



## **COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION**

729 NE Oregon, Suite 200, Portland, Oregon 97232

503 238 0667

**Testimony of  
The Honorable Virgil Lewis, Sr.  
Confederated Tribes and Bands of the Yakama Nation  
and  
Commissioner, Columbia River Inter-Tribal Fish Commission  
on the  
*The Endangered Salmon Predation Prevention Act (HR 946)*  
Fisheries, Wildlife, Oceans, and Insular Affairs Subcommittee  
House Natural Resources Committee  
June 14, 2011**

Chairman Fleming, Ranking Member Sablan and distinguished Members of the Fisheries, Wildlife, Oceans and Insular Affairs Subcommittee, on behalf of the Yakama Nation and the Columbia River Inter-Tribal Fish Commission (CRITFC), 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 Hastings, Dicks, Herrera, Schrader, Simpson, and Walden for having introducing and co-sponsoring this needed legislation.

**We strongly support HR 946:**

- The Marine Mammal Protection Act's (MMPA) Section 120 needs clarification from Congress.
- HR 946 provides management access to our tribes and CRITFC, an unfortunate oversight of the original Act.
- HR 946 requires a comprehensive review of MMPA and recommendations for amendment. The MMPA is overdue for a comprehensive review.
- 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.
- Tribal ceremonial, subsistence and commercial fisheries experience unique and unmitigated damage from growing sea lion predation.

We believe HR946 can be improved with tribal treaty savings language and offer such later in this testimony.

### **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 has always been a unifying figure 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 our four sovereign tribes<sup>1</sup> 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. 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. 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 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. 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. This is why we are alarmed over the increasing impact by sea lions during low salmon returns.

### **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

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<sup>1</sup> Treaty with the Yakama Tribe, June 9, 1855, 12 Stat. 951; Treaty with the Tribes of Middle Oregon, June 25, 1855, 12 Stat. 963; Treaty with the Umatilla Tribe, June 9, 1855, 12 Stat. 945; Treaty with the Nez Perce Tribe, June 11, 1855, 12 Stat. 957.

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 slow. 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 Marine Mammal Protection Act (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. Our treaty rights extend below Bonneville Dam; however harvest agreements allow non-tribal sport and commercial fisheries to enjoy harvests.

In 2008 CRITFC and its member tribes successfully concluded lengthy negotiations resulting in three landmark agreements: 1) the Columbia Basin Fish Accords<sup>2</sup> 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.<sup>3</sup> 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 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. It has taken several years to build a brand identity for tribally caught salmon. Soon we

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<sup>2</sup> The Nez Perce Tribe is not a Columbia Basin Fish Accord signatory

<sup>3</sup> See "Salmon Win A Triple Crown" at [http://www.critfc.org/text/wana\\_w09.pdf](http://www.critfc.org/text/wana_w09.pdf)

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.

While the sea lion problem occurs year round in the lower Columbia River, the mainstay of our salmon economy is the spring Chinook where 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 level of sea lion predation can devastate the hard earned value of the tribal commercial fishery. Also submitted accompanying this testimony are photographs of Columbia River Spring Chinook showing damage from sea lions.

### **Marine Mammals – a growing management problem**

California sea lions and other marine mammals have always existed in the river as has a 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. As the size of the natural salmon runs dwindle in numbers the impact of predation on wild fish is greater. The states and NOAA estimate 18,000 to 25,000 adult salmonids are lost to sea lions annually between Bonneville Dam and the mouth of the river. In addition, impacts by sea lions are disproportionally distributed during the early portion of the run. For the period of 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. In 2009, a California sea lion spent the entire summer upstream of the dam impacting fishers and feeding on fish as they exited the fish ladders. 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 along with Washington and Oregon, have tried dispersing sea lions from the dam through daytime hazing from boats. Our actions have been limited to the area just downstream from the dam and not the entire 150 river miles from the dam to the Pacific Ocean. Nonlethal hazing appears to have been slightly more successful this year based upon evidence from the USACE observers, however 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 wish to continue implementing hazing functions as well as telemetry tracking and monitoring of pinnipeds. Initially CRITFC diverted a portion of our Bureau of Indian Affairs funding to pay for our hazing efforts, however the Bonneville Power Administration has funded our hazing efforts since 2007.

### **Justification of Support for HR 946**

The California sea lion problem exists in multiple waters along the Pacific coast but it is perhaps nowhere more alarming than 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.

We do not take the National Environmental Protection Act exemption lightly. However, this is a short term, three 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. 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 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.

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 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 applied for management tools under Section 120 of the MMPA. Each of our four tribes and CRITFC committed representatives to each of the two convenings of the Pinniped Interaction Task Force. In each case the Task Force developed sound and effective recommendations to NOAA for proceeding with the real challenge which is NOAA's ability to shepherd any decision through the NEPA process. 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.

Healthy spring Chinook returns in recent years lead to 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.

#### **A recommendation for amendment - Treaty Savings language**

HR946 would successfully amend the Marine Mammal Protection Act allowing it to stand alongside as a visionary and effective law in the Columbia Basin like the Northwest Power Act. To clarify that this amendment does not affect or impact tribal treaties we recommend Treaty Savings language such as that included in the Northwest Power Act, 16 U.S.C. 839g (e).

*"Nothing in this chapter shall be construed to affect or modify any treaty or other right of an Indian tribe."*

In conclusion, 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.

CRITFC Contact:

Charles Hudson

[hudc@critfc.org](mailto:hudc@critfc.org)

Phone: 503-238-0667

Fax: 503-235-4228

Columbia River Inter-Tribal Fish Commission

729 NE Oregon, Suite 200

Portland, OR 97232

[www.critfc.org](http://www.critfc.org)