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from Noun Project

Vacate a Criminal Conviction related to Treaty Indian Fishing Rights



Part 1. Questions and Answers

What does this mean?

Read [Get Misdemeanor Convictions off Your Criminal Record](#). Find it at WashingtonLawHelp.org.

Does this apply to me?

Yes, if you are a member of a Washington or Oregon Indian tribe that entered into one of these treaties:

- Treaty of Medicine Creek
- Treaty of Point Elliott
- Treaty of Point no Point
- Treaty of Neah Bay
- Treaty with the Walla Walla
- Treaty with the Yakama
- Treaty with the Nez Perce Tribe
- Treaty with the Tribes of Middle Oregon
- Treaty of Olympia

- Treaty with the Bitterroot Salish, Kootenai, and Pend d' Oreille

When can I do this?

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

- You have a conviction for violating certain Washington state laws related to catching salmon or steelhead
- At the time of the arrest that led to the conviction, you claimed to be exercising a treaty Indian fishing right

What info will I need beforehand?

You need this info:

- Which court (county, superior or district) convicted you
- The date the court convicted you
- Which state law ("RCW") the court convicted you under

If you still have the paperwork from your conviction, it should have this info. If you do not have this paperwork anymore, you might need to get help tracking this info down.

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 prosecutor's office in the county that convicted you if they will agree to a vacate order.

My father was convicted of this. He has passed away. Can I get rid of this conviction anyway?

Yes. A family member or official tribal representative can do this on behalf of a defendant who is now deceased.



Part 2. Steps to ask a court to vacate a criminal conviction related to treaty Indian fishing rights

Step 1: Fill out the forms in this packet. Find out what else you need.

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- ❖ It is better to **type** these. If you must hand-write, your penmanship must be clear and easy to read.
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In some counties, you must include copies of your judgment and sentence, and criminal history with your motion. Contact the clerk of the court that sentenced you. Ask what you need to include.

Step 2: Have a tribal representative fill out and sign the Tribal Status Certification.

Only a tribal representative can fill this out. It is page 3 of the Motion and Declaration.

Step 3: Schedule a Hearing Date. Fill out the Notice of Hearing.

Contact the Court Clerk again. Get a hearing date and time. You should schedule it three to four weeks in advance.

Ask the Clerk if they have a special form you must use to give notice of the hearing time and date. If not, use the **Notice of Hearing** form here.

Step 4: Copy, file, and serve the documents.

- 1. Copy:** Make **three** complete sets of all documents. You will have one set of originals and two copies.

- 2. File:** At the Clerk's office, file your originals of the **Motion and Declaration for an Order Vacating Conviction – Treaty Indian Fishing Rights** and **Notice of Hearing**. Have the clerk date stamp every set of your documents (the first page of each document in the set).
- 3. Serve:** Go to the prosecutor's office. Hand someone who works there a copy of the **Motion and Declaration** and **Notice of Hearing**. Have them date stamp the same set of documents the Court Clerk stamped. Tell the person who receives the documents that there is a notice of a hearing that will happen very soon and they should give your documents to a prosecutor right away.

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- ❖ The prosecutor might agree to your motion to vacate. After you serve the prosecutor's office, try to call the prosecutor who handles vacate motions. Ask if they will agree to your motion.
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Step 5: Fill out and file the Declaration of Service.

Fill out the **Declaration of Service** form here. Put **how** you sent **what** papers to **whom** and **when**.

Make three copies. File the original with the Court Clerk before your hearing date. Have the clerk date-stamp all copies. Bring the three copies to the hearing:

- ✓ One for yourself
- ✓ One for the prosecutor
- ✓ One for the judge

Step 6: Get ready for and go to the hearing.

Fill out everything in the **Order on Motion Re: Vacating Conviction – Treaty Indian Fishing Rights** here, except where the judge signs and date it.

The prosecutor may agree to present an Agreed Order to the judge for the judge's signature. If not, make and bring **three** copies of your proposed Order to the hearing.

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

- Brief intro. Introduce yourself. Thank the court for hearing your motion.
- Explain that you are bringing a motion to vacate criminal history records. State that you have met the law's requirements.
- Present a copy of your proposed order to the prosecution and judge. Explain that your proposed order uses the language in [RCW 9.96.060](#).
- Ask the court if it has any questions. Answer them as best you can.

Bring at least two extra copies of your documents (three copies of your Declaration of Service and Order on Motion Re: Vacating Conviction, including the copy the court and prosecutor date stamped).

- Be 30 minutes early.
- Dress as if you were going to a job interview.
- Do **not** bring your children, if possible.
- Check in with the clerk of the judge's courtroom.
- Try to find the prosecutor. Go over any last minute details with them before the hearing.
- When they call your case, walk up to the table or podium for lawyers in front of the judge. Wait for the judge to tell you it is your turn to speak. Follow your outline.
- Speak only to the judge, only when it is your turn. Do **not** interrupt the judge or speak to the prosecutor, even if they interrupt or speak to you. Be polite, reasonable, and calm. If you are confused or do not understand something, politely tell the judge so. Ask for clarification.

Step 7: Get an order. Send the orders to Washington State Patrol (WSP) & other agencies. Follow up with those agencies.

If the judge grants and signs your orders, ask that the judge or courtroom clerk give you the orders. File it at the Court Clerk's office and get **five** copies of the orders. **If the orders do not have the court's file stamp, Washington State Patrol will not accept it.** There will be a charge.

Fill out and sign the attached letter to WSP asking them to stop giving out to the public info about your conviction. The letter also asks them to forward this info to other agencies, including the Department of Corrections, local law enforcement, and FBI. You **must** enclose the copy of the signed order you got from the Court Clerk after your hearing.

Mail this letter with delivery confirmation requested to the WSP at the same address where you sent your criminal history report request. **Do not send by certified mail.** After a few weeks have passed, call WSP. Make sure they got the order and are processing your request.

About ninety days after you got the Vacate Order, you should confirm that 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. Ask them to remove their records concerning this info from public dissemination.

A **private data company** may have your conviction record. Ask the agencies to tell any private company that got the record from them in the past to update their records and stop giving it out because of the vacate order. You may need to send them a court-stamped copy of your order.

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- ❖ You should keep a court-stamped copy of your order with you in case someone like a **prospective employer** gets negative info from some other source.
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I got a Vacate Order. Agencies are still reporting that info anyway.

Contact WSP and the court. Make sure they have taken all steps to follow the vacate order.

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.

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- ❖ If someone asks for info about your conviction, you can show your Vacate Order. It confirms you have the right to say you were not convicted of that offense.
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Get Legal Help

Outside King County: Call the CLEAR Hotline at 1-888-201-1014 weekdays from 9:15 a.m. - 12:15 p.m.

In King County: Call 211 for referral to a legal services provider weekdays from 8:00 am – 6:00 pm.

Persons 60 and Over can call CLEAR*Sr at 1-888-387-7111 (statewide).

Deaf, hard of hearing or speech impaired callers can call CLEAR or 211 (or toll-free 1-877-211-9274) using a relay service of their choice.

Apply online with [CLEAR*Online](https://nwjustice.org/get-legal-help) - nwjustice.org/get-legal-help

CLEAR and 211 will provide a free interpreter.

This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice.
This information is current as of October 2019.

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_____ COURT OF WASHINGTON
FOR _____

_____ Plaintiff
vs.
_____ Defendant.

No. _____

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

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: _____

III. Tribal Status Certification

The (name of tribe or nation) _____ certifies that at the time of defendant's state conviction/s, he/she was 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

_____ COURT OF WASHINGTON
FOR _____

_____ Plaintiff
vs. _____ Defendant.

No. _____
Notice of Hearing
(NTHG)

To: the court clerk of _____ County Superior Court
 _____ District/Municipal Court
To: _____ City/County Prosecuting Attorney's Office
To: _____
To: _____

Please take notice that on _____ at _____ a.m./p.m., at
_____ Court, _____, the
undersigned will ask the court for an order vacating conviction/s related to the regulation of fishing
activities in this matter pursuant to RCW 9.96.060.

Dated: _____

Applicant/Attorney for Applicant/ WSBA #

Print Name

<div style="text-align: center; border-bottom: 1px solid black; margin-bottom: 5px;">COURT OF</div> <div style="display: flex; justify-content: space-between;"> WASHINGTON FOR </div> <div style="border-top: 1px solid black; margin-top: 10px; padding-top: 5px;"> Plaintiff </div> <div style="margin-top: 10px; padding-top: 5px;"> <p style="text-align: center;">vs.</p> </div> <div style="border-top: 1px solid black; margin-top: 10px; padding-top: 5px;"> Defendant. </div>	No. _____ Order on Motion Re: Vacating Conviction - Treaty Indian Fishing Rights <input type="checkbox"/> Granted (ORVCJG) <input type="checkbox"/> Denied (ORVCJD) Clerk's Action Required
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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):

- 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: _____

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

<p style="text-align: center;">_____ COURT OF WASHINGTON FOR _____</p>	<p>No. _____</p>
<p style="text-align: right;">_____ Plaintiff</p> <p>vs.</p> <p>_____</p> <p>Defendant.</p>	<p>Declaration of Service</p>

I.

I DECLARE that:

A. I hand-delivered/mailed by regular mail First Class U.S. Mail postage prepaid/mailed by certified mail First Class U.S. mail return receipt requested postage prepaid/e-mailed/faxed (circle one or more) to the Office of the Prosecutor of _____ County the following documents:

1. Notice of Hearing to Vacate Conviction;
2. Defendant's Motion and Declaration for Order Vacating Marijuana Conviction

On/at the following date, time and place:

Date: _____ Time: _____ a.m./p.m.

Address: _____

B. I hand-delivered/mailed by regular mail First Class U.S. Mail postage prepaid/mailed by certified mail First Class U.S. mail return receipt requested postage prepaid/e-mailed/faxed (circle one or more) to _____ (the identified victim)

To the Prosecuting Attorney's Office to be forwarded to victim identified above.

The following document:

1. Notice of Hearing re Defendant's Motion for Order Vacating Marijuana Conviction.

On/at the following date, time and place:

Date: _____ Time: _____ a.m./p.m.

Address: _____

II.

In accordance with RCW 9A.72.085 and GR 13, I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at _____, on ____ day of _____, 20__.
(City and State)

Signature

Printed/Typed Name

DATE: _____

TO: Records Officer
Washington State Patrol
Criminal Records and Identification Section
P.O. Box 42633
Olympia, WA 98504-2633

RE: Court order vacating record of _____,
Date of birth _____

Dear Officer:

Pursuant to RCW 9.94A.640, on _____, 20____, the court entered the attached order vacating my conviction record. The court has also ordered me released from all penalties and disabilities resulting from my conviction.

Please seal the record from dissemination in background checks. This will allow me to state, consistent with the court's order, that I have no conviction for this offense. You may disseminate a conviction only until a court vacates it. WAC 446-20-030.

Please remove the record from your databases and notify other agencies as appropriate of the court order and its impact. State Patrol can seal the conviction from public disclosure as to its own records and the records of other law enforcement agencies who may have given you the record (such as local police) or gotten it from you (such as the FBI). RCW 10.97.040.

Please confirm in writing once you have taken these actions. This will greatly help to put the past behind me and be a productive member of our community. I appreciate your cooperation.

Sincerely,

Print or Type Name

Address

Phone