therefore cannot be dismissed short of summary judgment or trial.

REVERSED and REMANDED.

Pietro PARRAVANO; Wayne Heikkila; Marguerite Dodgin; Earl Carpenter; David Bitts; Liz Henry; Norman L. De Vall; Pacific Coast Federation of Fishermen's Associations, Inc.; Humboldt Fishermens' Marketing Association; Caito Fisheries, Inc.; Golden Gate Fisherman's Association; Salmon Trollers Marketing Association, Plaintiffs–Appellants,

v.

Bruce BABBITT, Secretary of the United States Department of Interior; Ron Brown, Secretary, United States Department of Commerce, Defendants–Appellees,

and

Sue MASTEN, Intervenor–Appellee.

No. 94–16727.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted Oct. 17, 1995.

Decided Nov. 16, 1995.

Commercial fishermen and commercial fishing associations brought action against Secretaries of Interior and Commerce alleging improper reduction of Klamath chinook ocean harvest rate for one fishing season. In separate orders, the United States District Court for the Northern District of California, Thelton E. Henderson, Chief Judge, 837 F.Supp. 1034, and 861 F.Supp. 914, granted partial summary judgment in favor of Secretaries and dismissed remaining claims. Fishermen appealed. The Court of Appeals, Pregerson, Circuit Judge, held that: (1) federally reserved fishing rights vested in Hoopa Valley and Yurok Tribes by executive orders and by 1988 Hoopa-Yurok Settlement Act constituted "other applicable law" within meaning of Magnuson Fishery Conservation and Management Act; (2) protection of upstream tribal fishing rights depended on coordinating regulation of ocean and river fishing; and (3) issuance of emergency regulations reducing ocean harvest limits of Klamath chinook were not arbitrary, capricious, or an abuse of discretion.

Affirmed.

1. **Federal Courts** ⇨776

Court of Appeals reviews district court's grant of summary judgment de novo.

2. **Federal Courts** ⇨776

Court of Appeals reviews district court's interpretations of statutes and regulations de novo.

3. **Fish** ⇨12

With respect to action taken by Secretary of Commerce under Magnuson Act, Court of Appeals has limited judicial review and may only invalidate the challenged action if it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C.A. § 706(2)(A); Magnuson Fishery Conservation and Management Act, § 305(b), as amended, 16 U.S.C.A. § 1855(b).

4. **Indians** ⇨4

Court of Appeals must assume that Department of Interior has been given reasonable power to discharge effectively its broad responsibilities in area of Indian affairs and, thus, although it reviews questions of statutory interpretation de novo, in reviewing secretary's actions, Court of Appeals gives substantial deference to Secretary's interpretation of applicable statutes and executive actions that give rise to tribal rights.

5. **Federal Courts** ⇨776

Statutory interpretation and standing issues raised under claim of River Basin Fishery Resources Restoration Act and Trinity Basin Act are reviewed de novo. Klamath River Basin Fishery Resources Restoration

Act, § 1, 16 U.S.C.A. § 460ss; Act, October 24, 1984, § 1 et seq., 98 Stat. 2721.

6. Indians ⇐3(3), 12

Rule of construction applicable to executive orders creating Indian reservations is same as that governing interpretation of Indian treaties; executive orders, no less than treaties, must be interpreted as the Indians would have understood them and any doubtful expressions in them should be resolved in Indians' favor.

7. Indians ⇐12

In interpreting statutes that terminate or alter Indian reservations, Court of Appeals construes ambiguities in favor of Indians, and rights arising from these statutes must be interpreted liberally, in favor of Indians.

8. Indians ⇐32.10(1)

Indian fishing rights that exist under federal law may constitute "other applicable law" for purpose of section of Magnuson Act permitting Secretary of Commerce to issue emergency regulations to achieve consistency with national standards set forth in Act and "any other applicable law." Magnuson Fishery Conservation and Management Act, §§ 303(a)(1)(C), 304(a)(1)(B), as amended, 16 U.S.C.A. §§ 1853(a)(1)(C), 1854(a)(1)(B).

See publication Words and Phrases for other judicial constructions and definitions.

9. Indians ⇐5

When it comes to protecting tribal rights against nonfederal interests, it makes no difference whether those rights derived from treaty, statute or executive order, unless Congress has provided otherwise.

10. Indians ⇐3(3)

Difference in form between treaties and seemingly more mundane instruments of law, such as statutes, executive orders, and federal regulations, should not substantially alter judicial methodology in federal Indian law decisions where such nontreaty enactments embody agreements with tribes that would have been handled by treaty prior to 1871, when Congress suspended process of treaty negotiations and delegated power to President to create specified numbers of Indian reservations. 25 U.S.C.A. § 71.

11. Indians ⇐32.10(1)

As authorized by Congress, 1876 and 1891 executive orders creating and extending Hoopa Valley Reservation for "Indian purposes" along main course of Klamath River necessarily included Hoopa Valley and Yurok Tribes' traditional salmon fishing as one of those purposes.

See publication Words and Phrases for other judicial constructions and definitions.

12. Indians ⇐32.6

In general, hunting and fishing rights arise by implication when reservation is set aside for Indian purposes.

13. Indians ⇐32.10(3)

Hoopa-Yurok Settlement Act of 1988, partitioning extended Hoopa Valley Reservation into Yurok Reservation and Hoopa Valley Reservation, did not divest Hoopa Valley and Yurok Tribes of their federally reserved fishing rights, even though Act did not explicitly set aside fishing rights. Hoopa-Yurok Settlement Act, § 1, 25 U.S.C.A. § 1300i.

14. Indians ⇐12

Barring explicit congressional instructions to contrary, Court of Appeals must construe any ambiguities in 1876 and 1891 executive orders creating and extending Hoopa Valley Reservation and 1988 Hoopa-Yurok Settlement Act, partitioning extended reservation, in favor of Hoopa Valley and Yurok Tribes. Hoopa-Yurok Settlement Act, §§ 1–14, 25 U.S.C.A. §§ 1300i to 1300i–11.

15. Indians ⇐4, 32.10(1)

Trust responsibility over Indian tribe's rights, including fishing rights, extends not just to Interior Department but attaches to federal government as a whole, and, in particular, includes trust obligation to protect Yurok and Hoopa Valley Tribes' rights to harvest Klamath chinook salmon.

16. Indians ⇐32.10(1)

Secretary of Commerce did not act arbitrarily or capriciously when he reformulated fishing recommendations of Pacific Fishery Management Council by issuing emergency

regulations reducing ocean harvest limits of Klamath chinook, pursuant to Magnuson Act provision for such regulations in order to conserve salmon runs and protect against violations of "other applicable law," which included federally reserved fishing rights of Hoopa Valley and Yurok Tribes under 1988 Hoopa-Yurok Settlement Act; Secretary was trustee of tribal interests as well as administrator of Magnuson Act and protection of upstream tribal fishing rights depended on coordinating regulation of ocean and river fishing. Magnuson Fishery Conservation and Management Act, §§ 2 et seq., 304, 305(b), as amended, 16 U.S.C.A. §§ 1801 et seq., 1854, 1855(b); Hoopa-Yurok Settlement Act, §§ 1–14, 25 U.S.C.A. §§ 1300i to 1300i–11.

James M. Johnson, Olympia, Washington, for plaintiffs-appellants.

Jacques B. Gelin, United States Department of Justice, Washington, DC, for defendants-appellees.

George Forman, Alexander & Karshmer, Berkeley, California, for intervenor-appellee.

Thomas F. Gede, Special Assistant Attorney General, Sacramento, California, for amicus States of California, Idaho, Nevada, North Dakota, Oklahoma, South Dakota and Vermont.

Thomas P. Schlosser, Morisset, Schlosser, Ayer & Jozwiak, Seattle, Washington, for amicus Hoopa Valley Tribe.

Appeal from the United States District Court for the Northern District of California.

Before: SKOPIL, PREGERSON, and FERNANDEZ, Circuit Judges.

PREGERSON, Circuit Judge:

Pietro Parravano, other commercial fishermen, and commercial fishing associations (collectively "Parravano") appeal the district court's order granting partial summary judgment in favor of defendants Interior Secretary Babbitt and Commerce Secretary Brown and dismissing the remainder of Parravano's claims.

In United States District Court, Parravano alleged that Secretary Brown violated the Magnuson Fishery Conservation and Management Act ("Magnuson Act"), 16 U.S.C. § 1801 *et seq.*, when he issued an emergency regulation that reduced the ocean harvest rate of Klamath River chinook for the fall 1993 season. The district court determined that executive orders issued in 1876 and 1891 and the 1988 Hoopa–Yurok Settlement Act, 25 U.S.C. § 1300i *et seq.*, vested the Hoopa Valley and Yurok Tribes (the "Tribes") with federally reserved fishing rights. The district court found that these fishing rights constituted "any other applicable law," 16 U.S.C. § 1854(a)(1)(B), which the Secretary of Commerce could take into consideration when reviewing fishery management policies under the Magnuson Act. For this reason, the district court concluded that Secretary Brown did not violate the Magnuson Act when he issued emergency regulations for the fall 1993 ocean harvest.

Parravano also charged that Secretary Babbitt failed to comply with the Klamath River Basin Fishery Resources Restoration Act ("Klamath Act"), 16 U.S.C. § 460ss, and the Trinity Basin Act ("Trinity Act"), Pub.L. No. 98–541, by failing to enforce limitations on Indian fishing in the Klamath River. The district court dismissed the claims against Secretary Babbitt, concluding that there was no basis for judicial review under the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, and that Parravano did not have standing because there was neither an explicit nor an implicit private right of action under the Klamath and Trinity Acts.[1] Parravano now appeals.

We have jurisdiction under 28 U.S.C. § 1291. We affirm for the same reasons stated by the district court in its orders published at 837 F.Supp. 1034 (N.D.Cal.1993)

1. In district court, Parravano also charged that the actions of Secretaries Brown and Babbitt violated the Civil Rights Act, 42 U.S.C. § 1981, the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552b, and the United States Constitution. The district court held that this action did not present any due process or equal protection violations. *See Parravano v. Babbitt*, 861 F.Supp. 914, 926–931 (N.D.Cal.1994). Parravano does not appeal these holdings.