

# Vacate a criminal conviction related to treaty Indian fishing rights

## Author

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You can clear (vacate) certain Washington state convictions from your record if the conviction was related to your treaty Indian fishing rights. Learn how to do it and get the forms you need.

We have separate forms and instructions for vacating different types of criminal records.

## 1. Fast facts

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### What does it mean to “vacate” convictions?

Vacate is the legal term for “clearing” a conviction from your criminal record. Even though vacating a record cancels the judgement against you, it **does not** make the court record private. If you get a criminal record vacated, you can tell **anyone** who asked that you were **not** convicted of that offense.

### Why would I want to vacate a conviction?

It will:

- Give you some protection in background checks.
- Stop the State Patrol from releasing the record to the public.
- Officially “cancel” the conviction. GR 15(b)(8)  
([https://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.display&group=ga&set=gr&ruleid=gag](https://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=gr&ruleid=gag))

- **You can tell anyone, including someone who might hire you, that you were not convicted of that offense.**

## Will I need to go to a hearing?

**Maybe not.** The prosecutor might agree to a vacate order **if** you meet all legal requirements. Local practices vary. Ask the county prosecutor's office in the county where your conviction occurred if they'll agree to a vacate order. If they agree to the order, you probably won't have to go to a hearing.

You'll most likely have to go to the court many times even if you don't have a hearing. Prepare for multiple visits to the courthouse over a period of many weeks.

## If I vacate my record, will it be totally cleared?

If you're granted an order that vacates a conviction or record, Washington State Patrol (WSP) will remove the vacated conviction from your public criminal history record. This gives you **some** protection in some background checks.

There may still be a mention of your conviction or record in certain places even if you have the record vacated. But once you have a court order that vacates a conviction, you can show that to prove that the record was vacated any time it does show up.

## Will this remove all public information about the conviction?

**No.** It will not remove it from court records and computerized court indexes to court records, such as:

- JIS.
- SCOMIS.
- The Washington Courts public website (<http://www.courts.wa.gov>)

**Even if you have your record vacated, it can still show up in these ways:**

- **Information** about the court records **from the case** that led to the conviction **are** still public and accessible on Washington Courts public website

(<http://www.courts.wa.gov>).

- Prosecutors **can** still raise evidence of the vacated conviction during a later criminal prosecution or sexually violent predator commitment proceeding.
- **FBI records and private background check service records** may still have info about a vacated conviction.
- **Employers, landlords, and others doing background checks** might still find out about your conviction from sources including court indexes, law enforcement databases, and/or records collected by private data brokers.

## Can I have my conviction expunged?

No. In some states, expungement of a conviction means they delete it from your records entirely. There is no Washington law allowing for the deletion or destruction of an adult conviction record.

## Can I get my non-conviction data deleted?

Yes. You can ask Washington State Patrol (WSP) to delete **non-conviction** data. It is hard for information to qualify as non-conviction data under the rules. This could make it hard for you to get the information deleted. RCW 10.97.030(2) (<http://apps.leg.wa.gov/rcw/default.aspx?cite=10.97.030>) and 10.97.060 (<http://apps.leg.wa.gov/rcw/default.aspx?cite=10.97.060>) describe which kinds of information can be deleted from your record.

## I got a Vacate Order. What if agencies are still reporting that information anyway?

Under state law, law enforcement agencies must report accurate and complete criminal history info. No agency may report criminal history info concerning a conviction without checking with WSP to find out the most current and complete info available. RCW 10.97.040. (<https://app.leg.wa.gov/rcw/default.aspx?cite=10.97.040>)

You may be able to sue an agency that violates this requirement. This might make sense if, for example, you lost a job opportunity because of their mistake. RCW 10.97.110 (<http://apps.leg.wa.gov/RCW/default.aspx?cite=10.97.110>). You may be able to get attorney's fees.

The court file stays open to the public. A background check may still show your conviction if the person doing the background check looks at the court file. If that happens, you can show them the court order that vacated your conviction. That order is supposed to clear your record related to that information. Employers should accept the vacate order as proof that the record was cleared even if the court file information is still public.

Employees at an agency that keeps reporting your vacated conviction may be criminally liable. RCW 10.97.120 (<https://app.leg.wa.gov/rcw/default.aspx?cite=10.97.120>).

## 2. Fishing Convictions

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### **Is it possible to vacate a criminal conviction related to treaty Indian fishing rights?**

Yes. You can have the conviction vacated if both of these are true:

- You are a member of a tribe that has treaty Indian fishing rights.
- Your tribe has those treaty rights at the location where the offense occurred.

You can ask to vacate a fishing conviction for yourself or for a family member if that person has died. This guide has the instructions and forms you need.

If you need to ask to vacate a conviction related to your tribal fishing rights, the Native American Unit of the Northwest Justice Project might be able to help you.

### **What kind of fishing convictions can be vacated?**

You can vacate a criminal conviction related to treaty Indian fishing rights if all of these are true:

- The conviction was for violating certain Washington state laws related to catching **salmon or steelhead**.
- At the time of the arrest that led to the conviction, the fishing activities were protected by a treaty Indian fishing right **at the specific location** of the arrest.
- You are a member of a tribe or nation with those Indian fishing rights.

## How do I know if my tribe has treaty based Indian fishing rights protections?

You have treaty Indian fishing rights if you are a **member** of a Washington or Oregon Indian tribe that entered into one of these treaties:

- Treaty of Medicine Creek (included more than 60 tribal signatories which includes many of the tribes present today in Washington)
- Treaty of Point Elliott (Duwamish Tribe, Suquamish Tribe, Snoqualmie Indian Tribe, Snohomish Tribe of Indians, Lummi Nation, Upper Skagit Tribe, Swinomish Tribe, the Lower Skagit band of the Swinomish Tribe, Skokomish Indian Tribe, Sammamish peoples now part of Tulalip Tribes, Stillaguamish Tribe of Indians, Sauk- Suiattle Indian Tribe , many tribes now part of present day Muckleshoot Indian Tribe, Tulalip Tribes, the Nooksack are also likely included under this treaty)
- Treaty of Point no Point (also known as the Treaty with the S'Klallam and included all S'Klallam bands including Jamestown S'klallam Tribe and Port Gamble S'Klallam Tribe, Chimakum, Skokomish Indian Tribe)
- Treaty of Neah Bay (also known as the Treaty with the Makah Tribe)
- Treaty with the Walla Walla (Walla Walla tribe, Cayuse tribe, Confederate Tribes of the Umatilla Indian Reservation, Nez Perce Tribes, Confederated Tribes and Bands of Yakama Nation)
- Treaty with the Yakama (Confederated Tribes and Bands of Yakama Nation)
- Treaty with the Nez Perce Tribe (1855 treaty and included Nez Perce Tribe bands)
- Treaty with the Tribes of Middle Oregon (Wasco, Deschutes, Tenino, Middle Oregon- now part of the Confederated Tribes of Warm Springs and the Confederated Tribes and Bands of the Yakama Nation)
- Treaty of Olympia (Hoh Tribe, Quileute Tribe, Quinault Indian Nation, Coastal Treaty Tribes)
- Treaty with the Bitterroot Salish, Kootenai, and Pend d' Oreille (also known as the Hellgate Treaty)

Most tribes in Washington **do** have treaty Indian fishing rights. If you aren't sure if your tribe has these rights, try to contact your tribe's government to find out.

## Can I ask to vacate someone else's fishing convictions if the person has died?

Yes. You **can** file to vacate the record on behalf of your deceased family member. A family member (or official tribal representative) can ask to vacate another person's fishing conviction if the person is **deceased**.

## Can I ask to vacate someone else's fishing convictions?

**Only** if the person has died.

If you want to help someone who is still alive (like a tribal elder), the person themselves will have to be the person who files the case. You can use this guide and forms to help them.

## What information will I need for this?

You need this information:

- Which county court (Superior or District) the conviction happened in
- The date the court convicted happened
- Which state law (or "RCW") the court convicted you under. This is usually listed on the citation itself. **These are the typical RCWs for this kind of fishing related conviction:** RCWs 75.08.260, 75.12.060, 75.12.070, 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and 77.16.240.

If you still have the paperwork from the conviction, it should have the violation you were charged with listed on it.

If you don't have the paperwork anymore, you might need to get help finding this information. Start by calling the court clerk of the court you think the conviction would have happened in.

### 3. Before you file

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#### What documents do I need?

For treaty fishing rights related convictions, you'll need to prove **these 3 things**:

- The conviction was for violating certain Washington state laws related to catching **salmon or steelhead**.
- At the time of the arrest, the fishing activities were protected by a treaty Indian fishing right **at the specific location** of the arrest.
- You are a member of a tribe or nation with those Indian fishing rights.

Gather documents that show these things like:

- The offense ticket or citation itself
- Any court charging documents or any paper showing the fishing related charge
- Your tribal enrollment card
- Other proof of your membership in a tribe who has protected treaty rights to the waterways you were fishing in

#### Fill out your forms

Fill out the forms in Chapter 8 of this guide.

You'll need to get a special form signed by a representative from your tribe. Plan ahead as that can take some time to coordinate.

#### Get the signature from your tribal representative

Have a tribal representative fill out and sign the **Tribal Status Certification** on page 3 of the Motion and Declaration form. **Only** a tribal representative can fill this out.

## 4. File your forms

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If you meet the requirements and have gathered your documents, follow these steps:

1. **Gather your completed forms** from Chapter 8 of this guide.
2. **Contact the prosecutor's office.**

Before filing your papers or scheduling a court hearing, you should contact the prosecutor's office involved in your case to see if they might agree. This will take some time. When you call, you can say:

I'm filing a petition to vacate a treaty fishing rights conviction from (year). Which prosecutor in your office handles this issue?  
What's the best way for me to send paperwork to you?

Write down the prosecutor's name, then send that person a copy of your Motion (with any attachments) and a proposed Order. Wait a few days, then call that prosecutor to ask if they'll agree to sign an order vacating your conviction.

The prosecutor's office may sign off on an **Agreed Order** if you provide enough proof that you have met the requirements. If they do that, you probably won't have to have a court hearing.

If the prosecutor **doesn't** respond or agree, you can schedule a hearing and ask the judge to decide. You must follow court rules and properly notify the prosecutor of the hearing.



You have the **right** to file your motion and get a decision from a judge.

3. **Make 3 copies of your completed forms (except for the Proof of Service).**

4. **Call or visit the Superior Court Clerk's Office**  
([https://www.courts.wa.gov/court\\_dir/?fa=court\\_dir.county](https://www.courts.wa.gov/court_dir/?fa=court_dir.county)).

Tell the clerk you'll be filing a petition to vacate a treaty fishing rights related misdemeanor conviction. Tell the clerk you want to schedule a hearing on your motion 3 or 4 weeks from now.

Ask the clerk:

- What day and time can I schedule a hearing on my request to vacate?
- Which docket or calendar will the hearing be on?
- What courtroom will the hearing be in? (This may be assigned on the day of the hearing.)
- Is there an option to appear remotely? (Phone or video.)
- Do you have a local form I have to use to schedule a hearing?

If the clerk says you must use their local form, ask them where you can get that form. Otherwise, you can use the Notice of Hearing form we give you. Write in the hearing details you got from the clerk.

In some counties the judge may decide these motions **without a hearing**. If the clerk says you don't need a hearing date, ask when you can expect to get a decision. You still need to follow all the steps below (except preparing for and going to the hearing).

The clerk should **not** charge you a fee to file this motion.

**5. File the originals with the Superior Court Clerk.**

**To file in person:**

- Bring your originals and copies to the clerk's office
- Give the clerk your set of originals to file
- Ask the clerk to stamp your copies to show the date you filed the originals, OR stamp the copies yourself
- Take the stamped copies back from the clerk. The clerk keeps the originals

**To file by mail:** mail the court clerk your originals plus one set of copies with a postage-paid return envelope addressed to you.

**6. Deliver or mail working copies to the judge if local rules require it.** Ask the clerk where to deliver the judge's working copies. (*Skip this step if local rules don't require it.*)

**7. Deliver or mail a copy to the prosecutor's office right away.** Most counties require service at least **14 days** before a hearing. Ask the clerk if your county's deadline is different.

You can serve the prosecutor by hand delivery or regular mail.

**Hand Delivery** means handing a copy to someone who works in the prosecutor's office. Have them stamp the date on your copy of the same papers. Tell them you've scheduled a hearing, and they should give your papers to a prosecutor right away.

**Mail:** If you're mailing, you must mail your papers **more than 3 days before your deadline**.

- When counting, don't count the day of mailing, weekends, or court holidays (Example: if you mail something on a Monday, it counts as served on Thursday)
- If the third day is on a weekend or holiday, it is not "served" until the next court day

If you send your papers by regular first-class mail, you can have an extra copy sent by certified mail, return receipt requested, for extra proof of

mailing. You can staple the green return receipt card to the Proof of Service form. (This is not required.)

8. **File your Proof of Mailing or Hand Delivery.** As soon as you have mailed or delivered the delivered the papers to the prosecutor, fill out and sign the Proof of Mailing or Hand Delivery form. Then:
  - Make 3 copies
  - Take the original and copies to the court clerk's office
  - Give the original to the clerk for filing
  - Ask the clerk to stamp the date you filed the original on your copies
  - Bring your copies to the hearing.
9. **Get ready for and go to your court hearing.** Read the next chapters for what to say and do at the hearing.
10. **Get certified copies of the signed order from the clerk.** When the order is available, go to the clerk's office and ask for at least **2 certified copies** of the signed orders. The clerk will charge you for the copies.

Keep a certified copy of your order with you in case someone, like a prospective employer, gets negative information from some other source.

1. **After the hearing, follow up with the Washington State Patrol (WSP) and other agencies.**

## 5. What to say in court

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Before the hearing, make a short outline of what to say to the court. It should look like this:

### **Introduction:**

- My name is \_\_\_\_\_. Thank you for letting me be heard. I am bringing a motion to vacate my misdemeanor fishing conviction.

**Tell the judge you've met all the statutory requirements from RCW 09.96.060(4) because:**

- The conviction was for violating certain Washington state laws related to catching **salmon or steelhead**.
- At the time of the arrest, the fishing activities were protected by a treaty Indian fishing right **at the specific location** of the arrest.
- I am a member of a tribe or nation with those Indian fishing rights at that location. I provided a signed Tribal Status Certification declaration form with my Motion.

The judge may ask you questions. If so, answer them to the best of your ability.

Practice what you'll say from your outline **before** you go to court. It's okay to read from your notes when you speak to the judge.

## 6. Court hearing

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Bring your copies of the documents that the clerk's office and prosecutor's office date stamped. Also bring the extra copies of your **Proof of Mailing or Hand Delivery** and **Order on Motion to Vacate**.

If you have children, try to find someone to watch them while you go to court. The judge probably won't let them sit in the courtroom.

Don't bring a weapon, or something that could be mistaken for a weapon (like a pocketknife), to the courthouse.

Try to be in the courtroom at least 15 minutes before you were told to be there. Give yourself time to find parking, or the right transit stop, or to wait in line to get into the courthouse.

If your hearing is online, follow these tips for phone and video hearings.

When you get to the courtroom:

- Check in with the courtroom clerk. Usually, they are sitting at a desk close to the judge. **Tell the courtroom clerk your name because they need to know that you are there.**
- Find the prosecutor and introduce yourself. Go over any last-minute details with them before the hearing, like an agreed order.
- When the judge calls your case, walk up to the table or podium for lawyers in front of the judge. Wait for them to tell you that it is your turn to speak. **Follow your outline.**
- During the hearing, speak only to the judge. Speak only when it is your turn. **Don't interrupt** the judge or speak to the prosecutor, even if they interrupt or speak to you.
- Be polite, reasonable, and calm. If you're confused or don't understand something, politely tell the judge so and ask for clarification. If the judge asks you any questions, answer the best you can. If you don't know the answer to the judge's question, don't guess. Tell the judge you don't know the answer. If you need time to think, just tell the court you need a moment. Take your time.
- If the judge agrees with you and signs your order, ask the judge or courtroom clerk when the order will be available at the clerk's office.

## 7. Follow up

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### Check with Washington State Patrol & other agencies

**About a month** after the judge signs your vacate order, call WSP at (360) 534-2000. Ask WSP if they got your vacate order from the court and are working on processing it. (The clerk should have sent it.) If they don't yet have it, call the court clerk's office and ask them to send a copy to WSP.

**About 3 months** after you called the WSP to make sure they got your vacate order, you should check if your criminal history record with WSP is up-to-date and correct. Do this by ordering a new official and/or unofficial copy of your criminal history report.

Your criminal history info may have found its way into **other databases**. Contact the FBI, local law enforcement, Department of Corrections, Department of Licensing, and other agencies to ask them to remove their records about this info from public dissemination. You may need to send them a certified copy of the vacate order.

A **private data company** may have your conviction record. Ask the agencies to tell any private company that has gotten the record from them in the past to update their records and stop disseminating it because of the vacate order. You may need to send them a certified copy of your order.

Try to keep at least 1 certified copy of your order in case someone, like a prospective employer, gets negative info from some other source.

## 8. Forms

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Form attached:

**Motion and Declaration for an Order Vacating Conviction – Treaty Indian Fishing Rights** (CrRLJ 09.0500)

Form attached:

**Order on Motion Re: Vacating Conviction - Treaty Indian Fishing Rights** (CrRLJ 09.0700)

Form attached:

**Notice of Hearing (general civil)** (NJP General 008)

Form attached:

**Proof of Mailing or Hand Delivery (general civil)** (NJP General 002)

Follow the general rules to format and fill out court documents.

Any documents you file with the court may remain public.

### **Tips for filling out the Motion and Declaration for an Order Vacating Conviction – Treaty Indian Fishing Rights (CrRLJ 09.0500)**

Fill out the **motion** form to explain what you want the judge to do and why they should do it.

- Don't forget to have **page 3** signed by your Tribal Representative.
- Attach to your motion any documents you gathered that prove you meet the requirements.

### **Tips for filling out the Order on Motion Re: Vacating Conviction - Treaty Indian Fishing Rights CrRLJ 09.0700**

Fill out the **order** form the way you want the judge to sign it. This is a **proposed order** you'll ask the judge to sign at the hearing. If you're not sure about something in the order, leave it blank for the judge to complete.

### **Tips for filling out the Notice of Hearing (NJP General 008)**

Fill out the **Notice of Hearing** with details from the court clerk. You can try to get that information over the phone, or in-person when you file your papers. When choosing a date, leave yourself enough time to have the other party served.

**Many counties require you to use their own form.** Ask the clerk if they use a special Notice of Hearing form. If not, use ours.

### **Tips for filling out the Proof of Mailing or Hand Delivery (NJP General 002)**

Fill out this form after serving the other party. Whoever served the other party must sign it. Follow the rules for service after a case starts.

Check to be sure your server filled out the date of service, who the papers were delivered to, and how they were delivered. Also be sure the form lists all documents that were served. If your server leaves out a form, you won't have proof it was served.

**WashingtonLawHelp.org** gives general information. It is not legal advice. Find organizations that provide free legal help on our Get legal help page.



<div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div> <b>COURT OF WASHINGTON</b> <b>FOR</b> <div style="border-bottom: 1px solid black; display: inline-block; width: 80%;"></div>	<b>No.</b> <div style="border-bottom: 1px solid black; display: inline-block; width: 80%;"></div> <b>Motion and Declaration for an Order Vacating Conviction – Treaty Indian Fishing Rights (MTAF)</b>
<div style="border-bottom: 1px solid black; display: inline-block; width: 80%;"></div> <b>Plaintiff</b> <b>vs.</b> <div style="border-bottom: 1px solid black; display: inline-block; width: 80%;"></div> <b>Defendant.</b>	

### I. Motion

Applicant (name) \_\_\_\_\_, is the:

- ☐ defendant.
- ☐ the family member of the defendant, who is deceased.
- ☐ the official representative of the tribe of the defendant, who is deceased.

The applicant asks the court for an order vacating the defendant's misdemeanor, gross misdemeanor, or felony conviction/s relating to the regulation of fishing activities. This motion is based on RCW 9.96.060, the relevant case record and files, the declaration of the applicant, and the tribal status certification.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Applicant/Applicant's Attorney/ WSBA #

\_\_\_\_\_  
Print Name

### II. Declaration of Applicant

I, \_\_\_\_\_, state as follows:

2.1. On (date/s) \_\_\_\_\_ I/the defendant was convicted of the following offense/s regarding the regulation of fishing activities.

Cause No: _____	Count No: _____	Offense: _____
Cause No: _____	Count No: _____	Offense: _____
Cause No: _____	Count No: _____	Offense: _____

2.2 At the time of the arrest, I/the defendant claimed to be exercising a treaty Indian fishing right.

2.3 I am/the defendant was a (name of tribe or nation) \_\_\_\_\_  
Indian whose Tribe and tribal members may exercise treaty Indian fishing rights at the location where the offense/s occurred under reserved rights of the:

- ☐ Treaty of Medicine Creek; December 26, 1854 [10 Stats. 1132].
- ☐ Treaty of Point Elliott; January 22, 1855 [12 Stats. 927].
- ☐ Treaty of Point No Point; January 26, 1855 [12 Stats. 933].
- ☐ Treaty of Neah Bay; January 31, 1855 [12 Stat., 939].
- ☐ Treaty with the Walla Walla, June 9, 1855 [12 Stat., 945].
- ☐ Treaty with the Yakama; June 9, 1855 [12 Stat., 951].
- ☐ Treaty with the Nez Perce Tribe, June 11, 1855 [12 Stat. 957].
- ☐ Treaty with the Tribes of Middle Oregon, June 25, 1855 [12 Stat. 963].
- ☐ Treaty of Olympia; July 1, 1855, and January 25, 1856 [12 Stat., 971].
- ☐ Treaty with the Bitterroot Salish, Kootenai, and Pend d' Oreille, July 16, 1855 [12 Stat. 975].

2.4 I/the defendant was convicted of violating:

- ☐ RCW 75.08.260, RCW 75.12.060, RCW 75.12.070, RCW 75.12.160, RCW 77.08.020, or RCW 77.16.060;
- ☐ \_\_\_\_\_ (state statute or rule);

and the State of Washington has been enjoined from taking enforcement action under these statutes or rules to the extent that they interfere with a treaty Indian fishing right as determined under United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), or Sohappy v. Smith, 302 F. Supp. 899 (D. Oregon 1969), and any post-trial orders of those courts, or any other state supreme court or federal court decision (explain here and cite or attach any such additional or later cases or orders to this motion):

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at \_\_\_\_\_ Date: \_\_\_\_\_  
city state

► \_\_\_\_\_  
Sign here Print name

### III. Tribal Status Certification

The (name of tribe or nation) \_\_\_\_\_ certifies that at the time of defendant's state conviction/s, they were a recognized treaty Indian on contemporaneous tribal or Indian census rolls and that defendant (name) \_\_\_\_\_ was engaged in fishing within the customary fishing domain of a tribe or tribes under the (name of treaty) \_\_\_\_\_.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at \_\_\_\_\_ Date: \_\_\_\_\_  
*city state*

by Tribe or Nation Representative:



\_\_\_\_\_  
*Sign here*

\_\_\_\_\_  
*Print name*

<div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div> <div style="text-align: center;"><b>COURT OF</b></div> <div style="margin-bottom: 5px;"><b>WASHINGTON</b></div> <div style="margin-bottom: 5px;"><b>FOR</b> <div style="border-bottom: 1px solid black; display: inline-block; width: 350px;"></div></div> <div style="margin-top: 20px; text-align: right; padding-right: 10px;">Plaintiff</div> <div style="margin-top: 10px;"><b>vs.</b></div> <div style="margin-top: 20px; text-align: right; padding-right: 10px;">Defendant.</div>	<div style="margin-top: 20px;">No. <div style="border-bottom: 1px solid black; display: inline-block; width: 150px;"></div></div> <div style="margin-top: 10px;"><b>Order on Motion Re: Vacating Conviction - Treaty Indian Fishing Rights</b></div> <div style="margin-top: 10px;"> <input type="checkbox"/> Granted (<b>ORVCJG</b>)  <input type="checkbox"/> Denied (<b>ORVCJD</b>)         </div> <div style="margin-top: 5px;"><b>Clerk's Action Required</b></div>
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### I. Basis

**This matter** came before the court on applicant's motion for order vacating the defendant's misdemeanor, gross misdemeanor, or felony conviction/s relating to the regulation of fishing activities pursuant to RCW 9.96.060. The applicant is the ☐ defendant ☐ the family member of the defendant, who is deceased ☐ the official representative of the tribe of the defendant, who is deceased. The court heard argument of the parties, if any, and considered the relevant case records and files, and the pleadings submitted on the matter.

### II. Findings

- 2.1 ☐ Adequate notice ☐ was ☐ was not given to the appropriate parties and agencies.
- 2.2 Defendant  satisfied the following requirements of RCW 9.96.060:
- ☐ Prior to January 1, 1975, the Defendant was convicted of
- Cause No:  Count No:  Offense:
- Cause No:  Count No:  Offense:
- Cause No:  Count No:  Offense:

The State of Washington has been enjoined from taking enforcement action under the statutes or rules listed above to the extent that it interferes with a treaty Indian fishing right as determined under United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), or

Sohappy v. Smith, 302 F. Supp. 899 (D. Oregon 1969), and any post-trial orders of those courts, or any other state supreme court or federal court decision (explain here and cite or attach any such additional or later cases or orders to this order):

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- ☐ The defendant claimed to be exercising a treaty Indian fishing right at the time of arrest.
- ☐ The defendant is/was a (name of tribe or nation) \_\_\_\_\_ Indian whose Tribe and tribal members may exercise treaty Indian fishing rights at the location where the offense/s occurred under reserved rights of the treaty identified in the application.
- ☐ Other: \_\_\_\_\_

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### III. Order

Based on the above findings, the court:

- 3.1 ☐ Denies the application.
- 3.2 ☐ Grants the application. The court vacates the conviction records of the offense/s listed in paragraph 2.2.

**The court also orders that:**

- 3.3 ☐ The defendant's guilty plea for the offense/s listed in paragraph 2.2 is withdrawn and a not guilty plea is entered.
- ☐ The guilty verdict for the offense/s listed in paragraph 2.2 is set aside.
- 3.4 The charging document is dismissed and the judgment and sentence is vacated for the offense/s listed in paragraph 2.2.
- 3.5 The defendant shall be released from all penalties and disabilities resulting from the offense/s listed in paragraph 2.2, and the conviction/s of the offense/s shall not be included in the defendant's criminal history for purposes of determining a sentence in any subsequent conviction. However, the conviction/s may be used in a later criminal prosecution.
- 3.6 For all purposes, the defendant may state that he or she has never been convicted of the offense/s listed in paragraph 2.2.

3.7 ☐ The applicant has paid costs incurred by the court and probation services in the amount of \$\_\_\_\_\_.

☐ The applicant is indigent and costs are waived. RCW 9.96.060(6).

3.8 The clerk of the court shall immediately transmit a certified copy of this order to the Washington State Patrol and to \_\_\_\_\_ (local law enforcement agency) which agencies shall immediately update their records to reflect the vacation of the conviction/s of the offense/s listed in paragraph 2.2. The Washington State Patrol shall transmit a copy of this order to the Federal Bureau of Investigation. The Washington State Patrol or local law enforcement agency may not disseminate or disclose a conviction that has been vacated under RCW 9.96.060 to any person, except to other criminal justice enforcement agencies. RCW 9.96.060(7).

Dated: \_\_\_\_\_

\_\_\_\_\_  
**Judge/Commissioner**

Submitted by:

\_\_\_\_\_  
Applicant/Attorney for Applicant/WSBA #

\_\_\_\_\_  
Print Name

_____ <b>Court of Washington, County of</b> _____	
Petitioner / Plaintiff: _____	No. _____ Notice of Hearing (No mandatory form)
And Respondent / Defendant: _____	Clerk's action required: 1 <input type="checkbox"/> Need interpreter ( <i>language</i> ) _____

## Notice of Hearing

**To the Court Clerk and all parties:**

**1. A court hearing has been scheduled:**



for: \_\_\_\_\_ at: \_\_\_\_\_ (check one) ☐ a.m. ☐ p.m.  
           *date*                                      *time*

at: \_\_\_\_\_ in \_\_\_\_\_  
       *court's address*                                      *room or department*

\_\_\_\_\_  
*docket / calendar or judge / commissioner's name*

☐ Online or phone: \_\_\_\_\_

**2. The purpose of this hearing is (specify):** \_\_\_\_\_  
 as requested by the (check one) ☐ Petitioner/Plaintiff ☐ Respondent/Defendant

► \_\_\_\_\_  
*Person asking for hearing signs here*                      *Print name here (and WSBA #, if lawyer)*                      *Date*

I agree to accept legal papers for this case at (check all that apply):

☐ the following address (*this does **not** have to be your home address*):

\_\_\_\_\_  
*Street or mailing address*                                      *city*                                      *state*                                      *zip*

☐ Email: \_\_\_\_\_

\_\_\_\_\_ Court of Washington, County of \_\_\_\_\_

Petitioner or Plaintiff:

\_\_\_\_\_

And Respondent or Defendant:

\_\_\_\_\_

No. \_\_\_\_\_

Proof of Mailing or Hand Delivery  
(No mandatory form)

## Proof of Mailing or Hand Delivery

Server declares:

**1. I am (check one):**

- ☐ the Petitioner or Plaintiff  
☐ the Respondent or Defendant  
☐ (name): \_\_\_\_\_

and I am competent to be a witness in this case.

**2. Service.** On (date): \_\_\_\_\_, I served copies of court documents  
to (name of party or lawyer served): \_\_\_\_\_ by:

☐ **mail** (check all that apply): ☐ first class ☐ certified ☐ other

\_\_\_\_\_  
Mailing address city state zip

☐ **email** to (address): \_\_\_\_\_  
(only if allowed by agreement, order, or your county's Local Court Rule)

☐ **fax to** (number): \_\_\_\_\_  
(only if allowed by agreement, order, or your county's Local Court Rule)

☐ **hand delivery** at (time): \_\_\_\_\_ (check one) ☐ a.m. ☐ p.m. to this address:

\_\_\_\_\_  
Street address city state zip



**For hand delivery:** I left the documents (*check one*):

- ☐ with the party or lawyer named above.
- ☐ at the lawyer's office with the clerk or other person in charge.
- ☐ at the lawyer's office in a conspicuous place because no one was in charge.
- ☐ with (*name*): \_\_\_\_\_, at the address listed in court documents where the party agreed to receive legal papers for this case.

**3. List all documents you served (*check all that apply*)**

*(The most common documents are listed below. Check only those documents that were served. Use the "Other" box to write in the title of each document you served that is not already listed.)*

- ☐ Notice of Hearing (*for date*) \_\_\_\_\_
- ☐ Motion for \_\_\_\_\_
- ☐ Declaration of \_\_\_\_\_
- ☐ Order on/for: \_\_\_\_\_
- ☐ Other:

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**4. Other information (if any)**

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I declare under penalty of perjury under the laws of the state of Washington that the statements on this form are true.

Signed at (*city and state*): \_\_\_\_\_ Date: \_\_\_\_\_



\_\_\_\_\_  
*Server signs here*

\_\_\_\_\_  
*Print name*