

2 **SSJM 8019** - H COMM AMD **ADOPTED 4/10/95**

3 By Committee on Natural Resources

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5 On page 1, beginning on line 1, strike the remainder of the joint  
6 memorial and insert the following:

7 "TO THE HONORABLE BILL CLINTON, PRESIDENT OF THE UNITED STATES, AND  
8 TO THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF  
9 REPRESENTATIVES, AND TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE  
10 UNITED STATES, IN CONGRESS ASSEMBLED, AND TO BRUCE BABBIT, SECRETARY OF  
11 THE INTERIOR:

12 We, your Memorialists, the Senate and House of Representatives of  
13 the State of Washington, in legislative session assembled, respectfully  
14 represent and petition as follows:

15 WHEREAS, The United States Congress has in this new session  
16 entertained, debated, and passed legislation that would prohibit  
17 federal mandates upon states without the coincident provision of the  
18 means necessary to implement the mandates; and

19 WHEREAS, To open the Washington territory to settlement, the United  
20 States entered into a series of treaties with Indian tribes in the  
21 Washington Territory in 1854 and 1855; and

22 WHEREAS, These federal treaties became binding on, indeed, a  
23 federal mandate on, the State of Washington upon its entry into  
24 statehood; and

25 WHEREAS, The following treaty clause secured fishing rights for the  
26 tribes: "the right of taking fish at usual and accustomed grounds and  
27 stations is further secured to said Indians in common with all citizens  
28 of the territory, and of erecting temporary houses for the purpose of  
29 curing, together with the privilege of hunting and gathering roots and  
30 berries on open and unclaimed lands; provided, however, that they shall  
31 not take shellfish from any beds staked or cultivated by citizens;" and

32 WHEREAS, In 1974, federal district court Judge Boldt held, and the  
33 United States Supreme Court later affirmed, that this clause entitled  
34 the treaty tribes to harvest up to fifty percent of each run of  
35 anadromous fish passing through ancestral tribal fishing areas; and

36 WHEREAS, In December 1994, federal district court Judge Rafeedie  
37 interpreted this same treaty provision to hold that the treaties also

1 include the tribal harvest of shellfish on ancestral tribal fishing  
2 areas, including shellfish from natural beds on privately owned  
3 tidelands; and

4 WHEREAS, This federal treaty provision, a mandate imposed on the  
5 state of Washington by the federal government, has already cost the  
6 state and numerous other parties millions of dollars in litigation  
7 costs. This most recent decision is having a significant negative  
8 impact on the state's economy, particularly on private citizens who  
9 depend on shellfish harvesting for their livelihood. The decision  
10 threatens to erode private property rights to tidelands and other  
11 privately held natural resources, and may deprive many Washington  
12 citizens of the opportunity for recreational shellfish harvesting; and

13 WHEREAS, Judge Rafeedie has issued an interim order which states  
14 that "the State of Washington and the United States should recognize  
15 and acknowledge their particular responsibility toward innocent  
16 purchasers of tidelands and the Tribes and should take affirmative  
17 steps to help reach a resolution of the matter;" and

18 WHEREAS, the United States government bears the overwhelming  
19 responsibility for the negotiation, implementation, and subsequent  
20 interpretation of the treaties; and

21 WHEREAS, In developing a remedy to this pending litigation, the  
22 United States should seek a solution that fulfills not only its trust  
23 responsibility to Indian citizens but also its trust to non-Indian  
24 citizens. The United States should not strip Washington tideland  
25 owners of their property rights, thereby creating a new class of  
26 victims; and

27 WHEREAS, Several property rights bills are now being considered in  
28 Congress, several of which could serve as vehicles for amendment to  
29 prevent this government "taking" of more than three thousand miles of  
30 privately owned beachfront properties in Western Washington;

31 NOW, THEREFORE, Your Memorialists respectfully request that the  
32 United States federal government act to fulfill its obligations to the  
33 state of Washington and all its citizens by doing the following:

34 (1) Acting promptly to clarify, interpret, or amend federal law  
35 including treaties as necessary, to assure that the exercise of Indian  
36 treaty rights does not extend to privately owned property, that Indian  
37 tribal members or employees may have access to private lands only with  
38 prior written permission of the owner, and that all citizens enjoy the  
39 same harvest rights except upon tribal reservation lands and federal

1 lands set aside for tribal purposes by the United States;

2 (2) Being part of the solution to the conflicts caused by this  
3 federal treaty by offering federally owned tidelands for tribal  
4 shellfish harvest as part of any implementation plan, for example,  
5 offering tidelands on Indian Island and at the Bangor Naval Base;

6 (3) Assisting the state of Washington with funds to help offset the  
7 costs of the state's appeal of the shellfish decision; and

8 (4) Providing funds for the purchase of tidelands for tribal and  
9 public recreational shellfish harvesting;

10 BE IT RESOLVED, That copies of this Memorial be immediately  
11 transmitted to the Honorable Bill Clinton, President of the United  
12 States, Bruce Babbitt, Secretary of the Interior, the President of the  
13 United States Senate, the Speaker of the House of Representatives, and  
14 each member of Congress from the State of Washington."

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