

Columbia River  
Inter-Tribal  
Fish Commission



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**Written Testimony of  
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**Before the**

**Subcommittee on Oceans, Atmosphere, and Fisheries  
Committee on Commerce, Science, and Transportation  
U.S. Senate**

**Hearing on the Pacific Salmon Recovery Act (S. 1825)  
and on Pacific Salmon Management Issues**

**May 14, 2002**

On behalf of the Columbia River treaty tribes, I want to thank the Chair and members of the Subcommittee for this opportunity to provide some initial written views on the Pacific Salmon Recovery Act (S. 1825) and Pacific Salmon Management Issues. I apologize for not being able to attend this meeting in person, but I believe that Harold Blackwolf, Sr., Commissioner and Chair of the Fish and Wildlife Committee of the Confederated Tribes of the Warm Springs Reservation of Oregon, will ably present the initial views of the tribes'. Due to the very short time frame that was available to prepare this testimony, it was not possible to review this testimony with the Commission for which I work, the Northwest Indian Fisheries Commission, the Klamath River Inter-Tribal Fish and Water Commission, nor with the tribes that these three commissions serve. For that reason, I would like to request that you keep the hearing record on this important piece of legislation open for two weeks so that the tribes and their Commissions may provide you additional considered views on the critical questions and issues entertained by the Subcommittee members and witnesses today.

**Recommendation** The Columbia River treaty tribes are heartened by Congress' continued strong support for the funding necessary to implement the historic 1999 U.S.-Canada Pacific Salmon Treaty Agreements, the coastwide salmon restoration fund through the Pacific Coastal Salmon Recovery Fund, and other key salmon management programs and restoration efforts. Currently, the Pacific Coastal Salmon Recovery Fund is authorized through the end of fiscal year 2003 at a total funding level of \$100 million dollars. The Pacific Salmon Recovery Act (S. 1825) would authorize funding for four more years, through 2007, at a level more than three times the current authorization. At the same time, the legislation being considered by the subcommittee would add additional layers of review and may require the duplication of on-going coordination and collaboration efforts of the states and tribes. Mainly for those reasons, and in consideration of the current budgetary and economic situation facing the country, the initial recommendation of the Commission is that the current authorizing legislation be modified in the following manner:

- Extend the authorization for another 6 (six) years through 2009. This amendment would capture two life-cycles of coho salmon and would ensure that the program covered two life-cycles of the chinook salmon.

- Amend the authorization to add the State of Idaho to the Fund.
- Increase the annual authorized appropriation for the Fund from \$100 million to at least \$132 million, of which:
  - o \$110 million is for the for States of Alaska, California, Idaho, Oregon and Washington,
  - o \$18 million is for the tribes served by the Columbia River Inter-Tribal Fish Commission, the Northwest Indian Fisheries Commission, and the Klamath River Inter-Tribal Fish and Water Commission,
  - o \$2 million is to be shared by the Colville Confederated Tribes, the Shoshone-Bannock Tribes, and five other coastal tribes, and
  - o \$2 million is for the U.S. Section of the Pacific Salmon Commission.
- Increase the level of annual funding should the Secretary of the Interior identify any other qualified tribes or tribal organizations. In fact, just as the states qualified to participate in this Fund are explicitly identified in the current authorization, the clear and explicit definition of the participating tribal governments would be helpful. The bulk of the tribes or inter-tribal bodies noted above have recognized co-management authority under federal case law (U.S. v. Washington (Boldt); Hoh v. Baldrige; U.S. v. Oregon; and Parravano v. Babbitt). We would note that with regard to tribes in Alaska, it would be appropriate to specifically recognize those tribal governments (or their coordinating bodies as may be appropriate) that participate in the U.S.-Canada Treaty process or under the Yukon River Treaty or that are developing that capability.

We are specifically concerned that the proposed legislation appears to:

- Add additional process, such as another layer of peer review, especially when a state or tribal governing body has already established a competitive review and technical oversight process;
- Require pre-approval of an annual spending plan or projects when an (MOU) process and/or a government approved restoration plan already exists; and,
- Focus attention on and narrow funding priorities to ESA-listed salmon stocks (thereby encouraging additional listing petitions) over meeting comprehensive obligations to restore other weak and depressed naturally spawning stocks to optimum production.

We would be more than happy to provide you with specific language and commentary on the most current working draft of the proposed legislation.

**Commission status**        The Commission was formed by resolution of the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon and the Confederated Tribes and Bands of the Yakama Nation for the purpose of coordinating fishery management policy and providing technical expertise essential for the protection of the tribes' treaty-protected fish

resources. Since 1979, the CRITFC has contracted with the BIA under the Indian Self-Determination Act (P.L. 93-638) to provide this technical support. The Commission's primary mission is to provide coordination and technical assistance to the member tribes 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. My testimony today is provided on behalf of the tribes.

**Treaties of 1855** Under treaties negotiated with the United States in 1855,<sup>1</sup> the tribes reserved to themselves several rights as sovereigns, among these the right to take fish at all usual and accustomed fishing places. Our peoples have exercised this right since time immemorial. Our peoples fished during times of drought and during times of floods, during times of great runs of salmon and during times of low runs of salmon. As they do now, our chiefs and elders watched over the harvest to ensure that the people cherished and protected the gift of salmon from the Creator. It was the expectation of our treaty negotiators then that the tribes would always have access to abundant runs of salmon; it is our expectation now that the United States will honor that commitment and take the steps necessary to protect our trust resource. This reserved right has not been diminished by time and its full exercise has been upheld and affirmed in several U.S. Supreme Court decisions. Yet, our ability to fully exercise this right has been compromised by a combination of state and federal decisions and management actions focused on the short term.

The fact that we now find ourselves in an extremely low water year does not lower the standard by which the U.S. must strive to meet to honor those obligations; in fact, the drought increases the burden of the U.S. and its agencies to ensure that the salmon resource is protected from further injury and loss. To honor its commitment now means that the United States must ensure that there is water in sufficient quantity and quality in the Columbia River to ensure the safe passage of out-migrating juveniles as well as for adult salmon returning upriver

**Extra-legislative Development of Fund** The development of this salmon restoration fund is intricately tied to five years (1995-1999) of intense U.S.-Canada Pacific Salmon Treaty negotiations. The Columbia River treaty tribes, as are the western Washington tribes, are a key and integral party to the Treaty. Conserving and rebuilding far north migrating chinook stocks from the Columbia River and the Washington Coast remains a keystone commitment of the Treaty.

In 1999, the United States and Canada, after several years of negotiation, formally renewed their salmon conservation and rebuilding programs and their harvest sharing arrangements under the Pacific Salmon Treaty. As part of this package of agreements, the Parties established two *international* Restoration and Enhancement Funds for research and projects on salmon stocks of interest under the Treaty. Of these two Funds,

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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.

the Southern Boundary Restoration and Enhancement Fund will provide funding for projects and research in southern British Columbia and the Pacific Northwest (and, at the insistence of Columbia River treaty tribal delegates, specifically the Snake River basin).

*Domestically*, in 1999 the U.S. Congress under Senators Stevens' and Murray's leadership passed legislation to authorize and appropriate funding for a similar program, first proposed by the Governors of Alaska, Washington, and Oregon at the Sitka Salmon Summit, convened by Governor Knowles in May 1996. U.S. representatives to the Pacific Salmon Treaty process attended the summit too

Governor Knowles convened the Sitka Salmon Summit as a healing tool for the U.S. Section of the Pacific Salmon Commission. In 1995, Southeast Alaska chinook salmon fisheries were shut down for conservation purposes through court action against Alaska initiated by the Columbia River treaty tribes and joined by other treaty tribes, the states of Oregon and Washington, and Canada. This occurred only after years of negotiation and the implementation of draconian fishery management actions in Canadian and Pacific Northwest fisheries. The Summit provided a forum for U.S. representatives to begin to resolve differences and set a proactive course to rebuild chinook salmon stocks, as well as other salmon stocks. Among other initiatives, the Governors called for the establishment of a \$250 million Fund for Pacific Salmon Conservation and Restoration. In June 1996, largely as a result of Governor Knowles' initiative, the U.S. was able to agree upon and propose to Canada a more responsive abundance-based chinook harvest management system.

In October 1998, the Governor of California joined the Governors of Alaska, Washington, and Oregon at the Salmon Homecoming in Seattle, where they again requested the establishment of a coastwide salmon restoration fund. The Columbia River treaty tribes had submitted a similar request a few weeks earlier.

In 1999, as the loose ends of the Pacific Salmon Treaty negotiations were tied up, the Congressional delegations of Alaska, Washington, Oregon and California reacted positively and in support of the U.S. negotiating team's efforts and success and aggressively moved funding measures through the Congress to implement the Treaty's ongoing and new bilateral commitments, as well as authorizing and appropriations language for the domestic Pacific Coastal Salmon Recovery Fund.

**The Tribes' Salmon Restoration Plan** I want to take this opportunity to note that the tribes, working through the Commission, have developed a framework restoration plan, *Wy-Kan-Ush-Mi Wa-Kish-Wit* or *Spirit of the Salmon*. I have provided copies for the subcommittee's use, the plan is also available on line at [www.critfc.org](http://www.critfc.org). This plan documents the threats to our fisheries, identifies hypotheses based upon adaptive management principles for addressing these threats, and provides specific recommendations and practices that must be adopted by natural resource managers to guarantee their trust responsibilities and meet their treaty obligations. In this plan, the tribes have identified the need to insure that the burden of conserving these salmon stocks is allocated fairly across those land and water uses responsible for their decline. Consistent with this need, we have identified changes that hatchery programs, forestry, hydroelectric development, irrigation, mining and other development activities must make

in their operations to ensure the recovery of salmon stocks and fisheries. The tribes' ultimate goal is to restore a sustainable resource for the benefit of all peoples in the Pacific Northwest. Consistent with meeting this goal, each and every beneficiary of the river must make sacrifices in times of shortage, much as the tribes have voluntarily sacrificed fully exercising their right to fish over the last several decades. The tribes now call upon those who would generate electricity and those who would withdraw water from the rivers to now make that sacrifice, or to provide equivalent mitigation when it is demonstrated that such sacrifice is impossible.

**The Hydropower System** With regard to the hydroelectric power system, the tribes continue to believe that the four dams in the lower Snake River must be breached to ensure the restoration of salmon in that basin. It is clear from the scientific data collected over years of study that breaching is the only sure course to salmon restoration. In lieu of dam breaching, a very aggressive program of increased flows through the reservoirs and spills at the dams must be pursued by the federal agencies to increase the survival of juvenile out migrants. Based on the overwhelming amount of information available from research conducted over the last 30 years, the tribes do not believe that transporting fish provides benefits anywhere near the equivalent of adequate flows and spill.

We advocate flow and spill not because we believe they are the answer to salmon recovery, but because they are the only two management actions at our disposal. They will lessen what promise to be unusually lethal impacts of the hydropower system at a time when salmon stocks in the Snake and upper Columbia River are at dangerously low levels. This cannot be considered enhancement but, at best, damage control.

We have been told that, instead of dam breaching, we will use the next eight years for adaptive management. Yet there is a growing reluctance to use the information and knowledge we have already gathered about the survival of salmon, let alone utilizing additional information we may learn by conducting additional studies to improve their survival.

**Habitat Conservation and Restoration** The tribes believe that implementation of their plan will result in healthy, sustainable salmon fisheries from Southeast Alaska to the headwaters of the Snake River Basin. To protect and recover tributary habitat, the plan proposes that land and water managers meet a series of habitat conditions associated with survival rates. The use of this "Coarse Screening Process," where applicable will define allowable levels of watershed impacts consistent with salmon restoration.

The tribes' salmon plan calls for baseline surveys of watershed and in-channel conditions as well as trend monitoring to document watershed recovery, test assumptions and validate models used in land management. Monitoring needs include egg-to-smolt survival, total smolt production, and production per spawning pair in salmon-bearing watersheds. Physical monitoring needs in all salmon-bearing watersheds include measuring substrate sediment loads, large woody debris, pool frequency, and volume, bank stability, and water temperature.

Adaptive management is a hallmark of the tribes' salmon plan, which takes a gravel-to-

gravel approach to achieve improvements in survival throughout the salmon life-cycle. The tribes' science-based approach to land management is supported by independent scientific peer review. To halt salmon declines and rebuild healthy runs, the USFS and BLM must likewise implement science-based adaptive approaches that integrate biological and physical monitoring with land management actions that protect and restore salmon habitat.

The tribes' plan calls for an expedited program of watershed restoration actions for the Columbia Basin. The tribes are working in partnership with state, federal, and local governments as well as private landowners to establish a comprehensive program for implementing actions that will restore functioning ecosystems in our watersheds. We have developed watershed restoration action plans for the 23 salmon bearing watersheds above Bonneville Dam in the Columbia Basin. Many of these actions will be carried out on private lands.

**Hatchery Reform** State and federal hatchery management programs contribute to the extirpation of naturally spawning salmon stocks in the basin. The tribal goal to put fish back in the river means literally putting the fish back. Young salmon, if released at the proper time, will return as adults to spawn in the same area they were released as juveniles. Consistent with this concept, the tribes, working with the state and federal fishery agencies, developed a supplementation protocol so as to reform hatcheries to rebuild naturally spawning salmon populations in the basin. Utilizing this protocol, the tribes developed integrated production plans that can be implemented as research projects to restore naturally spawning populations using carefully monitored supplementation practices. Under tribal management, hatcheries would be used for the restoration of naturally spawning chinook stocks throughout the Basin.

The tribes' plan covers all the areas that must be addressed in order to protect salmon stocks and insure their restoration to levels consistent with the international obligations of the United States and with its trust obligation to the tribes; *but that will be the easy part: the most difficult obstacle facing the restoration of the salmon runs is the lack of political will to tackle the issues head on.* We will do everything necessary to insure that these runs will be rebuilt.

**In conclusion**, the tribes look forward to working the state and federal governments on effective and efficient salmon restoration programs. We believe the Pacific Coastal Salmon Recovery Fund, with some modifications to the current authorizing language, can help us in this cooperative effort.