



COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION

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Testimony of
The Honorable Leotis McCormack
Nez Perce Tribe
and
Commissioner, Columbia River Inter-Tribal Fish Commission
on the
The Endangered Salmon and Fisheries Predation Prevention Act (H.R. 564)
Water, Power and Oceans Subcommittee
House Natural Resources Committee
July 23, 2015

Chairman Fleming, Ranking Member Huffman and distinguished Members of the Water, Power and Oceans Subcommittee, on behalf of the Nez Perce Tribe and the Columbia River Inter-Tribal Fish Commission (CRITFC), thank you for inviting me to testify in favor of the *Endangered Salmon and Fisheries Predation Prevention Act*. The California sea lion predation problem exists in multiple waters along the Pacific coast, but nowhere is it more alarming than what is occurring in the Columbia River. We support passage of H.R. 564 as an appropriate response to this crisis and extend our great appreciation to Representative Jaime Herrera-Beutler and co-sponsors for introducing this needed legislation.

The Problem:

- An unprecedented explosion of pinnipeds in the lower Columbia River has caused spikes in predation levels of salmon despite years of hazing and cumbersome removal authority;
- California sea lions are completely recovered and expanding; current population estimate is >325,000 with an annual growth rate of 9.2%;
- A large and growing surplus of male sea lions, far in excess of the population's reproductive needs, is expanding its range to exploit increasing salmon and smelt runs;
- Sea lions killed over 8,474 salmon within ¼ mile of Bonneville Dam (146 miles from the Ocean) in 2015, a staggering 140% increase over the previous 12 year average;
- Three to five California Sea Lions are now above Bonneville Dam, 146 miles from the mouth of the Columbia, some residing for over four years;
- The aggressive feeding behavior threatens the safety of sport, commercial and tribal fishermen trying to land catch;
- NOAA Fisheries estimated an unaccounted for loss of 45% (99,000 fish) of the 2014 spring Chinook salmon run between the estuary and Bonneville Dam, this loss is over 4 times greater than in 2010 when the losses were estimated at only 10%;
- Tribal ceremonial, subsistence and commercial fisheries experience unique and unmitigated damage from growing sea lion predation; and

- Anticipated downturns in future salmon runs due to the present drought conditions would increase sea lion impacts even more, management tools are needed now to help address this anticipated impact. Attempts to address California Sea Lion predation under the existing constraints of the Marine Mammal Protection Act (MMPA) have been inadequate and hampered by protracted litigation by special interests exploiting ambiguities in the law.

We strongly support H.R. 564 to assist in addressing this problem because:

- Modern, professional natural resource managers need laws that provide us with efficient and effective tools to properly manage the resources we are obligated to protect;
- H.R. 564 provides management access to our tribes and CRITFC, an unfortunate oversight of the original MMPA;
- H.R. 564 recognizes the value of both listed and non-listed species to the public and nation; and
- Columbia Basin salmon recovery can't afford a setback as we witnessed in Puget Sound's Ballard Locks, where winter Steelhead became functionally extinct due to sea lion predation.

Commission History and Legal Authorities

The Columbia River Inter-Tribal Fish Commission 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 have always been a unifying force and we rely on its abundance 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, and even worshipped, so it would always flourish.

Salmon was so fundamental to our society that in 1855 when 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 roughly 40 million acres of our homelands to the U.S. while the U.S. pledged to honor our ancestral rights. It was the expectation of our treaty negotiators in 1855 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. The treaties of 1855 were all ratified by the Senate of the United States. The Supremacy Clause of the Constitution applies to all such treaties.

The importance of fish, especially salmon, to our tribes cannot be overstated. In *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.” The salmon are an integral part of our cultural, economic and spiritual well-being. They are a primary food source and our consumption of this First Food is nearly ten times higher than the national average. Salmon are fundamental to a healthy tribal diet and 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. We are longhouse people and these ceremonies have gone on without interruption for thousands of years. For these reasons, in conjunction with modern fisheries management principles, we are alarmed over the increasing impact by sea lions on these vital treaty and public resources.

A Brief History of Salmon Decline

The Columbia Basin and its tributaries began seeing major changes in the 1800's as agricultural lands were developed and 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 slow but methodical. Thirteen salmon and steelhead populations in the Columbia Basin are 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 MMPA are at historically robust population levels. 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.

Regional Recovery Efforts

We have been doing our best to bring the salmon back. In cooperation with States, Federal Agencies, and our neighbors in the Columbia Basin we are making huge financial and social investments in recovery efforts. The Tribes have long shouldered a heavy conservation burden through voluntary harvest reductions on our fishery.

In 2008, CRITFC and its member tribes successfully concluded lengthy negotiations resulting in three landmark agreements: 1) the Columbia Basin Fish Accords with federal action agencies overseeing the federal hydro system in the Columbia Basin, 2) a Ten-Year Fisheries Management Plan with federal, tribal and state parties under *U.S. v OR*, and 3) a new Chinook Chapter of the Pacific Salmon Treaty. These agreements establish regional and international commitments on harvest and fish production efforts, commitments to critical investments in habitat restoration, and resolving contentious issues by seeking balance of the many demands within the Columbia River basin.

Impacts of California Sea Lions on Tribal Families

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 of the 1900's, spring salmon runs dwindled and we had to forgo a tribal commercial harvest. However, when runs rebounded slightly from 2000 to the present we were able to open limited commercial tribal harvests. Unfortunately, the strong runs also brought the sea lions upstream in larger numbers.

A commercial tribal fishery diversifies economic opportunities in what are traditionally hard hit rural economies. 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 through innovative marketing strategies, individual training and public outreach. It has taken several years to build a brand identity for tribally caught salmon. The public is embracing the benefits of buying the products of our tribal fishery and demand is outpacing supply.

While the sea lion problem occurs year round in the lower Columbia River, a mainstay of our salmon economy is the spring chinook upon which sea lion predation is greatest. Prized for ceremonial, subsistence and commercial uses, these important uses have all suffered from predation's impact. Some fish buyers won't purchase damaged fish and the value can drop as much as 50%. The growing level of sea lion predation can devastate the hard earned the value of the tribal commercial fishery. Attached to this testimony are photographs of Columbia River spring chinook showing damage from sea lions.

Marine Mammals – A Growing Management Problem

Steller sea lions and other marine mammals had a very limited presence in the Columbia River with a functional and mutually respectful relationship between them and tribal people. Tribal members harvested them for their skins and oils. Tribal members also killed marine mammals that were disruptive to fishing activities. Though well intentioned, the MMPA has made the river more hospitable to opportunistic sea lions and less hospitable to salmon, lamprey and sturgeon survival by limiting traditional and modern management methods. The sea lions have learned to profit from the abnormal situation by preying on salmon and other treaty protected resources particularly at vulnerable areas, like Bonneville Dam. 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.

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 and they would be bled out in the river. Sea lions are shrewd enough to then understand 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 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, over a hundred 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. But growing data sets paint a troubling picture of increasing depredation throughout the lower Columbia River. We have previously estimated that 18% to 25% of the spring chinook salmon run are lost to sea lions annually between Bonneville Dam and the mouth of the river but based on recent NOAA research could be as high as 45% of the run. In addition, impacts by sea lions are disproportionally distributed on the early portion of the run. During March and April there are many days when the take by sea lions exceeds the fish count in the ladders. We are concerned that these early returning fish may be from stocks that are most at risk of extinction.

Every year a few sea lions pass through the Bonneville Dam lock. These animals damage fishing gear and steal salmon from our fishers. Some California sea lions have spent over 4 years in the Bonneville Pool. Studies show that the farther upstream the sea lions travel, the higher percentage of salmon and steelhead in their diet. Additional studies indicate that salmon comprise 10-30% of their diet. 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.

Hazing – Necessary but Insufficient

Since 2005, CRITFC, Washington and Oregon, have tried dispersing sea lions from the sensitive area immediately below Bonneville dam through daytime hazing from boats. Our actions have

been limited to a 5-mile zone just downstream from the dam and not the entire 150 river miles from the dam to the Pacific Ocean. Nonlethal hazing has a very short-term effect at best. After the crew is done for the day the sea lions move back into the prime feeding positions. Hazing is difficult and risky due to daylight-only limitations and frequent hazardous water conditions. Even under ideal conditions hazing alone is inadequate to remedy the predation problem.

We do recognize that some animals respond to hazing better than others and that it will remain a component of any future robust management package. CRITFC and tribal crews will continue to implement the hazing functions, as well as estimate sea lion abundance in the lower river. We are also collaborating with the states to develop techniques that may be useful for estimating sea lion predation rates in the lower Columbia River. Initially, CRITFC diverted a portion of our Bureau of Indian Affairs funding to pay for our hazing efforts, however Bonneville Power Administration has funded our hazing efforts since 2007.

Justification of Support for H.R. 564

H.R. 564 will allow us to employ new alternatives 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.

We do not take the National Environmental Protection Act (NEPA) exemption lightly. However, this is a short term, emergency-based 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. It relies on the taking of California sea lions within biological limits spread over the total California sea lion population. The exemption is necessary to give the fishery managers the ability to respond swiftly to avoid extraordinary delay that puts the species, our investments, and our livelihood at risk.

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 identifying the Columbia River Inter-Tribal Fish Commission as an eligible entity to delegate permit authority. We are very capable, professional fishery managers with the necessary skills to administer and implement the provisions of a permit.

There are 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 would support amendments that would require the Secretary of Commerce to issue a report to Congress 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 of one species being caught in the middle when two environmental protection laws clash.

The states of Washington, Idaho and Oregon applied for management tools under Section 120 of the MMPA. Each of our four tribes and CRITFC were represented at the two convening's of the Pinniped Interaction Task Force. In each case, the Task Force developed sound and effective recommendations to NOAA for proceeding. However, the real challenge has been NOAA's ability to shepherd any decision through the NEPA process and to withstand relentless legal challenges by well-funded special interest groups. If the consideration of new sea lion management alternatives is continually bogged down, as shown in Seattle's Ballard Locks experience, considerable predation will continue during future spring runs.

Improving spring chinook returns in recent years have led to more sea lion and human conflict. If we continue to use the same insufficient measures we are using today, it will be difficult to answer to the region, ratepayers, taxpayers and the region's fishermen, who have invested in salmon restoration across the Columbia Basin.

Conclusion - Our Strong Recommendation for Passage of H.R. 564

In conclusion, H.R. 564 would successfully amend the Marine Mammal Protection Act allowing it to stand alongside visionary and effective laws in the Columbia Basin, like the Treaties of 1855 and the Northwest Power Act.

The United States 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.

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

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