

Battle lines drawn in fish test

Fishing closures are a necessity to the conservation of salmon in Washington, top officials of the State Fisheries Department testified in the Indian fishing rights test case yesterday afternoon.

Testifying, for the State, were Milo Moore, director, and Edward Mains, research division supervisor.

On trial in Skagit County Superior Court is Joe McCoy, Swinomish Indian. Arrested near the mouth of the Skagit River's North Fork, he is charged with salmon fishing in a closed season.

Moore, who said he previously lived along the Skagit about 40 years, said he feels the only way salmon fishing could be effectively "rehabilitated" would be a halt to all salmon fishing for two full salmon life cycles.

In lieu of such a drastic measure, he pointed out, temporary fishing closures at certain times are a must.

REGULATION OF fishing at certain places, particularly near river mouths and immediately below falls and dams — places fish congregate — is a necessary tool in the conservation of salmon runs, Mains said.

But, he added, these regulations must be applied to all fishermen.

"A few individual fishermen unregulated on the Skagit could definitely destroy its (salmon) runs," he emphasized. "By gill net they could take up to 98 per cent of a run."

TWO FISHERIES patrolmen involved in McCoy's arrest, W. A. Guffler and Robert Gruett, also testified yesterday.

Opening statements of the trial brought out that McCoy's arrest was more-or-less by mutual consent between the Indian tribe and the Fisheries Department, both of whom want a judicial review of Indian fishing rights.

Indians contend an 1855 treaty gives them unrestricted fishing rights in their "usual and customary" fishing waters.

The State says they have unrestricted fishing rights on, but not off, reservations.

Presiding Judge Charles F. Stafford turned thumbs down on a State move to introduce as evidence a chart showing the relationship between Indian fishing and salmon escapement on the Puyallup River.

Paul N. Luvera Jr., deputy prosecutor aiding Prosecutor Walter J. Deierlein Jr. with the State's case, said the chart "tends to show the need for salmon fish conservation by the State."

Defense counsel Harwood (Bill) Bannister objected that the chart was not relevant to the present case.

Sustaining the objection, Judge

Stafford said: "It has not been shown it relates to the case at hand."

Also at issue in the trial is whether McCoy was on or off the Swinomish Reservation when arrested.

Bannister, in his opening statement, said the Swinomish Reservation extends to the present channel of the Skagit River's North Fork near Goat Island.

The State is trying to prove the reservation's boundary only extends to the fork's old channel, near McGlenn Island and Pull and Be Dammed Point.

State witness Mat Bessner, 93, and a North Fork area resident

about 83 years, testified that in his boyhood, a "deep" channel ran near the island and the point. Later, the channel was moved by the construction of jetties, he said.

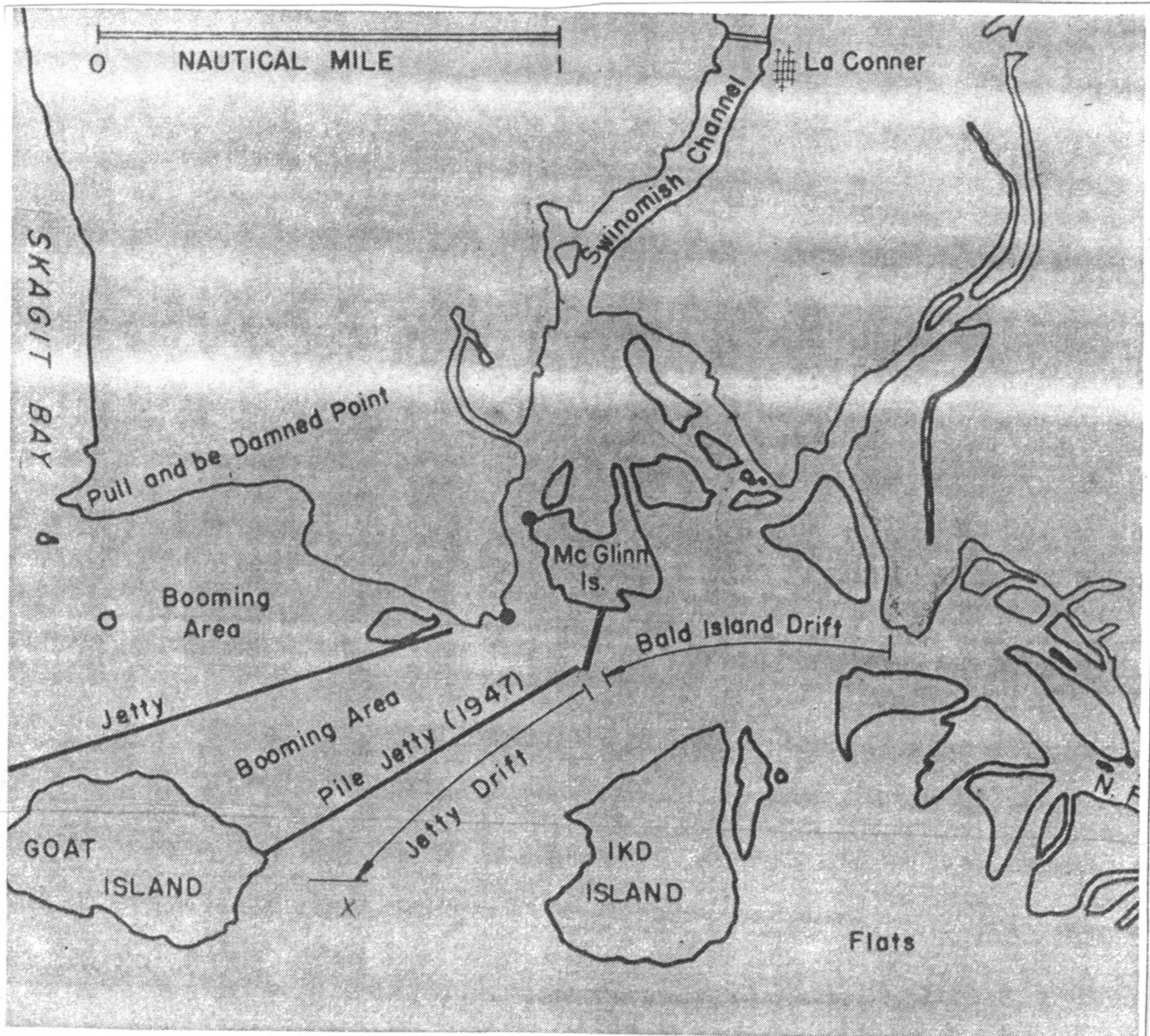
Under United States treaty provisions, the reservation extends to the "low water tide mark," defense counsel said yesterday.

The State is attempting to show that the old channel described by Bessner stayed underwater at high and low tide.

Under questioning by both the State and defense counsel, Bessner said the old channel never went dry and was "too deep to walk through."

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TEST CASE AREA — Small "X" marks approximate spot where Swinomish Indian Joe McCoy was arrested on fishing charge. Indians contend he was on reservation, which they say extends south (down) to channel of Skagit River's North Fork, along "Jetty Drift." State argues reservation only extends south to old fork channel, which ran along McGlinn Island and Pull and Be damned Point. Joshua Green, Seattle banker and former steam boater, testified today that in the late 1880s four-foot-draft steamers regularly used old channel at "any stage of tide." North Fork mouth is at "N."

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