a cannery on Annette Island; and

WHEREAS it is therefore necessary that the fishery in the waters contiguous to the hereinafter described group comprising the Annette Islands be reserved for the purpose of supplying fish and other aquatic products for said cannery;

Now, therefore, I, Woodrow Wilson, President of the United States of America, by virtue of the power in me vested by the laws of the United States, do hereby make known and proclaim that the waters within three thousand feet from the shore lines at mean low tide of Annette Island, Ham Island, Walker Island, Lewis Island, Spire Island, Hemlock Island, and adjacent rocks and islets, located within the area segregated by the broken line upon the diagram hereto attached and made a part of this proclamation; also the bays of said islands, rocks, and islets, are hereby reserved for the benefit

Waters surrounding islands reserved for Metlakahtlans and other Alaskan natives.

of the Metlakahtlans and such other Alaskan natives as have joined them or may join them in residence on these islands, to be used by them under the general fisheries laws and regulations of the United States as administered by the Secretary of Commerce.

Unauthorized fishing prohibited.

Warning is hereby expressly given to all unauthorized persons not to fish in or use any of the waters herein described or mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 28th day of April, in the year of our Lord one thousand nine hundred and sixteen, [SEAL.] and of the Independence of the United States the one hundred and fortieth.

WOODROW WILSON

By the President:
ROBERT LANSING
Secretary of State.

May 3, 1916.

BY THE PRESIDENT OF THE UNITED STATES

A PROCLAMATION.

Colville Indian Reservation, Wash.
Unallotted irrigable, etc., lands in, opened to homestead entry.
Vol. 34, p. 80.

I, Woodrow Wilson, President of the United States of America, by virtue of the power and authority vested in me by the Act of Congress approved March 22, 1906 (34 Stat. L., 80) do hereby prescribe, proclaim, and make known, that all the non-mineral, unallotted and unreserved lands within the diminished Colville Indian Reservation, in the State of Washington, classified as irrigable lands, grazing lands, or arid lands, shall be disposed of under the general provisions of the homestead laws of the United States and of the said Act of Congress, and shall be opened to settlement and entry and settled upon, occupied, and entered only in the manner herein prescribed: *Provided*, That all lands classified as timber or mineral, all lands designated for irrigation by the Government, and all lands within the following townships and parts of townships shall not be disposed of under this proclamation:

Lands excepted.

Townships 31, 32, 33, and 34 north, range 35 east; township 30 north, range 31 east; township 31 north, range 30 east; north half of township 31 north, range 28 east; townships 32, 33, and 34 north, range 28 east; south half and south half of north half of township 33 north, range 27 east; and fractional part north and east of Lake Omache of township 32 north, range 27 east.

Time and places for registration.

1. A registration for the lands will be conducted at the cities of Spokane, Wenatchee, Colville, Wilbur, Republic and Omak, Washington, beginning July 5, and ending July 22, 1916, Sunday excepted, under the supervision of John McPhaul, Superintendent of the opening. Any person qualified to make entry under the general provisions of the homestead law may register.

Applications from soldiers and sailors.

2. Any person who was honorably discharged after at least ninety days' service in the United States Army, Navy or Marine Corps, during the Civil War, the Spanish-American War or the Philippine Insurrection (or the widow or minor orphan children of such person) may register either in person or by agent. Other persons will not be permitted to register by agent. No person shall present more than one application in his own behalf and one as agent.

Others.

Requirements.

Each application for registration must show the applicant's name, postoffice address, age, height and weight, and must be inclosed in an envelope bearing no distinctive marks or any paper other than the application. No envelope shall contain more than one application.

Code of Federal Regulations
Title 25. Indians
Chapter I. Bureau of Indian Affairs, Department of the Interior
Subchapter J. Fish and Wildlife
Part 241. Indian Fishing in Alaska (Refs & Annos)

25 C.F.R. § 241.2

§ 241.2 Annette Islands Reserve; definition; exclusive fishery; licenses.

Currentness

(a) Definition. The Annette Islands Reserve is defined as the Annette Islands in Alaska, as set apart as a reservation by section 15 of the Act of March 3, 1891 (26 Stat. 1101, 48 U.S.C. sec. 358), and including the area identified in the Presidential Proclamation of April 28, 1916 (39 Stat. 1777), as the waters within three thousand feet from the shore lines at mean low tide of Annette Island, Ham Island, Walker Island, Lewis Island, Spire Island, Hemlock Island, and adjacent rocks and islets, located within the broken line upon the diagram attached to and made a part of said Proclamation; and also the bays of said islands, rocks, and islets.

(b) Exclusive fishery. The Annette Islands Reserve is declared to be exclusively reserved for fishing by the members of the Metlakatla Indian Community and such other Alaskan Natives as have joined or may join them in residence on the aforementioned islands, and any other person fishing therein without authority or permission of the Metlakatla Indian Community shall be subject to prosecution under the provisions of section 2 of the Act of July 2, 1960 (74 Stat. 469, 18 U.S.C. sec. 1165).

(c) Licenses. Members of the Metlakatla Indian Community, and such other Alaskan Natives as have joined them or may join them in residence on the aforementioned islands, shall not be required to obtain a license or permit from the State of Alaska to engage in fishing in the waters of the Annette Islands Reserve.

SOURCE: 28 FR 7183, July 12, 1963, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982., unless otherwise noted.

ADD 4

AUTHORITY: 25 U.S.C. 2, 9; 43 U.S.C. 1457; sec. 15, 26 Stat. 1101, 48 U.S.C. 358; Presidential Proclamation, Apr. 28, 1916, 39 Stat. 1777; sec. 2, 49 Stat. 1250, 48 U.S.C. 358a; sec. 4, 72 Stat. 339, as amended 73 Stat. 141.

Current through June 4, 2021; 86 FR 30130.

End of Document

ADD 5

legal representatives of Sterling Boyce, deceased—to the Committee on War Claims.

Also, a bill (H. R. 12051) for the relief of Margaret Hitt, of Lincoln County, Missouri—to the Committee on Pensions.

Also, a bill (H. R. 12052) for the relief of August Kuhne, of the city of Troy, Lincoln County, Missouri—to the Committee on Claims.

By Mr. NUTE: A bill (H. R. 12053) granting a pension to Annie M. Kimball, widow of Alvah M. Kimball, Company H, Sixth New Hampshire Regiment of Volunteers—to the Committee on Invalid Pensions.

By Mr. PAYNTER: A bill (H. R. 12054) to amend the military record of George W. Darby—to the Committee on Military Affairs.

By Mr. STONE, of Kentucky: A bill (H. R. 12055) to remove the charge of desertion from the record of Thomas C. Dyson—to the Committee on Military Affairs.

By Mr. WHEELER, of Alabama: A bill (H. R. 12056) for the relief of Frederic Calboune—to the Committee on War Claims.

Also, a bill (H. R. 12057) for the relief of John Jones—to the Committee on War Claims.

Also, a bill (H. R. 12058) for the relief of Thomas Jones—to the Committee on War Claims.

Also, a bill (H. R. 12059) for the relief of J. A. Letsinger—to the Committee on War Claims.

Also, a bill (H. R. 12060) for the relief of E. R. Matthews—to the Committee on War Claims.

PETITIONS, ETC.

Under clause 1 of Rule XXII, the following petitions and papers were laid on the Clerk's desk and referred as follows:

By Mr. BAYNE: Resolutions of the Chamber of Commerce of Pittsburgh, Pa., in favor of ample light service on the Ohio and Mississippi Rivers—to the Committee on Commerce.

By Mr. BOWDEN: Petition of trustees of First Baptist Church of Suffolk, Va., for reimbursement for use and occupancy of church property—to the Committee on War Claims.

By Mr. CARUTH: Eight petitions of various boards of trade, traveling men's associations, and merchants, praying for the passage of House bill 11744, regarding mailing-boxes at railroad stations—to the Committee on the Post-Office and Post-Roads.

By Mr. ENLOE: Petition of William Johnson, administrator of Thomas I. Johnson, of Fayette County, Tennessee, for reference of claim to the Court of Claims under the provisions of the Bowman act—to the Committee on War Claims.

By Mr. HERMANN: Petition, with affidavits, of Edward B. Myer, administrator of the estate of John Fortune, of Douglas County, Oregon, praying for pay for Indian depredations in Douglas County, Oregon—to the Select Committee on Indian Depredation Claims.

Also, petition, with affidavits, of Susan H. Wallace, praying for pay for stealing of cattle in Douglas County, Oregon, by the Rogue River, Grave Creek, and Cow Creek Indians, in October, 1855—to the Select Committee on Indian Depredation Claims.

By Mr. McRAE (by request): Petition for the passage of House bill 8526—to the Committee on Ways and Means.

By Mr. MOREY: Petition of Isaac Holdbrook, late of Company G, One hundred and twenty-first Regiment Ohio Volunteers, for muster—to the Committee on Military Affairs.

By Mr. NORTON: Petition of William R. Boyce, praying that his claim for property taken by the Army during the late war be referred to the Court of Claims—to the Committee on War Claims.

By Mr. PERKINS: Petition of the Woman's Christian Temperance Union of New Mexico, asking for the passage of the Perkins bill, providing for a common-school system in New Mexico—to the Committee on the Territories.

Also, resolution of the San Juan County Alliance of Aztec, N. Mex., asking for the passage of the Perkins bill, providing the same relief—to the Committee on the Territories.

Also, petition of Charles Wright and 26 others, of Las Vegas, N. Mex., asking for the passage of the Perkins bill, providing for a common-school system in New Mexico—to the Committee on the Territories.

Also, resolution of the New York Yearly Meeting of the Society of Friends, asking for employment by the Government of matrons among Indian women—to the Committee on Indian Affairs.

By Mr. RUSSELL: Petition favoring a pension to Antoinette Walker—to the Committee on Invalid Pensions.

By Mr. STIVERS: Petition of Mrs. Frank E. Burr, secretary of the Woman's Christian Temperance Union of Middletown, N. Y., and 76 others of that city, in favor of the bill prohibiting the transportation of intoxicating liquors from any State or Territory in the United States or District of Columbia into any other State or Territory contrary to and in violation of the laws thereof—to the Committee on Commerce.

Also, petition of 131 persons of the Second Congressional district of Louisiana and elsewhere, collected by the National Woman's Christian Temperance Union, asking for a national Sunday-rest law, against needless Sunday work in the Government mail and military service and interstate commerce—to the Committee on Labor.

SENATE.

TUESDAY, *September* 16, 1890.

The Senate met at 11 o'clock a. m.

Prayer by the Chaplain, Rev. J. G. BUTLER, D. D.

The Journal of yesterday's proceedings was read and approved.

PETITIONS AND MEMORIALS.

Mr. FAULKNER presented a petition of Suballiance No. 3, of the National Farmers' Alliance, of Wood County, West Virginia, praying for the passage of the Conger lard bill; which was referred to the Committee on Agriculture and Forestry.

Mr. QUAY presented a resolution adopted by Clover Township Alliance, No. 45, of Baxter, Pa.; a resolution adopted by the Salem (Pa.) Farmers' Alliance, No. 29, and a resolution adopted by the Tuttle Hill Farmers' Alliance, No. 14, of Wesleyville, Pa., favoring the passage of what is known as the Conger lard bill; which were referred to the Committee on Agriculture and Forestry.

Mr. PADDOCK presented the telegraphic petition of W. H. Kelsey, secretary of the State Farmers' Alliance of Indiana, praying for the passage of the Conger lard bill; which was referred to the Committee on Agriculture and Forestry.

He also presented a petition of 54 citizens of Nebraska; a petition of 89 residents of Nebraska and Kansas; a petition of 87 citizens of Nebraska; a petition of 45 citizens of Iowa and Nebraska; a petition of 54 citizens of Nebraska; a petition of 41 residents of Nebraska; a petition of 49 citizens of Nebraska; a petition of 88 citizens of Nebraska; a petition of 90 residents of Nebraska; a petition of 68 residents of Nebraska; a petition of 91 residents of Omaha, Nebr.; a petition of 91 residents of Omaha, Nebr.; a petition of 20 residents of Omaha, Nebr.; a petition of 88 citizens of Nebraska; a petition of 87 citizens of Nebraska; a petition of 68 citizens of Nebraska; a petition of 51 citizens of the State of Nebraska, and other States; a petition of 87 citizens of the States of Nebraska and Iowa; a petition of 90 citizens of the State of Nebraska; a petition of 91 citizens of Lincoln, Nebr.; a petition of 38 citizens of the State of Nebraska; a petition of 91 citizens of the State of Nebraska; a petition of 47 citizens of the State of Nebraska; a petition of 54 citizens of the State of Nebraska; a petition of 91 citizens of Council Bluffs, Iowa, and a petition of 35 citizens of the State of Nebraska, praying for the passage of Senate bill 3991, to prevent the adulteration of food products, etc.; which were referred to the Committee on Agriculture and Forestry.

Mr. INGALLS presented a petition of citizens of Oklahoma Territory, praying for the passage of House bill 3839, for the protection of those engaged in mining; which was referred to the Committee on Mines and Mining.

Mr. STOCKBRIDGE presented a petition of sundry citizens of the Third Congressional district of Michigan, praying for the enactment of laws to prevent the use of the United States mails for immoral purposes; which was referred to the Committee on Post-Offices and Post-Roads.

He also presented a petition of the Ottawa Farmers' Alliance, No. 39, of Michigan, praying for the passage of what is known as the Conger lard bill; which was referred to the Committee on Agriculture and Forestry.

He also presented the petition of A. White and 26 other citizens of Tremont, Mich.; the petition of W. Wooley and 28 other citizens of Bannister, Mich.; the petition of Henry Anders and 14 other citizens of Barry, Mich.; the petition of A. D. Hoffman and 80 other citizens of North Star, Mich.; a petition of the Heller Grange, No. 159, Patrons of Husbandry, of Van Buren County, Michigan; the petition of D. E. Chestnut and 15 other citizens of Cambria, Mich.; the petition of C. H. Boughton and 35 other citizens of Brian, Mich.; the petition of H. M. Ward and 46 other citizens of Hillsdale County, Michigan; the petition of William Barry and 45 other citizens of Ocean County, Michigan; the petition of H. D. McCabe and 25 other citizens of Clinton County, Michigan; the petition of George S. Crane and 29 other citizens of Hillsdale County, Michigan; the petition of W. H. Olmstead and members of Gilead Grange, No. 400, Patrons of Husbandry, of Gilead, Mich., and the petition of J. V. Oster and 7 other citizens of Allegan County, Michigan, praying for the passage of what is known as the pure-lard bill; which were referred to the Committee on Agriculture and Forestry.

He also presented the petition of D. E. Chestnut and 17 other citizens of Hillsdale County, Michigan; a petition of the Heller Grange, No. 159, Patrons of Husbandry, of Van Buren County, Michigan; the petition of S. A. Nichols and 48 other citizens of Cass County, Michigan; the petition of A. White and 26 other citizens of Tremont, Michigan; the petition of A. J. Crosby, jr., and 15 other citizens of Novi post-office, Mich.; the petition of S. R. Post and 12 other citizens of Alma County, Michigan; the petition of J. Muslin and 21 other citizens of Shiawassee County, Michigan, and the petition of Freeman Fuller and 74 other citizens of Hillsdale County, Michigan, praying for the passage of what is known as the pure-food bill; which were referred to the Committee on Agriculture and Forestry.

Mr. BLAIR. I have received quite a number of telegrams from Jackson, Grenada, Greenville, Macon, Clarksdale, in the State of Mis-

it may be taken *ad libitum;* that a man who has plenty of timber land may go on the public land and take as much as he pleases.

Now, if the Senator thinks that is wise, of course I have no objection; he can take his chances with the amendment; but I suggested what I think is a perfectly fair proposition to him, and that is that it should apply to those States in which the precious metals are mined. If he does not feel like accepting that modification, of course I shall oppose his amendment, because it is altogether too broad. I think he will realize when he comes to look it over that in the effort to save something for his people he has saved a great deal more for other people than they really need or desire.

Mr. SANDERS. I desire to conform to the reasonable desires of Senators, and if I may be permitted to amend the amendment I will do so.

Mr. MANDERSON. While the Senator from Montana is modifying his proposed amendment I ask unanimous consent to offer an amendment that may be considered pending. It will take some little time, I suppose, to get the Senator's amendment in proper shape, and I propose a new section, to come in after section 12, on page 14 of the bill.

The VICE-PRESIDENT. The amendment moved by the Senator from Nebraska will be read.

The SECRETARY. It is proposed to add after section 12:

SEC. 13. That until otherwise provided by law the body of land known as Annette Islands, situated in Alexander Archipelago, in Southeastern Alaska, on the north side of Dixon's entrance, be, and the same is hereby, set apart as a reservation for the use of the Metlakahtla Indians, and those people known as Metlakahtlans who have recently emigrated from British Columbia to Alaska, and such other Alaskan natives as may join them, to be held and used by them in common, under such rules and regulations and subject to such restrictions as may be prescribed from time to time by the Secretary of the Interior.

The VICE-PRESIDENT. If there be no objection, the question is on agreeing to the amendment proposed by the Senator from Nebraska.

Mr. MANDERSON. Mr. President, the history of the Metlakahtla Indians is probably well known to most members of the Senate, and it is a history that is of very great interest. About thirty years ago a man named Duncan, of the city of London, went into British Columbia, and he has devoted the last thirty years of his life to the reclaiming of certain Indians, who when he went among them were cannibals and men of the worst description. After many years of labor he succeeded in forming the settlement known as Metlakahtlan, in British Columbia. In some difficulty that ensued between himself and the Bishop of British Columbia he deemed it well in the interest of this tribe, amounting to about one thousand at that time, to go to Alaska and come under the protecting influence of the United States Government.

Mr. EDMUNDS. What year was that?

Mr. MANDERSON. I think the change was made in 1886 or 1887. Before doing so Duncan came to the city of Washington and laid the matter and the condition of these Indians before several, I think, of the committees of Congress and before the Executive, President Cleveland then being in the Presidential chair. The matter was of such a character and the effort of this man was so commendable that he received all the encouragement that could be given for the removal of these Indians; and about three years ago he moved eight or nine hundred of them to Annette Island, a mountainous island, not of very large extent as things go in Alaska, for that is a country of very great distances on a great area.

Mr. EDMUNDS. How many square miles does the island contain?

Mr. MANDERSON. I should have to guess at that; but I should say that the island certainly could not contain over 50 or 60 square miles. It is 13 miles long and 14 miles wide at the widest.

Mr. EDMUNDS. How far is it from the mainland?

Mr. MANDERSON. Annette is in that group of islands that run along the southeastern Alaskan coast; I should say, perhaps, from the mainland out, 30 or 40 miles, there being many sea channels between Annette Island and the main shore of Alaska.

When the Committee on Indian Affairs were in Alaska, under the order of the Senate, a year ago we found this body of Indians settled in this new place, and they had carved out a forest and a home for themselves. They are christian Indians. I think none of us will forget the expression of joy and delight with which these Indians ran to their school-house, to their church, and ran up upon the flagstaff the American flag; and how glad they were to meet the first official representatives of the Government under which they had sought protection.

They are of course not natives of this country as the native Indians of Alaska are under our treaty or purchase from Russia, and they must become in the end, before they can acquire this property, naturalized citizens of the United States. The proposition of the amendment is simply to allow this band of Indians to remain there under such rules and regulations as the Secretary of the Interior may impose, and give them some recognized footing at that place.

Mr. EDMUNDS. How are they supplied? In what occupation are they engaged?

Mr. TELLER. I should like to inquire of the Senator from Nebraska what is the necessity of giving them a recognized footing.

Mr. MANDERSON. The necessity, as it seems to me, would be that they can at any time be disturbed by those who would go upon the island under many pretenses, claiming that it was mining land, or in pursuit of the timber upon the land, which is cedar mainly.

Mr. TELLER. Which they have no right to cut?

Mr. MANDERSON. Perhaps they have no right to cut it, but still they cut it in a very large degree there, as they do in very many of the other Territories of the United States.

This action has been very strongly recommended by the Interior Department, not only under this Administration, but under the last, and it seems to me that it is no more than a decent and a proper recognition of the great influence that these people are exerting over all the Indians of Alaska. They are constantly increasing. They have a community there that is in many respects a model; it would be a model to many white communities. There is no liquor sold there, and they are a christian and God-fearing people. I think we should render them all the encouragement that is in our power.

Mr. DAWES. I should like to suggest to the Senator from Colorado as a reason why we might perhaps do this thing—he asks what necessity there is for it—that these Indians spent thirty years in the British dominion building up a town there. It was laid out in regular streets. In thirty years from the time they were cannibals to the time they left there, they had come to be a village of a thousand people, laid out in streets, regularly lighted by kerosene lamps, and had built a church of their own and a school-house. All at once——

Mr. TELLER. I should like to say to the Senator from Massachusetts that I have no objection to his giving the Senate all the information about those Indians. I do not need any myself. I know as much about them as anybody does. I certainly understand that they occupy the same position in Alaska that all the native Indians there occupy. We have not given the natives any land; we have not said they might live in any particular place. I can see no reason why these Indians, who are foreign Indians, should be treated differently from those Indians born on the soil whom we agreed to protect and to treat in a certain method by our treaty with Russia.

Mr. DAWES. I was about to give a reason why I thought this ought to be done, growing out of their experience in British America. After having been civilized in the most remarkable way, alluded to by the Senator from Nebraska, and having built up this town, coming into a religious controversy with the bishop, the bishop dispossessed them of that land on the ground that all the land belonged to the crown, and when they moved over to Alaska prevented them from carrying any of their fixtures. They could not take one of their little houses because they had become attached to the freehold, and they lost everything except what they could take in their hands and put in their boats and take over to Alaska. That has been their life.

Now, they live in constant terror for fear their work and labor upon this island may result in the same way. The first thing they said to us when we went there was, "Is it true that the Government of the United States can drive us off here at any time?" The people over on the other side, 30 miles, are all the time telling them that they will be driven off after they have expended their money in this way to build up this little town. Only the week before we were there a messenger from the other side came over and told them that he had visited Washington, that he had seen the new President, and that the new President had told him that he was going to drive them off.

Now, they live there in that way. They have built a church there within the last two years. They have built a fine house for an industrial school. They exhibit more common sense in the matter of civilization than any Indians I ever saw anywhere.

All the amendment proposes is that, until otherwise ordered by Congress, that island, which is good for nothing except for the wild beasts that are in the mountains and the thousand acres perhaps that run down on a level into the sea, upon which they have planted their town, shall be set apart for them under such rules and regulations as the Secretary of the Interior may prescribe. Nobody wants it now except there may turn up at some time somebody who desires to plunder them.

Mr. BLAIR. Mr. President, it is always restorative to one's feelings when he gets discouraged in contemplation of his own nature and human nature generally to have the Indians sprung up in the Senate. It is not of much consequence that there are one hundred thousand children over in New York, as the New York World said the other day, who can not get into any kind of school. There are several thousand in Boston, I see from recent accounts, who can not get under cover for the purpose of learning their A B C's. At least one-third of the children in a great section of this country are begging God for the opportunity of learning how to read and write, and have made some application to the American nation, but if with no better success to the Supreme Being than to Congress they are likely to grow up and to live and die in utter ignorance. At the same time they are to be allowed to vote, and compelled to vote. They shall vote; we will organize and use the necessary regulations and put the Army into the business if we can not accomplish it in any other way, but that these ignorant people shall vote and govern this country and govern the world.

I have great sympathy with this movement in regard to these Indians with the unpronounceable name. It is a great deal worse name than to be called a cannibal, I should think. We ought to change their name, at all events. Undoubtedly it is well to give them a local habitation and to give them this island. I hope it may be done. I

think it is one of those things that are due to the credit of this great nation that it should look after these Indians. But, right along with it, I desire in the way of comparative anatomy to call attention to the condition of our own flesh and blood in our own country with reference to this same matter of education and development. I have often thought I should like on some suitable occasion to allude to this subject in the Senate, but the pressure of important public matters has prevented my doing it until this occasion.

The VICE-PRESIDENT. The question is on agreeing to the amendment of the Senator from Nebraska [Mr. MANDERSON] to the amendment of the Committee on Public Lands.

Mr. DOLPH. I should like to inquire of the Senator from Nebraska if these islands were inhabited by any natives of Alaska at the time they were taken by the Metlakahtla Indians.

Mr. MANDERSON. Not a living soul was on them or within many miles of them.

Mr. DOLPH. Then I think that is a very proper amendment to pass, because under this bill title might be acquired by white people and by others upon the island, and I think it is well enough to set apart the island at present for the use of the Indians, as no existing rights of others are affected.

The amendment to the amendment was agreed to.

Mr. SANDERS. I ask leave to modify the amendment which I offered.

Mr. TELLER. Let it be read.

The VICE-PRESIDENT. The amendment will be read as now modified.

The Secretary read as follows:

And in the States of Colorado, Montana, Idaho, North Dakota, and South Dakota, and the gold and silver regions of Nevada, and the Territory of Utah, in any criminal prosecution or civil action by the United States for a trespass on such public timber lands or to recover timber or lumber cut thereon, it shall be a defense if the defendant shall show that the said timber was so cut or removed from the timber lands for use in such State or Territory by a resident thereof for agricultural, mining, manufacturing, or domestic purposes, and has not been transported out of the same. But nothing herein contained shall operate to enlarge the rights of any railway company to cut timber on the public domain: *Provided*, That the Secretary of the Interior may make suitable rules and regulations to carry out the provisions of this section.

Mr. COCKRELL. I should like to ask the Senator from Montana what right the railroad companies now have to cut timber on the public land.

Mr. EDMUNDS. They have the right to buy it of everybody who does cut it, which comes to the same thing.

Mr. TELLER. The Senator from Montana is very much mistaken. They have not any such right under existing law, and several companies have been compelled to submit to very large judgments.

Mr. COCKRELL. What are their rights?

The VICE-PRESIDENT. The question is on the amendment of the Senator from Montana as modified, on which the yeas and nays have been ordered.

Mr. COCKRELL. I should like to have the Senator from Colorado explain what rights the railroads have.

Mr. TELLER. In some of the railroads that went across the country there were provisions that they might for construction purposes cut timber on the public lands; in other cases there were none. The general rule is that the railroad company, after the construction of the road, at least, can not cut timber on the public land, and if they buy it of persons who cut it off the public lands the courts have in a number of cases, certainly in Colorado, rendered judgment against them for the value of the timber after it was cut.

Mr. DOLPH. After it was in the road?

Mr. EDMUNDS. Mr. President, that I can understand, because if then the cutting was unlawful——

Mr. TELLER. I had not concluded.

Mr. EDMUNDS. I beg pardon of the Senator. He turned to speak to the Senator near him and I supposed he was through.

Mr. TELLER. A number of railroads in Colorado have been compelled under existing law to go into New Mexico and buy the timber off private grants at very large expense. Of course they have bought more or less timber off such of the public lands as have passed into private ownership from those sections of the country where lands could be entered for homestead and pre-emption purposes.

Mr. STEWART. The act of 1878 specially excluded railroads.

Mr. TELLER. The act of 1878, which provided for the use of such timber by miners and others, expressly excluded railroads from the provision of the act.

Now, while I am up I want to say to the Senator from Vermont, who takes great interest properly in the preservation of the forests, that the great danger to the forests of the Northwest and the West is not the consumption by the people, but the waste by fire. There have been, I think I may say advisedly, hundreds of acres burned over in the State of Colorado at least, which I can speak of more knowingly than of other sections, where there has been one acre cut off. A Senator in my hearing says he thinks thousands, and I should not be surprised if that was so. A single fire in 1879, it was estimated, burned many times more than had been consumed by the people since the early settlement of that country. The great danger to the forests is from fires, and not from the consumption, which is comparatively small, by the settler or by the miner.

Mr. SANDERS. As the Senator from Missouri addressed his inquiry to me, perhaps I can answer it to his satisfaction.

On the 3d day of March, 1875, an act was passed granting to railroads the right of way through the public land of the United States, and also the right to take from the public lands adjacent to the line of the road material, earth, stone, and timber, necessary for the construction of the railroad. The subsequent part of the act provide that the Secretary of the Interior might prescribe regulations by which they might get their timber. There have been a great many decisions, executive and judicial, as to how extensive this right is. It is not necessary, however, to go further than to say that in 1875 Congress gave to all persons who desired to build a railroad upon the public domain the right to get the material for it upon adjacent land.

Mr. EDMUNDS. What I undertook to say, or intended to say when I thought my friend from Colorado had concluded his remarks, was that it may be and doubtless is perfectly true that while the law prohibits the cutting of timber on the public lands under certain limitations, and timber contrary to law is cut and is followed into the hands of a railroad, just as if it were followed into your hands or mine, the United States could recover it. But what I was alluding to was how the thing would stand when this amendment shall have been adopted and become a law, when if I resided in any one of those favored communities I could proceed for all the purposes mentioned, which cover about everything that anybody can need for the uses of timber, probably everything, and cut for sale in that Territory or State all that I like according to the amount of capital that I can invest and the people I can employ; and having cut it I carry it to a market in that State and sell it to whoever will give me the best price. There is no law, and there ought not to be any law, which in that case would prevent a railway company, if it wanted timber, from offering me the best price, any more than a baker, or a shoemaker, or anybody else.

That is where we are coming; and therefore with great respect I insist that this amendment ought not to be adopted, but this bill, which provides for an entirely different branch of the subject, and as our friend from Montana suggested awhile ago, being a bill framed which shall provide for the reasonable and necessary obtaining of timber by residents in these States and Territories for their private and domestic operations, how far it will go towards mining, etc., is a question for consideration; but for the immediate wants of the community a measure which shall provide a regulation and a consistence and a conservatism which are not only for their benefit, but for the benefit of everybody else who lives east or west of that great divide.

The VICE-PRESIDENT. The roll will be called on agreeing to the amendment of the Senator from Montana [Mr. SANDERS].

The Secretary proceeded to call the roll.

Mr. DAVIS (when his name was called). I am paired with the Senator from Indiana [Mr. TURPIE].

Mr. HAMPTON (when his name was called). I am paired with the junior Senator from Rhode Island [Mr. DIXON]. I do not know how he would vote. I would vote "yea," were he present. If the senior Senator from Rhode Island can give me any information as to how his colleague would vote, I may vote to help make a quorum.

Mr. HIGGINS (when his name was called). I am paired with the senior Senator from New Jersey [Mr. MCPHERSON]. I do not see that party lines are observed on this vote, and I therefore vote "yea."

Mr. MANDERSON (when his name was called). I am paired with the Senator from Kentucky [Mr. BLACKBURN].

Mr. PIERCE (when his name was called). I am paired with the Senator from Kentucky [Mr. CARLISLE]. On the bill as it was originally reported from the committee I am at liberty to vote, but on this proposition I shall withhold my vote.

Mr. SANDERS (when his name was called). I think there is nothing of a partisan character in this question that should require me to abstain from voting, and unless some one on the other side objects, I shall vote "yea."

Mr. WILSON, of Iowa (when his name was called). I am paired with the Senator from Maryland [Mr. WILSON].

The roll-call was concluded.

Mr. HAMPTON. I vote "yea."

Mr. MANDERSON. My vote seems to be needed to make a quorum, and I will vote upon this question. I vote "yea."

Mr. DAVIS. I vote "yea."

Mr. PIERCE. I will vote to help make a quorum. I vote "yea."

Mr. BLAIR. I can vote if necessary to make a quorum. Otherwise I am paired with the senior Senator from Mississippi [Mr. GEORGE].

The VICE-PRESIDENT. The Senator's vote is necessary.

Mr. BLAIR. I vote "yea."

Mr. COLQUITT. I vote "yea."

The result was announced—yeas 41, nays 3, as follows:

YEAS—41.

Allen,	Cullom,	Gorman,	Jones of Nevada,
Bate,	Davis,	Gray,	Manderson,
Berry,	Dawes,	Hampton,	Mitchell,
Blair,	Dolph,	Hawley,	Moody,
Casey,	Evarts,	Hearst,	Morgan,
Coke,	Faulkner,	Higgins,	Paddock,
Colquitt,	Frye,	Hoar,	Pasco,

55TH CONGRESS, 2d Session. } SENATE. { DOCUMENT No. 275.

COLONY OF NATIVES ON ANNETTE ISLAND, ALASKA.

LETTER

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING,

IN RESPONSE TO RESOLUTION OF THE SENATE OF MAY 23, 1898, COPY OF A REPORT TOUCHING THE COLONY OF NATIVES ON ANNETTE ISLAND, ALASKA, PREPARED BY DR. WILLIAM DUNCAN, TOGETHER WITH COPIES OF THE FILES AND RECORDS OF THE DEPARTMENT RELATING TO ANNETTE ISLAND AND ITS OCCUPANCY BY THE METLAKAHTLA INDIANS AND ALASKAN NATIVES.

MAY 26, 1898.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, May 25, 1898.

SIR: I have the honor to acknowledge the receipt of a resolution of the Senate, dated the 23d instant, as follows:

Resolved, That the Secretary of the Interior be, and he is hereby, directed to furnish the Senate with the report made by Dr. Duncan on the history, progress, etc., of the Metlakahtla colony on the island of Annette, Alaska, and any other data he may have in his possession to show why no portion of said island of Annette should be opened to settlement.

In response thereto, I transmit herewith a copy of the report touching the colony of natives on Annette Island, Alaska, prepared by Dr. William Duncan, together with copies of the files and records of this Department relating to Annette Island and its occupancy by the Metlakahtla Indians and Alaskan natives.

Very respectfully,

C. N. BLISS,
Secretary.

The PRESIDENT OF THE UNITED STATES SENATE.

DEPARTMENT OF THE INTERIOR,
BUREAU OF EDUCATION, ALASKA DIVISION,
Washington, D. C., March 21, 1898.

DEAR SIR: Your communication of the 4th of January, addressed to me in Alaska, requesting me to write for the honorable the Secretary of the Interior a brief history of the colony of natives on Annette

Island, reached me about the end of January, and as I had then determined upon visiting Washington, I was prevented from undertaking the work at once. Since my arrival here I have been very much occupied and anxious in reference to a bill before Congress seriously affecting our settlement. I regret the long delay in complying with your request.

I now beg herewith to submit the narrative called for.

Very respectfully, your obedient servant,

WILLIAM DUNCAN.

Hon. W. T. HARRIS,
Commissioner of Education, Washington, D. C.

W. DUNCAN'S STATEMENT OF THE AFFAIRS OF METLAKAHTLA, ALASKA.

In the autumn of 1886, a crisis having come over the affairs of the associated community of natives living at Metlakahtla, British Columbia, I was deputed by them to visit Washington, D. C., to beg of the United States Government a place in Alaska where they might build for themselves another home.

In Washington I was kindly received and entertained by the Hon. Darwin R. James, who introduced me to the honorable Commissioner of Indian Affairs, to whom I communicated, both verbally and in writing, the object of my mission. Subsequently I had the privilege of conferring with the President, the Secretary of the Interior, Justice Miller of the Supreme Court, and other officers of the Government. Though no positive promises were made, I was given to understand that if the natives I represented removed to Alaska action would be taken by the Government to secure to them lands for their benefit.

In addition to this encouragement a very deep interest in our people was taken by a number of Christian churches in the several cities I visited, and many friends of the native races heartily espoused our cause. Thus finding the way open I sent a telegram to our people from Washington, directing them at once to seek a suitable location in Alaska for their new settlement. To this advice they promptly attended, and before I arrived back to the Pacific coast Annette Island, on the north side of Dickson entrance and about 70 miles from Metlakahtla, British Columbia, had been selected. To this island, therefore, I directed my course without even again visiting my former home in British Columbia, and arrived there on Sunday, the 7th of August, 1897, where I found a few of our people, as an advanced corps, awaiting my arrival. It is well I should mention here that I passed through Portland, Oreg., on my way to Alaska, and while there it struck me that, as I was about to go into a new country to form a settlement, it would be prudent to have advice from some legal gentleman, so that our steps from the first might be in strict accordance with the law. I was therefore introduced to Thomas N. Strong, attorney at law, Portland, who warmly responded to the call and prepared himself at once to accompany me to Alaska, at his own cost and charges, and thus see our settlement started.

Annette Island is about 18 to 20 miles long and about 8 miles wide on the average, and though more than three-fourths of it consists of mountains and rock, and the place for the town site being densely wooded, yet I found it bore some features recommending it as a settlement for the natives. It had a beautiful pebbly beach, suitable for

weekly for special duties as watchmen for the town. All are expected to keep a watchful care over the peace wherever they may be traveling or are located. The two watchmen on duty parade the village occasionally during the day, and especially at night, and at 9.30 p m. the bugle gives the warning "go to bed," when the watchmen see that all are indoors except those who may have special reasons for being outside.

For still further promoting order and watchful care over the young, all members of the community are divided into ten companies, each company being named by its color, and each member provided with a badge which can be worn on the breast. On the metal badge are the words "Faith, love, loyalty," encircled by the words "United Brethren of Metlakahtla." In each of the ten companies there are 3 councilmen, 2 elders of the church, and 2 constables. The total number of men enrolled is 215.

THE PLAN OF THE TOWN SITE.

It was decided that each builder should have a corner lot, and that each lot should be 80 feet front and 90 feet deep. To avoid contention in choosing lots I announced that, as we could not give anyone precedence from the order of their coming to Alaska, as all had come together, therefore we would follow the order of their coming into the world. By this plan, which was adopted, the elder brothers secured front lots and the other members of the family, naturally and without murmuring, took the lots behind them. In laying out the sites we left ample room on the sea front for canoe rests and for parade; also a space for the playground. Not having any horses or vehicles in the village, nor needing any, we only made the roads between each block 20 feet wide. We have been careful to place the church, school, town hall, residences for the minister, doctor, and school teacher, nice distances from each other and from the houses occupied by the people.

On a small projection of land and rocks we have built a salmon cannery with its wharf and a general store, and at the extreme end of the village, on rocks, we have erected a sawmill, which is run by water power conveyed by a pipe line, 2 miles in length, from the lake, over 800 feet in elevation. This pipe line is also continued to the cannery and supplies abundance of water for washing the fish and power for running all the machinery. Another great boon is that it brings good drinking water to the village, and supplies steamers with water at the wharf. A fairly correct survey of all the land occupied by the people and for public buildings has been made, and a neatly drawn map of the same for reference has been executed. With the numbers on the map all the certificates issued to the natives correspond, and a book is kept in which all the lots granted are registered. The certificates of the lots given to the natives show who are bona fide settlers, and answer the purpose of giving some assurance to builders of ownership until valid titles are granted by the Government. Though some very small patches of land, here and there, have been cultivated for vegetables by some few natives, no action has been taken by the council in reference thereto. (For copy of certificates, see Exhibit A.) At the time of receiving the certificates each native has to sign, in the presence of the council, a declaration card containing the rules and regulations of the settlement, which he solemnly pledges himself to obey. (For copy of declaration card, see Exhibit B.)

To our growth in numbers we have had to encounter serious drawbacks. The physical trials which were demanded in fighting the

FOR THE PRESERVATION OF THE PEACE.

I have already stated that we have a native corps of 20 policemen, elected yearly by the people. Of this body two are paid a salary of $10 per month by the Government. This $240 a year is all that is needed for police purposes, for, having no intoxicants in the village, we have but few troubles. Still there is a necessity for constant watchfulness, and the village, especially in these times, should never be without some one holding magisterial authority. During our first six years in Alaska I held a commission as justice of the peace, but during the last five years the commission was not renewed, as the governor ascertained the commission had no legal status in Alaska. When my commission as justice of the peace lapsed, the district judge at Sitka appointed me court commissioner, without salary, which authority I still hold, and which empowers me to commit for trial and gives me at least a semblance of authority.

In reply to the question which the honorable the Secretary of the Interior asks as to "the advisability of having a United States commissioner from Fort Wrangell to visit Annette Island and hold a term of his court there once a year or oftener," I would say that I believe it would be a salutary step for impressing upon the natives generally the authority of the law if the United States commissioner could occasionally itinerate. His services would not be so much needed at Annette Island as they would be in some neighboring places where the peace is frequently broken and crime committed. But offenders against the law should be dealt with promptly as well as legally, and for this there needs to be some authority within reasonable distance that can summon or arrest the lawbreakers, settle petty cases, but for serious crimes keep the accused in custody to await trial, or be empowered to grant bail until the arrival of the commissioner. It is to be regretted that the office of justice of the peace is not legal in Alaska, as that office, duly filled, would insure the enforcement of the law at little cost to the Government. I may here mention that, in obedience to the prompting of the governor, during our first two years in Alaska our young men formed a military company, to be ready in case of emergency to sustain civil authority. After having undergone a course of drilling, the governor promised to come and equip them with uniforms and arms, but to his and their disappointment the district judge vetoed the arrangement by pronouncing it illegal, our natives, he said, not being American citizens.

I have now only left me to explain, what I have already alluded to in this paper, the Metlakahtla Industrial Company. Very early in my missionary experience among the Indians I saw that for permanently benefiting the converts to Christianity it would be needful to help them in their material and social life by introducing them to such industries as would develop the natural resources around them. I therefore set to work on this line many years ago, and the results have been all that my most sanguine expectations led me to anticipate. Twice I have reached the goal of my hopes, first in British Columbia and now in Alaska, the goal being to build up a self-supporting people by honest craft and consequently to render the community independent of all outside aid for their church, school, and medical expenses. On migrating from British Columbia to Alaska in 1887, we had to forfeit all the industrial plant we had raised at old Metlakahtla. This so much reduced my means that I could not start afresh on any large scale without calling to my friends in America for help. As soon as my plans

West's Alaska Statutes Annotated
The Constitution of the State of Alaska (Refs & Annos)
Article VIII. Natural Resources

AK Const. Art. 8, § 15

§ 15. No Exclusive Right of Fishery

Currentness

No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

Credits
1971 SJR 10, approved Aug. 22, 1972, eff. Oct. 14, 1972.

AK Const. Art. 8, § 15, AK CONST Art. 8, § 15
Current with legislation through Chapter 2 of the 2021 First Regular Session of the 32nd Legislature.

End of Document

West's Alaska Statutes Annotated
Title 16. Fish and Game (Refs & Annos)
Chapter 43. Regulation of Entry into Alaska Commercial Fisheries (Refs & Annos)
Article 1. Alaska Commercial Fisheries Entry Commission (Refs & Annos)

AS § 16.43.010

§ 16.43.010. Purpose and findings of fact

Effective: December 30, 2018
Currentness

(a) It is the purpose of this chapter to promote the conservation and the sustained yield management of Alaska's fishery resource and the economic health and stability of commercial fishing in Alaska by regulating and controlling entry of participants into the commercial fisheries in the public interest and without unjust discrimination.

(b) The legislature finds that commercial fishing for fishery resources has reached levels of participation, on both a statewide and an area basis, that have impaired or threaten to impair the economic welfare of the fisheries of the state, the overall efficiency of the harvest, and the sustained yield management of the fishery resource.

Credits
SLA 1973, ch. 79, § 1; SLA 2002, ch. 137, § 4; SLA 2002, ch. 137, § 5, eff. Dec. 30, 2013. Amended by SLA 2014, ch. 2, § 1, eff. March 26, 2014; SLA 2014, ch. 2, § 2, eff. Dec. 30, 2018.

AS § 16.43.010, AK ST § 16.43.010
Current with legislation through Chapter 2 of the 2021 First Regular Session of the 32nd Legislature.

End of Document

Alaska Administrative Code
Title 20. Miscellaneous Boards and Commissions
Chapter 5. Commercial Fisheries Entry Commission (Refs & Annos)
Article 6. Priority Classification Point System

20 AAC 05.610

20 AAC 05.610. Past participation.

Currentness

The standard of past participation in the fishery includes the number of years participation in the fishery and the consistency of participation. The commission will determine an applicant's extent of past participation as of the qualification date established under AS 16.43.260(d) or (e), and will apply the above two factors as follows:

(1) the commission will rank an applicant based on the number of years participation by considering the number of years the applicant has harvested the fishery resource commercially while participating as a gear license holder and his number of years participation as a crewman, with greater weight being given to participation in recent years as a gear license holder;

(2) the commission will rank an applicant based on consistency of participation by considering the number of weeks of the season in which the applicant harvested the fishery resource commercially while participating as a gear license holder. This factor will be given less weight than the number of years of participation.

Credits
(Eff. 12/18/74, Register 52)

AUTHORITY: AS 16.43.100, AS 16.43.110(a), AS 16.43.250(a)

Current with amendments received through the Quarterly Supplement, April 2021 (Register 237), and additional amendments from Register 238, received through April 30, 2021.

Alaska Admin. Code tit. 20, § 05.610, 20 AK ADC 05.610

ADD 15

End of Document

Alaska Administrative Code
Title 20. Miscellaneous Boards and Commissions
Chapter 5. Commercial Fisheries Entry Commission (Refs & Annos)
Article 6. Priority Classification Point System

20 AAC 05.620

20 AAC 05.620. Economic dependence.

Currentness

The standard of economic dependence upon the fishery includes a consideration of percentage of income derived from the fishery, reliance on alternative occupations, availability of alternative occupations, and investment in vessels, gear and setnet sites. The commission will determine an applicant's economic dependence as of the qualification date established under AS 16.43.260(d) or (e) and will therefore give primary weight to evidence from the years immediately preceding the qualification date and will consider the above four factors as follows:

(1) the commission will rank an applicant based on the two factors of percentage of income derived from the fishery and reliance on alternative occupations by considering the relation between “annual catch value” and “nonfishing occupational income,” as ex-pressed as an “income dependence percentage” as these terms are defined in 20 AAC 05.660. Points for income dependence will be awarded only to applicants who harvested the fishery resource commercially while participating as a gear license holder during a year in which income dependence is claimed. A higher income dependence percentage indicates a higher degree of economic dependence upon the fishery;

(2) the commission will rank an applicant based on the factor of investment in vessels, gear and setnet sites if the applicant, on the qualification date, was the owner of a vessel, gear or setnet site used or to be used in the fishery for which he is applying; or, if the applicant at any time between his last landing in the fishery and the qualification date was the owner of a vessel, gear or setnet site used in the fishery, so long as the applicant had fished consistently in the year prior to the qualification date. In the case of a setnet site the commission will consider the owner to be the person or persons who could rightfully exercise the power to sell or transfer the setnet site according to the accepted customs and usages of the area. In cases where a vessel, gear or setnet site was owned jointly or in a corporate capacity, an applicant's points will be determined by multiplying his percentage of ownership interest times the total number of points possible.

Fractional points will round off to the nearest whole number, with .5 rounding off to the lower whole number;

(3) the commission will rank an applicant based on the factor of availability of alternative occupations according to his place of domicile.

Credits
(Eff. 12/18/74, Register 52)

AUTHORITY: AS 16.43.100, AS 16.43.110(a), AS 16.43.250(a)

Current with amendments received through the Quarterly Supplement, April 2021 (Register 237), and additional amendments from Register 238, received through April 30, 2021.

Alaska Admin. Code tit. 20, § 05.620, 20 AK ADC 05.620

End of Document

Alaska Administrative Code
Title 5. Fish and Game (Refs & Annos)
Part 1. Commercial and Subsistence Fishing and Private Nonprofit Salmon Hatcheries
Chapter 33. Southeastern Alaska Area
Article 1. Description of Area

5 AAC 33.100

5 AAC 33.100. Description of area.

Currentness

The Southeastern Alaska Area consists of all waters of Alaska within an area that has as its southern boundary the International Boundary at Dixon Entrance, and as its northern boundary a line extending seaward from the western tip of Cape Fairweather at 58° 47.89' N. lat., 137° 56.68' W. long. to the intersection with the seaward limit of the three-nautical-mile territorial sea at 58° 45.91' N. lat., 138° 01.53' W. long.

Credits
(In effect before 1988; am 4/23/94, Register 130; am 3/11/2001, Register 157; am 7/26/2003, Register 167)

AUTHORITY: AS 16.05.251

Current with amendments received through the Quarterly Supplement, April 2021 (Register 237), and additional amendments from Register 238, received through April 30, 2021.

Alaska Admin. Code tit. 5, § 33.100, 5 AK ADC 33.100

End of Document

5 AAC 33.200

5 AAC 33.200. Fishing districts and sections.

Currentness

(a) District 1: all waters east and north of a line from the southernmost tip of Caamano Point at 55° 29.85′ N. lat., 131° 58.21′ W. long., south to a point in Dixon Entrance District at 54° 40.00′ N. lat., 131° 45.00′ W. long., and waters north of a line from 54° 40.00′ N. lat., 131° 45.00′ W. long., then east to 54° 42.48′ N. lat., 130° 36.92′ W. long.;

(1) Section 1-A: all waters of Portland Canal north of the latitude of Hattie Island Light at 55° 17.25′ N. lat., 129° 58.20′ W. long.;

(2) Section 1-B: all waters of the district south of Section 1-A and east and south of a line extending three nautical miles from the range marker located at Foggy Point at 54° 55.50′ N. lat., 130° 58.60′ W. long., to an offshore point at 54° 56.86′ N. lat., 131° 03.24′ W. long., and then south to intersect a line between Barren Island Light and Lord Rock Light at 54° 44.02′ N. lat., 131° 03.24′ W. long., then to Lord Rock Light at 54° 43.55′ N. lat., 130° 49.22′ W. long., and then due south to a point in Dixon Entrance District at 54° 42.03′ N. lat., 130° 49.22′ W. long.;

(3) Section 1-C: waters of the district between a line from a point at 55° 11.89′ N. lat., 131° 05.04 W. long., located on Point Sykes to a point at 55° 12.22′ N. lat., 131° 05.70′ W. long., located one-half mile northwest of Point Sykes to Point Alava at 55° 11.63′ N. lat., 131° 10.70′ W. long., and a line from the westernmost tip of Point Eva at 55° 33.61′ N. lat., 130° 52.60′ W. long., to the southeastern most tip of Cactus Point at 55° 33.29′ N. lat., 130° 56.59′ W. long.;

(4) Section 1-D: waters of the district between a line from the westernmost tip of Point Eva at 55° 33.61′ N. lat., 130° 52.60′ W. long., to the southeasternmost tip of Cactus Point at 55° 33.29′ N. lat., 130° 56.66′ W. long., and a line from Nose Point at 55° 48.32′ N. lat., 131° 42.53′ W. long., to the northernmost tip of Snail Point at 55° 49.47′ N. lat. 131° 46.25′ W. long.;

(5) Section 1-E: waters of the district between a line from the southernmost tip of Caamano Point at 55° 29.85′ N. lat., 131° 58.21′ W. long., to Point Higgins at 55° 27.43′ N. lat., 131° 50.03′ W. long., and a line from Nose Point at 55° 48.32′ N. lat., 131° 42.53′ W. long., to the northernmost tip of Snail Point at 55° 49.47′ N. lat., 131° 46.25′ W. long.;

(6) Section 1-F: all other waters of the district.

(b) District 2: all waters south of a line from the easternmost tip of Narrow Point at 55° 47.00′ N. lat., 132° 28.23′ W. long., to Lemesurier Point at 55° 46.02′ N. lat., 132° 16.94′ W. long., west of District 1 and east of a line from Point Marsh Light at 54° 42.70′ N. lat., 132° 17.72′ W. long., then due south to a point in Dixon Entrance at 54° 40.00′ N. lat., 132° 17.50′ W. long.

(c) District 3: all waters north and west of a line from Point Marsh Light at 54° 42.70′ N. lat., 132° 17.72′ W. long., then due south to a point in Dixon Entrance at 54° 40.00′ N. lat., 132° 17.50′ W. long., to the southernmost tip of Cape Muzon at 54° 39.82′ N. lat., 132° 41.29′ W. long., and east of a line from the northernmost tip of Eagle Point on Dall Island at 55° 14.53′ N. lat., 133° 13.28′ W. long., and passing successively through the westernmost tip of Point Arboleda at 55° 19.10′ N. lat., 133° 27.81′ W. long., the southernmost tip of Point San Roque at 55° 20.13′ N. lat., 133° 32.70′ W. long., the northernmost tip of Cape Ulitka at 55° 33.76′ N. lat., 133° 43.73′ W. long., the Cape Lynch Light at 55° 46.87′ N. lat., 133° 42.10′ W. long., to the southwest entrance point of Halibut Harbor on Kosciusko Island at 55° 54.99′ N. lat., 133° 47.64′ W. long., and south of the latitude of Aneskett Point at 56° 08.85′ N. lat.;

(1) Section 3-A: waters of District 3 south and east of a line through Tlevak Narrows beginning at the easternmost tip of Turn Point at 55° 15.74′ N. lat., 133° 07.33′ W. long., to a point on Prince of Wales Island at 55° 15.70′ N. lat., 133° 06.50′ W. long., including Soda Bay and its contiguous waters, but excluding all waters of Meares Pass and its contiguous waters;

(2) Section 3-B: waters of District 3 south of the latitude of Point Swift at 55° 45.78′ N. lat., including all waters of Warm Chuck Inlet, Iphigenia Bay south of Cape Lynch Light at 55° 46.87′ N. lat., 133° 42.10′ W. long., excluding all waters of Tuxekan Passage and its contiguous waters, and waters of District 3 north of a line through Tlevak Narrows beginning at the easternmost tip of Turn Point located at 55° 15.74′ N. lat., 133° 07.33′ W. long., to a point on Prince of Wales Island at 55° 15.70′ N. lat., 133° 06.50′ W. long., including all waters of Meares Pass and its contiguous waters, but excluding all of waters of Soda Bay and its contiguous waters;

(3) Section 3-C: waters of District 3 north of the latitude of Point Swift at 55° 45.78′ N. lat., including all waters of Tuxekan Passage and its contiguous waters, but excluding all waters of Warm Chuck Inlet, Iphigenia Bay south of Cape Lynch Light at 55° 46.87′ N. lat., 133° 42.10′ W. long.

(d) District 4: all waters north of the latitude of the southernmost tip of Cape Muzon at 54° 39.82′ N. lat., 132° 41.29′ W. long., west of District 3, and south of a line from Helm Point on Coronation Island at 55° 49.59′ N. lat., 134° 16.19′ W. long., to Cape Lynch Light at 55° 46.87′ N. lat., 133° 42.10′ W. long.

(e) District 5: waters of Sumner Strait, north and east of a line from Cape Decision at 56° 00.09′ N. lat., 134° 08.16′ W. long., to Helm Point at 55° 49.59′ N, lat., 134° 16.19′ W. long. to Cape Lynch Light at 55° 46.87′ N. lat., 133° 42.10′ W. long., to the southwest entrance point of Halibut Harbor at 55° 54.99′ IN lat., 133° 47.64′ W. long., and north of the latitude of Aneskett Point at 56° 08.85′ N. lat.. west of a line from Point Baker at 56° 21.52′ N. lat., 133° 37.57′ W. long., to Point Barrie at 56° 26.19′ N. lat., 133° 39.27′ W. long., and south of a line from Point Camden at 56° 48.58′ N. lat., 133° 53.14′ W. long., to Salt Point Light at 56° 50.69′ N. lat., 133° 52.01′ W. long., in Keku Strait.

(f) District 6: all waters of Clarence Strait north of a line from the easternmost tip of Narrow Point at 55° 47.00′ N. lat., 132° 28.23′ W. long., to Lemesurier Point at 55° 46.02′ N. lat., 132° 16.94′ W. long., to Ernest Point at 55° 51.01′ N. lat., 132° 22.21′ W. long., to the most southerly point on Etolin Island at 55° 54.79′ N. lat., 132° 21.27′ W. long.. Stikine Strait south of the latitude of Round Point at 56° 16.65′ N. lat.. Sumner Strait west of a line from Point Alexander at 56° 30.55′ N. lat., 132° 57.01′ W. long., to Low Point at 56° 27.18′ N. lat., 132° 57.18′ W long., and east of a line from Point Baker at 56° 21.52′ N. tat., 133° 37.57′ W. long., to Point Barrie at 56° 26.19′ N. lat., 133° 39.27′ W. long., Wrangell Narrows south and west of a line from Prolewy Point at 56°

50.12′ N. lat., 132° 56.45′ W. long., to the northern tip of Mitkof Island at 56° 49.36′ N. lat., 132° 56.39′ W. long., and all waters of Duncan Canal;

(1) Section 6-A: waters north of a line from the tip of Point Colpoys at 56° 20.18′ N. lat., 133° 11.90′ W. long., to the tip of Macnamara Point at 56° 19.85′ N. lat., 133° 03.96′ W. long., west of a line from Low Point at 56° 27.18′ N. lat., 132° 57.18′ W long., to Point Alexander at 56° 30.55′ N. lat., 132° 57.01′ W. long., and east of a line from Point Barrie at 56° 26.19′ N. lat., 133° 39.27′ W. long., to Point Baker at 56° 21.52′ N. lat., 133° 37.57′ W. long.;

(2) Section 6-B: waters south of a line from the tip of Point Colpoys at 56° 20.18 N. lat., 133° 11.90′ W. long., to the tip of Macnamara Point at 56° 19.85′ N. lat., 133° 03.96′ W. long., north and west of a line from the tip of Luck Point at 55° 59.05′ N. lat., 132 44.08′ W. long., to the tip of Point Stanhope at 56° 00.69′ N. lat., 132° 36.47′ W. long., to Lincoln Rock Light at 56° 03.50′ N. lat., 132° 41.40′ W. long., to Key Reef Light at 56° 09.61′ N. lat., 132° 49.78′ W. long., to Nesbitt Reef Light at 56° 13.22′ N. lat., 132° 51.84′ W. long., to the tip of Point Nesbitt at 56° 13.93′ N. lat., 132° 52.34′ W. long.;

(3) Section 6-C: waters enclosed by a line from Lincoln Rock Light at 56° 03.50′ N. lat., 132° 41.40′ W. long., to the westernmost point of Screen Islands at 56° 05.56′ W. lat., 132′ 42.60′ W. long., to the westernmost point of Marsh Island at 56° 06.95′ N. lat., 132° 43.18′ W. long., to the westernmost point of Steamer Rocks at 56° 08.40′ N. lat., 132° 43.62′ W. long., to Mariposa Rock Buoy at 56° 10.68′ N. lat., 132° 44.36′ W. long., to the tip of Point Nesbitt at 56° 13.93′ N. lat., 132° 52.35′ W. long., to Nesbitt Reef Light at 56° 13.22′ N. lat., 132° 51.84′ W. long., to Key Reef Light at 56° 09.61′ N. Int., 132° 49.78′ W. long., to Lincoln Rock Light at 56° 03.50′ N. lat., 132° 41.40′ W. long.;

(4) Section 6-D: all other waters of the district.

(g) District 7: the contiguous waters of Ernest Sound and Bradfield Canal east of a line from Lemesurier Point at 55° 46.02′ N. lat., 132° 16.94′ W. long., to Ernest Point at 55° 51.01′ N. lat., 132° 22.21′ W. long., to the most southerly point of Etolin Island at 55° 54.79′ N. lat., 132° 21.27′ W. long., Zimovia Strait south of the latitude of Nemo Point at 56° 17.00′ N. lat.. and Eastern Passage and Blake Channel east of a line from Babbler Point at 56° 29.08′ W. lat., 132° 17.37′ W. long., to Hour Point at 56° 27.73′ N. lat., 132° 16.79′ W. long.;

(1) Section 7-A: waters of the district north of the latitude of Point Eaton at 55° 56.44′ N. lat.;

(2) Section 7-B: waters of the district south of the latitude of Point Eaton at 55° 56.44′ N. lat.

(h) District 8: waters of Frederick Sound south of a line from Wood Point at 56° 59.55′ N. lat., 132° 56.96′ W. long., to Beacon Point at 56° 56.37′ N. lat., 132° 59.75′ W. long., (excluding Wrangell Narrows), Sumner Strait east of a line from Point Alexander at 56° 30.55′ N. lat., 132° 57.01′ W. long., to Low Point at 56° 27.18′ N. lat., 132° 57.18′ W long. Stikine Strait north of the latitude of Round Point at 56° 16.65′ N. lat., Zimovia Strait north of the latitude of Nemo Point at 56° 17.00′ N. lat., and Eastern Passage west of a line from Hour Point at 56° 27.73′ N. lat., 132° 16.79′ W. long., to Babbler Point at 56° 29.08′ W. lat., 132° 17.37′ W. long.:

(1) Section 8-A: the waters of the district north of a line from Blaquiere Point at 56° 35.03′ N. lat., 132° 32.56′ W. long., to Kakwan Point at 56° 41.66′ N. lat., 132° 13.22′ W. long.;

(2) Section 8-B: the waters of the district south of a line from Blaquiere Point at 56° 35.03′ N. lat., 132° 32.56′ W. long., to Kakwan Point at 56° 41.66′ N. lat., 132° 13.22′ W. long.

(i) District 9: all waters of Frederick Sound and Chatham Strait south of the latitude of of Point Gardner at 57° 00.94′ N. lat., south of the latitude of the southernmost tip of Elliott Island at 57° 15.19′ N. lat., and west of a line from the southernmost tip of Elliott Island at 57° 15.19′ N. lat., 134° 03.72′ W. long., to the westernmost tip of Point Macartney at 57° 01.49′ N. lat., 134° 03.52′ W. long., north and west of a line from Point Camden at 56° 48.58′ N. lat., 133° 53.14′ W. long., to Salt Point Light at 56° 50.69′ N. lat., 133° 52.01′ W. long., north of a line from the southernmost tip of Cape Decision at 56° 00.09′ N. lat., 134° 08.16′ W. long., to Helm Point at 55° 49.59′ N. lat., 134° 16.19′ W. long., to the westernmost tip of Hazy Islands at 55° 53.22′ N. lat., 134° 36.99′ W. long., to the southernmost tip of Cape Ommaney at 56° 09.83′ N. lat., 134° 40.42′ W. long.;

(1) Section 9-A: waters of the district west of a line from Nation Point at 55° 56.69′ N. lat., 134° 20.13′ W. long., on Coronation Island to a point two nautical miles west of Point Gardner at 57° 00.94′ N. lat., 134° 40.79′ W. long.;

(2) Section 9-B: waters of the district east of a line from Nation Point at 55° 55.69′ N. lat., 134° 20.13′ W. long., on Coronation Island to a point two nautical miles west of Point Gardner at 57° 00.94′ N. lat., 134° 40.79′ W. long..

(j) District 10: Frederick Sound, Stephens Passage and contiguous waters north of a line from Beacon Point at 56° 56.37′ N. lat., 132° 59.75′ W. long., to Wood Point at 56° 59.55′ N. lat., 132° 56.96′ W. long., east of a line from Point Macartney at 57° 01.49′ N. lat., 134° 03.52′ W. long., to the southernmost tip of Elliott Island at 57° 15.19′ N. lat., 134° 03.72′ W. long., north of the latitude of the southernmost tip of Elliott Island at 57° 15.19′ N. lat., Seymour Canal south of 57° 36.71′ N. lat., and south of a line from Point League at 57° 37.76′ N. lat., 133° 40.47′ W. long., to Point Hugh at 57° 34.22′ N. lat., 133° 48.62′ W. long.

(k) District 11: Stephens Passage and contiguous waters north of a line from Point League at 57° 37.76′ N. lat., 133° 40.47′ W. long., to Point Hugh at 57° 34.22′ N. lat., 133° 48.62′ W. long., and Seymour Canal north of 57° 36.71′ N. lat., south of the latitude of Little Island Light at 58° 32.41′ N. lat., and east of a line from Little Island Light at 58° 32,41′ N. lat., 135° 02.83′ W. long., to Point Retreat Light at 58° 24.69′ N. lat., 134° 57.31′ W. long.;

(1) Section 11-A: waters of the district north and west of a line from a point at 58° 12.32′ N. lat., 134° 10.14′ W. long., to Point Arden Light at 58° 09.55′ N. lat., 134° 10.68′ W. long.;

(2) Section 11-B: waters of the district north of the latitude of Midway Islands Light at 57° 50.20′ N. lat. and south and east of a line from a point at 58° 12.32′ N. lat., 134° 10.14′ W. long., to on Point Arden Light at 58° 09.55′ N. lat., 134° 10.68′ W. long.;

(3) Section 11-C: waters of the district south of the latitude of Midway Islands Light at 57° 50.20′ N. lat., to a line from Point League at 57° 37.76′ N. lat., 133° 40.47′ W. long., to Point Hugh at 57° 34.22′ N. lat., 133° 48.62′ W. long.;

(4) Section 11-D: all waters of Seymour Canal north of 57° 36.71′ N. lat.

(*l*) District 12: all waters of Lynn Canal and Chatham Strait south of the latitude of Little Island Light to the latitude of Point Gardner at 57° 00.94′ N. lat., west of a line from Little Island Light at 58° 32.41′ N. lat., 135° 02.83′ W. long., to Point Retreat Light at 58° 24.69′ N. lat., 134° 57.31′ W. long., east of a line from Point Couverden at 58° 11.37′ N. lat., 134° 03.40′ W. long., to Point Augusta at 58° 02.44′ N. lat., 134° 57.50′ W. long., and east of a line from the southeasternmost tip of Point Hayes at 57° 28.83′ N. lat., 134° 50.33′ W. long., to the northernmost tin of Point Thatcher at 57° 24.97′ N. lat., 134° 50.00′ W. long.;

(1) Section 12-A: all waters of Chatham Strait south of the latitude of Point Couverden at 58° 11.37′ N. lat. to the latitude of Point Gardner at 57° 00.94′ N. lat., east of a line from Point Couverden at 58° 11.37′N. lat., 134° 03.40′ W. long., to Point Augusta at 58° 02.44′ N. lat., 134° 57.50′ W. long., and east of a line from the southeasternmost tip of Point Hayes at 57° 28.83′ N. lat., 134° 50.33′ W. long., to the northernmost tip of Point Thatcher at 57° 24.97′ N. lat., 134° 50.00′ W. long.;

(2) Section 12-B: all waters of Lynn Canal south of the latitude of Little Island Light at 58° 32.41′ N. lat, west of a line from Little Island Light at 58° 32.41′ N. lat., 135° 02.83′ W. long., to Point Retreat Light and north of the latitude of Point Couverden at 58° 11.37′ N. lat..

(m) District 13: all waters north of the latitude of Helm Point at 55° 49.59′ N. lat. and west of a line from Helm Point at 55° 49.59′ N. lat., 134° 16.19′ W. long., to the westernmost tip of Hazy Island at 55° 53.22′ N. lat., 134° 36.99′ W. long., to the southernmost tip of Cape Ommaney at 56° 09.83′ N. lat., 134° 40.42′ W. long., south of a line projecting west from the southernmost tip of Cape Spencer at 58° 12.63′ N. lat., 136° 39.85′ W. long., west of a line from the southernmost tip of Cape Spencer through Yakobi Rock to Yakobi Island at 58° 04.69′ N. lat., 136° 33.35′ W. long., south of a line from the northernmost tip of Soapstone Point at 58° 06.33′ N. lat., 136° 29.86′ W. lung., to the westernmost tip of Column Point at 58° 07.21′ N. lat., 136° 26.88′ W. long., and west of a line from the southeasternmost tip of Point Hayes at 57° 28.83′ N. lat., 134° 50.33′ W. long., to the northernmost tip of Point Thatcher at 57° 24.97′ N. lat., 134° 50.00′ W. long.;

(1) Section 13-A: all waters north of 57° 16.00′ N. lat. and those waters of Peril Strait south of the latitude of Pogibshi Point at 57° 30.50′ N. lat.;

(2) Section 13-B: all waters south of 57° 16.00′ N. lat.;

(3) Section 13-C: waters of the district north of the latitude of Pogibshi Point at 57° 30.50′ N. lat. and west of a line from the southeasternmost tip of Point Hayes at 57° 28.83′ N. lat., 134° 50.33′ W. long., to the northernmost tin of Point Thatcher at 57° 24.97′ N. lat., 134° 50.00′ W. long., in Peril Strait.

(n) District 14: all waters of Icy Strait west of a line from Point Couverden at 58° 11.37′ N. lat., 134° 03.40′ W. long. to Point Augusta at 58° 02.44′ N. lat., 134° 57.50′ W. long., east of a line from the southernmost tip of Cape Spencer at 58° 12.63′ N. lat., 136° 39.85′ W. long., through

Yakobi Rock to Yakobi Island at 58° 04.69′ N. lat., 136° 33.35′ W. long., and north of a line from the northernmost point of Soapstone Point at 58° 06.33′ N. lat., 136° 29.86′ W. long., to the westernmost point of Column Point at 58° 07.21′ N. lat., 136° 26.88′ W. long.;

(1) Section 14-A: waters of the district west of a line beginning at 58° 13.00′ N. lat., 135° 57.00′ W. long., to Lemesurier Island at 58° 19.15′ N. lat., 136° 02.42′ W. long., and from Lemesurier Island Light at 58° 19.15′ N. lat., 136° 02.45′ W. long., to Point Carolus at 58° 22.91′ N. lat., 136° 02.20′ W. long.;

(2) Section 14-B: waters of the district east of a line beginning at 58° 13.00′ N. lat., 135° 57.00′ W. long., to the southeastern point of Lemesurier Island at 58° 16.35′ N. lat., 136° 02.42′ W. long., and from Lemesurier Island Light at 58° 19.15′ N. lat., 136° 02.45′ W. long., to Point Carolus at 58° 22.91′ N. lat., 136° 02.20′ W. long., and west of a line from Point Sophia at 58° 08.62′ N. lat., 135° 24.85′ W. long., to Excursion Point at 58° 22.52′ N. lat., 135° 28.57′ W. long.;

(3) Section 14-C: waters of the district east of a line from Point Sophia at 58° 08.62′ N. lat., 135° 24.85′ W. long., to Excursion Point at 58° 22.52′ N. lat., 135° 28.57′ W. long.

(o) District 15: waters of Lynn Canal north of the latitude of Little Island Light at 58° 32.41' N. lat.;

(1) Section 15-A: waters of the district north of the latitude of Sherman Rock at 58° 51.00' N. lat.;

(2) Section 15-B: waters of Berners Bay east of a line from Point St. Mary at 58° 43.93' N. lat., 135° 01.43' W. long. to Point Bridget at 58° 40.73' N. lat., 134° 59.25' W. long.;

(3) Section 15-C: all waters of the district south of the latitude of Sherman Rock at 58° 50.80′ N. lat., except for the waters of Section 15-B.

(p) District 16: all waters north of a line projecting west from the southernmost tip of Cape Spencer and south of a line projecting southwest from the westernmost tip of Cape Fairweather.

(q) Dixon Entrance District: all waters east of 138° 45.33' W. long., south of the southern boundaries of Districts 1 - 4 and north of a line from 54° 43.50' N. lat., 130° 37.62' W. long., to 54° 43.40' N. lat., 130° 37.65' W. long., to 54° 43.25' N. lat., 130° 37.73' W. long., to 54° 43' N. lat., 130° 37.92' W. long., to 54° 42.97' N. lat., 130° 37.95' W. long., to 54° 42.78' N. lat., 130° 38.10' W. long., to 54° 42.37' N. lat., 130° 38.43' W. long., to 54° 41.15' N. lat., 130° 38.97' W. long., to 54° 39.90' N. lat., 130° 38.97' W. long., to 54° 39.23' N. lat., 130° 39.30' W. long., to 54° 39.80' N. lat., 130° 41.58' W. long., to 54° 40.05' N. lat., 130° 42.37' W. long., to 54° 40.70' N. lat., 130° 44.72' W. long., to 54° 40.68' N. lat., 130° 44.98' W. long., to 54° 40.77' N. lat., 130° 45.85' W. long., to 54° 41.10' N. lat., 130° 48.52' W. long., to 54° 41.08' N. lat., 130° 49.28' W. long., to 54° 41.35' N. lat., 130° 53.30' W. long., to 54° 41.43' N. lat., 130° 53.65' W. long., to 54° 42.45' N. lat., 130° 56.30' W. long., to 54° 42.57' N. lat., 130° 57.15' W. long., to 54° 43' N. lat., 130° 57.68' W. long., to 54° 43.77' N. lat., 130° 58.92' W. long., to 54° 44.20' N. lat., 130° 59.73' W. long., to 54° 45.65' N. lat., 131° 03.10' W. long., to 54° 46.27' N. lat., 131° 04.72' W. long., to 54° 42.18' N. lat., 131° 13' W. long., to 54° 40.87' N. lat., 131° 13.90' W. long., to 54° 39.15' N. lat., 131° 16.28' W. long., to 54° 36.87' N. lat., 131° 19.37' W. long., to 54° 29.88' N. lat., 131° 33.80' W. long., to 54° 30.53' N. lat., 131° 38.02' W. long., to 54° 28.30' N. lat., 131° 45.33' W. long., to 54° 26.68' N. lat., 131° 49.47' W. long., to 54° 21.85' N. lat., 132° 02.90' W. long., to 54° 24.87' N. lat., 132° 23.65' W. long., to 54° 24.68' N. lat., 132° 24.48' W. long., to 54° 24.68' N. lat., 132° 24.58' W. long., to 54° 24.65' N. lat., 132° 26.85' W. long., to 54° 24.57' N. lat., 132° 38.27' W. long., to 54° 24.90' N. lat., 132° 39.77' W. long., to 54° 26' N. lat., 132° 44.20' W. long., to 54° 27.12' N. lat., 132° 49.58' W. long., to 54° 27.12' N. lat., 132° 50.70' W. long., to 54° 28.42' N. lat., 132° 55.90' W. long., to 54° 28.53' N. lat., 132° 56.47' W. long., to 54° 30.05' N. lat., 133° 07' W. long., to 54° 30.17' N. lat., 133° 07.72' W. long., to 54° 30.70' N. lat., 133° 11.47' W. long., to 54° 31.03' N. lat., 133° 14' W. long., to 54° 30.10' N. lat., 133° 16.97' W. long., to 54° 22.02' N. lat., 133° 44.40' W. long., to 54° 20.55' N. lat., 133° 49.35' W. long., to 54° 15.67' N. lat., 134° 19.82' W. long., to 54° 12.95' N. lat., 134° 23.78' W. long., to 54° 12.75' N. lat., 134° 25.05' W. long., to 54° 07.50' N. lat., 134° 56.40' W. long., to 54° 00.02' N. lat., 135° 45.95' W. long., to 53° 28.45' N. lat., 138° 45.33' W. long.

Credits

(In effect before 1985; am 5/31/85, Register 94; am 7/14/85, Register 95; am 4/18/86, Register 98; am 6/25/89, Register 110; am 6/28/97, Register 142; am 10/1/98, Register 147; am 10/12/2000, Register 156; am 3/11/2001, Register 157; am 2/22/2015, Register 213; am 7/1/2015, Register 214; am 6/17/2018, Register 226; am 9/19/2019, Register 231)

Authority: AS 16.05.251

Current with amendments received through the Quarterly Supplement, April 2021 (Register 237), and additional amendments from Register 238, received through April 30, 2021.

Alaska Admin. Code tit. 5, § 33.200, 5 AK ADC 33.200

End of Document

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of June, 2021, I caused the foregoing **PLAINTIFF-APPELLANT'S OPENING BRIEF** to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system. I further certify that I have caused the foregoing document to be sent by electronic mail to the following non-CM/ECF participant:

None

/s/ Julie A. Weis
Julie A. Weis