

# **Attachment 13**



UNITED STATES DEPARTMENT OF COMMERCE  
The Assistant Secretary for  
Oceans and Atmosphere  
Washington, D.C. 20230

JUL 21 1998

Mr. Ted Strong  
Executive Director  
Columbia River Inter-Tribal Fish Commission  
729 N. E. Oregon  
Portland, OR 97232

Dear Ted,

I am writing in response to your September 29, 1997 letter to Will Stelle describing your view of the federal trust responsibility to the four Columbia River Treaty Tribes and the relationship between this federal responsibility and the Endangered Species Act (ESA). My response to you has been coordinated with all the federal agencies involved in the salmon recovery effort and concurred in by the President's Council on Environmental Quality.

It is our policy that the recovery of salmonid populations must achieve two goals; 1) the recovery and delisting of salmonids listed under the provisions of the ESA; 2) the restoration of salmonid populations, over time, to a level to provide a sustainable harvest sufficient to allow for the meaningful exercise of tribal fishing rights. We see no conflict between the statutory goals of the ESA and the federal trust responsibility to Indian tribes. Rather the two federal responsibilities complement one another. Unfortunately, in light of the long-term decline of salmonid populations, we cannot achieve either goal within a short time frame. It is important that we achieve a steady upward trend toward ESA delisting in the near term, while making river and land management improvements for the long-term.

Our statement of the twin goals for salmonid populations listed under the ESA recognizes that the United States, and all federal agencies, stand in a trust relationship with all federally recognized Indian tribes and of the responsibilities that flow from that relationship. The federal trust obligation to Indian tribes is independent of the statutory duties of the federal agencies and informs the way such statutory duties are to be implemented. The United States Supreme Court has described certain characteristics of the trust relationship and the lower courts have implemented the trust in specific situations.<sup>1</sup> Hence, we understand the importance of the federal government's efforts to allocate the conservation burden for salmonids listed under the ESA in

<sup>1</sup> See, e.g., Seminole Nation v. U.S., 316 U.S. 286 (1942); U.S. v. Mitchell, 463 U.S. 206 (1983); Parravano v. Babbitt, 70 F.3d 539 (9th Cir. 1995), cert. denied, Parravano v. Babbitt, 518 U.S. 1016 (1996); Pyramid Lake Paiute Tribe v. U.S. Dept of the Navy, 898 F.2d 1410 (1990); Kittitas Reclamation District v. Sunnyside Valley Irrigation District, 763 F.2d 1032 (9th Cir. 1985); Joint Board of Control v. United States, 862 F.2d 195 (9th Cir. 1988); Confederated Tribes of the Umatilla Indian Reservation v. Alexander, 440 F. Supp. 553 (D. Or. 1977); Pyramid Lake Paiute Tribe v. Morton, 354 F. Supp. 252 (D.D.C. 1973).

THE DEPUTY ADMINISTRATOR



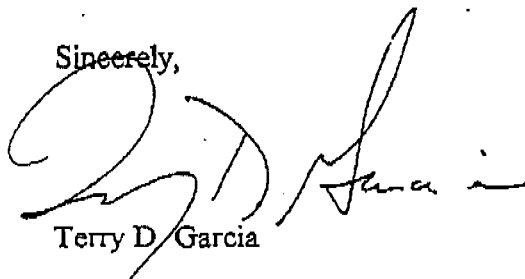
such a way that, among other things, it does not discriminate against tribal fishing rights and is implemented in the least restrictive manner. Accordingly, the tribes may reasonably expect, as a matter of policy, that tribal fishing rights will be given priority over the interests of other entities, federal and non-federal, that do not stand in a trust relationship with the United States.

The Secretaries of Commerce and Interior recognized the importance of harmonizing their trust responsibilities with their statutory obligations under the ESA in the Secretarial Order of June 5, 1997. The federal agencies will continue to consult with all affected tribes on a government to government basis as provided for in the President's Memorandum on Government to Government Relations with Native Americans, April 29, 1994, and Executive Order 13084 on Consultation and Coordination with Indian Tribal Governments, May 14, 1998.

The federal agencies will continue to join with the states and tribes to develop a comprehensive approach to the restoration of fish and wildlife resources in a manner that fulfills all obligations under federal law, including the trust obligations to Indian tribes. Toward that end, the federal government continues to support the "Three Sovereigns" process to develop a regional plan for the conservation of listed species and restoration of healthy, sustainable and harvestable populations of salmon.

We look forward to continuing to work with the people of the region, including the Columbia River Treaty Tribes, to accomplish salmon recovery.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry D. Garcia", written in a cursive style.

Terry D. Garcia