



COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION
729 NE Oregon, Suite 200, Portland, Oregon 97232 503 238 0667

**The Honorable Fidelia Andy
Tribal Council Member
Confederated Tribes and Bands of the Yakama Nation
and
Chairwoman, Columbia River Inter-Tribal Fish Commission**

***The Endangered Salmon Predation Prevention Act (HR 1769)*
Fisheries, Wildlife and Oceans Subcommittee
House Natural Resources Committee
August 2, 2007**

Chairman Bordallo, Ranking Minority Member Brown and distinguished Members of the Fisheries, Wildlife and Oceans Subcommittee, on behalf of the Yakama Nation and the Columbia River Inter-Tribal Fish Commission, thank you for inviting me to testify in favor of the *Endangered Salmon Predation Prevention Act*. I also want to extend our great appreciation to Representatives Baird, Hastings, Dicks, McMorris-Rodgers and Walden for having introduced this needed legislation.

The Columbia River Inter-Tribal Fish Commission (CRITFC) was formed in 1977 by resolutions from the four Columbia River treaty tribes: Confederated Tribes of the Umatilla Indian Reservation, Confederated Tribes of the Warm Springs Reservation of Oregon, Confederated Tribes and Bands of the Yakama Nation, and Nez Perce Tribe. CRITFC's mission is to ensure a unified voice in the overall management of the fishery resource and to assist in protecting reserved treaty rights through the exercise of the inherent sovereign powers of the tribes. CRITFC provides coordination and technical assistance to the tribes in regional, national and international efforts to ensure that outstanding treaty fishing rights issues are resolved in a way that guarantees the continuation and restoration of our tribal fisheries into perpetuity.

The combined ancestral homelands of our four tribes cover roughly one-third of the entire Columbia River Basin in Washington, Oregon and Idaho. Our existence on the Columbia River stretches beyond 10,000 years to time immemorial. Salmon has always been a unifying figure and we rely on it for physical and cultural sustenance. Collectively, we gathered at places like Celilo Falls to share in the harvest, forging alliances that exist today. Our fishing practices were disciplined and designed to ensure that the salmon resource was protected so it would always flourish.

Salmon was so fundamental to our society that in 1855 when our four sovereign tribes and the United States collaborated and negotiated treaties, our tribal leaders explicitly reserved—and the U.S. agreed to assure—our right to fish in perpetuity within our ancestral homelands as well as to

“take fish at all usual and accustomed places”. We kept our word by ceding about 40 million acres of our homelands to the U.S. and the U.S. pledged to honor our ancestral rights.

The treaties of 1855 were all ratified by the U.S. Senate. The Supremacy Clause of the Constitution applies to all such treaties. It was the expectation of our treaty negotiators then that we would always have access to abundant runs of salmon; it is our expectation now that the U.S. government will honor that commitment and take the steps necessary to protect our treaty resources.

Up and down the Columbia and its tributaries, dams harnessed the natural flows to build a western economy with low cost electrical power, navigation, and irrigation. Commercial fishing lacked restraint decimating salmon runs without regard for future generations. Logging, mining and agriculture bit into the earth, fouling clean waters, and degrading riparian habitat crucial to salmon survival. Nature’s bounties were exploited to build bigger cities with bigger economies, and the energy and infrastructure to support them was siphoned from the river. As more lands were flooded more promises flowed. Tribal leaders were told the dams would actually make life easier on salmon as the roaring pace of the river was reduced. We were also told that if any impacts occurred they would be mitigated.

The mitigation and recovery of our treaty fishing resources has been rather challenging. Some species are withering towards the edge of extinction with 13 salmon and steelhead populations in the Columbia Basin listed under the Endangered Species Act (ESA). Pacific lamprey and white sturgeon populations are also depressed and resources to rebuild them are slim, making us worry if they too will be listed under ESA. On the other hand, California sea lions, protected by the Marine Mammal Protection Act (MMPA), are enjoying recovery with a 5 to 6% annual population growth rate. Unfortunately, the success of the MMPA is exacting a toll on the recovery of ESA listed species and other natural stocks in the Columbia Basin.

While sea lions previously existed in the river, they were in smaller numbers. Our tribal members harvested them for their skins and oils. When the river flowed free, the tribes, the salmon and the sea lions coexisted. That is no longer the case as the river’s natural behavior has been altered, principally by dams. The river has become more hospitable to opportunistic sea lions and less hospitable to salmon, lamprey and sturgeon. The sea lions have learned to profit from the abnormal situation created by Bonneville Dam by preying on salmon and other treaty protected resources. They are cunning as proven by their ability to outmaneuver the exclusion devices placed in the fish ladders and their ability to ride the shipping barges through the dam’s locks. While we admit that the Creator intended a place for them, it doesn’t lessen the problem they are causing by exploiting an unnatural environment.

We have been doing our best to bring the salmon back and are proud of our leadership role in that regard. Along with our neighbors in the Columbia Basin we have been investing in recovery efforts for decades. The Tribes have long shouldered the heaviest conservation burden through voluntary harvest reductions on our fishery. Our treaty rights extend below Bonneville Dam, however we also voluntarily abstain from fishing below the dam to allow a non-tribal sport and commercial fishery to enjoy harvest below the dam. Now, the expanding aggressive sea lion population below the dam is diminishing the quality of the salmon in our tribal harvest above the dam. We have been addressing every cause of salmon mortality except one: sea lions.

The importance of fish, especially salmon, to our tribes cannot be overstated. In 1905 in the famous case of *U.S. v. Winans*, the U.S. Supreme Court stated that fishing was “not much less necessary to the existence of the Indians than the atmosphere they breathed.” That is really quite a statement coming from the highest court in the land over a century ago. The salmon are an integral part of our cultural, economic and spiritual well-being. They are a major food source and our consumption is nearly ten times higher than the national average. Salmon is fundamental to a healthy tribal diet and it plays a significant role in combating the risks of heart disease and diabetes in our communities.

Our livelihood evolved over thousands of years and our physical and cultural survival was intimately tied to the salmon. Ceremony became essential to insure the continued survival of the salmon, our traditions, and thus ourselves. Without salmon and without ceremony, we would cease being Indian people yet in recent years many of our longhouses have gone without even one salmon for this important religious ceremony. We are longhouse people and these ceremonies have gone on without interruption for thousands of years. It is essential for all parties involved to understand how important these fish are to our people. For us, among other issues this is a matter of religious freedom. This is why we are alarmed over the increasing impact by sea lions during low salmon returns.

Commercial salmon fishing has long been a traditional way of providing the necessary means to safeguard our families economically. Even the settlers who descended upon our ancestral homelands capitalized on the abundant salmon runs to secure an economic foothold in the region. In the middle the 1900's, spring salmon runs dwindled and we had to forgo a tribal commercial harvest. However, when runs rebounded slightly from 2000 to 2004 we were able to open a modest commercial harvest. Unfortunately, the strong runs were also accompanied by a growing population of sea lions in the Columbia River.

We have made considerable investments to rebuild our salmon economy and increase the commercial value of tribally caught salmon. Not long ago, the tribal commercial fishermen were receiving 30 to 40% less than market value. Today we have overcome this disparity. It has taken five years to build a brand identity for tribally caught salmon. Soon we hope to open a fish processing facility near White Salmon, WA to provide an even better product and return on value. The public is embracing the benefits of buying the products of our tribal fishery and demand is outstripping supply.

A commercial tribal fishery diversifies economic opportunities in what are traditionally hard hit rural economies. While a marine mammal problem occurs somewhat year round in the lower Columbia River, the mainstay of our salmon economy is the spring Chinook when the sea lion predation is greatest. Some fish buyers won't purchase damaged fish and the value can drop as much as 50%. The growing sea lion predation is stripping away at the hard earned value of our commercial fishery.

There was a time when a portion of a state fishing license fee was used to manage the sea lion population to reduce their predation. Historically, when sea lions made it up to those parts of the river where the dams now sit, they would be shot by state agents. If our people caught them we would bleed them out in the river. Sea lions learned that this was an area they needed to avoid. Things have changed for the worse now because man has changed the nature of the river. Now returning salmon must pass artificial dams and must go up man made cement fish ladders to get upstream. They are trapped by sea lions who understand the salmon must go right by them if

they hang out close to the ladders. We ask our friends in the animal rights community to understand that we are no longer dealing with basic nature when the ability of endangered salmon to defend themselves has been so compromised.

Some people claim that placing blame on the sea lions is a ruse to divert attention away from the dams' impact on salmon survival. If they understood our dilemma they would clearly recognize that attention is actually being drawn to Bonneville Dam where a growing number of sea lions have learned to exploit an artificial situation to disproportionately impact depressed salmon runs. Increasing numbers of sea lions have been documented returning year after year. In the last five years, a small but significant number of these animals have learned to prey on threatened and endangered spring Chinook as they converge on the entrances to the dam's fish ladder.

Significant predation at the dam is rising, evidenced by the number of salmonids eaten by sea lions. Finding number (8) of the legislation points out that there has been a seven fold increase in the number of salmon taken by sea lions since 2002. At Bonneville Dam alone, some observers believe that the sea lions have taken about 4% of the returning spring Chinook. It is important to keep in mind that this figure is based on "observed" predation, i.e. above the surface. The unobserved predation runs significantly higher. The biologists tell us that a sea lion will eat two salmon a day, and perhaps as many as three to five if it is their predominant source of food. With the 100 sea lions known to be in the vicinity of Bonneville Dam eating just two fish a day for 88 days (number of days in the hazing season when the sea lions are present), an estimated 17,600 salmon would be taken. That would equate to 15% to 17% of this year's Chinook salmon run. The Indian people were only allowed to take about 6.7% of that run. As the size of the natural salmon runs dwindle in numbers the impact of predation on wild fish is greater. Anyone who does not think this is having a profound impact on our people is terribly mistaken.

Tribal harvest is tiered to the size of the run and is rigorously managed to stay within the harvest rate. However, sea lion predation is three times higher than the tribal harvest rate. Indian treaty fisherman fishing for ceremonial, subsistence and economic needs are forced to stand on the river banks as the sea lions are allowed to run unmanaged in the river system and take a higher percentage of the salmon run. The treaties and the trust responsibility of the federal government to our tribes dictate that all other reasonable acts to conserve a species, such as salmon, be implemented before restrictions are made on tribal harvest.

The *Findings* contained in Section 2 of HR 1769 outline the severity of the sea lion damage occurring in the lower Columbia River. However, let me share one striking example. Midway into the spring return, one sea lion weighing 556 pounds, was trapped, tagged at the dam and hauled back to Astoria. About two months later, it was trapped again at the dam and weighed 1,043 pounds—nearly doubled in weight.

Studies show that the farther upstream the sea lions travel, the higher percentage of salmon and steelhead in their diet. Often sea lions don't generally consume the entire fish—they are most likely to bite out the soft under belly and discard the remainder of the carcass. The latest available sampling data beginning in 2001 shows that each year slightly over 30% of the spring salmon passing through Bonneville's fish ladder have suffered some form of injury caused by marine mammals. Those salmon that escape with harsh wounds are less likely to survive their upstream journey and unlikely to successfully spawn. Tribal and non-tribal fishermen who

harvest these injured fish cannot fully utilize them for their subsistence, sport and commercial value.

Since 2005 CRITFC along with Washington and Oregon have tried dispersing sea lions from the dam. Our actions have been limited to the problems occurring at the dam and not the entire 150 river miles from the dam to the Pacific Ocean. CRITFC has had to divert a portion of our Bureau of Indian Affairs funding to pay for our hazing efforts, however this year we were able to secure some funding under an existing coordination contract with Bonneville Power Administration. In 2007, CRITFC and the states were challenged to increase hazing from five to seven days a week, 24 hours a day. We stepped up our effort to seven days however hazing at night is hazardous and an unacceptable risk for our crews. Hazing is difficult and risky and basically ineffective but due to the MMPA it's the only tool in everyone's tool kit to deal with this problem. Earlier this year we were joined by a Senate staffer for a day's worth of hazing. He quickly saw the ineffectiveness of hazing..

The California sea lion problem exists in multiple waters along the Pacific coast but it is perhaps no where more alarming that what is occurring in the Columbia River. That is why we support *The Endangered Salmon Predation Prevention Act* and we applaud its introduction. This legislation will help us employ new alternatives to provide us with a means to help us deal with only those select animals responsible for the greatest impact. This legislation can ease the depredation occurring on our treaty protected resources as well as help curb predation on ESA listed species over the next five critical years. We should not be forced to stand back as sea lions cause other species, such as sturgeon and lamprey, to become listed under ESA. Surely Congress could not have intended the result of two laws (MMPA and ESA) to lead to one species of animal that is thriving being able to do such damage to another species that is endangered and to handcuff the fishery managers from being able to take an action to rectify the situation. There is simply no biological logic to be found in the existing situation.

We do not take the National Environmental Protection Act exemption in this legislation lightly. NEPA is a law that we work with on a regular basis. However, this is a short term, five year exemption focused exclusively on managing the most aggressive individual California sea lions whose predation severely impacts an entire wild salmon population. The legislation is also limited solely to the Columbia River and its tributaries and will allow for what is in reality a very small number of sea lions to be taken. The legislation requires the Secretary of Commerce to first determine that alternative measures are not working and then further requires the permit holder to determine that any sea lions proposed to be taken has been preying on salmon and that non-lethal methods to prevent preying on salmon have not been effective. Permit holders for legal takes are limited to the entities that the Federal courts have identified as fishery managers (i.e. the four Treaty Fishing Tribes and the States of Oregon and Washington). Another provision limits the cumulative number of sea lions taken under all permits to less than one percent of the annual biological removal of California sea lions. The exemption is necessary to give the fishery managers the ability to respond swiftly to avoid further and extraordinary delays that put the species, our investments, and our culture and livelihood at risk.

We support the legislation's provision which provides the public an opportunity to submit comments. The language calls for consultation in order to issue a permit and establishes accountability through an annual reporting requirement concerning the implementation of any taking of California sea lions.

A number of changes have been made to this legislation from the version introduced last year and those changes reflect input the bill's sponsors received from environmental organizations and others with a concern over the matters addressed in the bill. We are grateful that the authors of this legislation are including each of our four member tribes as eligible entities for applying for a permit, and for identifying the Columbia River Inter-Tribal Fish Commission as eligible to receive delegated permit authority. We are very capable, professional fishery managers with the necessary skills to administer and implement the provisions of a permit.

Federal law now includes provisions for de-listing species under the ESA—something we all aspire to achieve with salmon. The same consideration should be given to marine mammals who have achieved their optimum sustainable populations as provided under the MMPA. We agree with the legislative language calling for the Secretary of Commerce to issue Congress a report on the issue of marine mammal predation on ESA listed species. MMPA is overdue for reauthorization and we urge Congress and the administration to take this matter up and reconcile the disparity over one species being caught in the middle when two environmental protection laws clash.

The states of Washington, Idaho and Oregon have filed an application under Section 120 of the MMPA. Each of our four tribes and CRITFC has nominated representatives for the pinniped task force. We hope for a National Oceanic and Atmospheric Administration decision on the task force's recommendations prior to next spring's salmon run; however the real challenge is NOAA's ability to shepherd any decision through the NEPA process. Most policy makers and biologists working on this issue predict the Section 120 will take years. If the consideration of new sea lion management alternatives is bogged down, as shown in Seattle's Ballard Locks experience, considerable predation will continue during future spring runs. At Ballard Locks the sea lions basically wiped out the Lake Washington run of winter Steelhead during a multi-year period in which various interest groups fought against what the professional managers for the Washington State Department of Fish and Wildlife wanted to do, a limited take of the most problematic sea lions. As a result of sea lion predation and the lack of a response from the federal government, including the Congress, that run of fish is no longer deemed viable. We should not repeat this history with Columbia River spring Chinook salmon.

There has been some discussion about a recent demonstration project submitted to the Northwest Power and Conservation Council to test if an electronic barrier might prove capable of inhibiting upstream sea lion migration at a test site on the Willamette River. We support innovative efforts however we have concerns with this demonstration project. First, it is important to note that this technology is not readily available to deal with our immediate situation. Second, its effectiveness is largely unknown as an electronic barrier and has never been tested as a sea lion deterrent. Third, there are unanswered questions about its impact to the behavior and migration of the very species we are trying to protect, namely lamprey, sturgeon and salmon. CRITFC has submitted comments on this proposal requesting tests under a controlled environment to study its effectiveness on sea lions and its effects on non-target fish species. Once these studies are completed and the questions are answered perhaps this technology may offer another option as a sea lion deterrent in the future. Before this technology can be applied it will likely require approvals through the appropriate permitting processes under ESA and MMPA.

Biologists are predicting next spring's salmon run to be large which will lead more sea lion and human conflict. If we return to using the same failed tactics we use today, then it will be

difficult to answer to the region, the region's fishermen, and the taxpayers who have invested in salmon restoration across the Columbia Basin.

The U.S. made many promises beginning in 1855 with our treaties and subsequently when the dams were constructed. The treaty rights are meant to preserve our physical, cultural and economic livelihood—the U.S. committed to protecting these rights. We were further promised that any harm done to our fisheries attributed to the dams would be taken care of—Bonneville Dam has created an artificial situation the sea lions have learned to exploit. We have run out of options and any new technology will not be available in the near future to deal with the current dilemma.

We need more options to deal with the growing sea lion depredation and we need timely solutions to protect our ceremonial, subsistence and commercial harvests for salmon, lamprey and sturgeon. Please support passage of this important bi-partisan legislation.

Again, thank you for this opportunity to share our concerns and to express our support for this legislation.

CRITFC Contact:

Jaime A. Pinkham

pinj@critfc.org

503-238-0667

Fax: 503-235-4228

Columbia River Inter-Tribal Fish Commission

729 NE Oregon, Suite 200

Portland, OR 97232

www.critfc.org

Yakama Nation Contact:

Paul Ward or Steve Parker

ward@yakama.com

parker@yakama.com

(509) 865-5121