



COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION

700 NE Multnomah Street, Suite 1200
Portland, Oregon 97232

(503) 238-0667
F (503) 235-4228
www.critfc.org

Testimony of
The Honorable Leland Bill
Chairman, Columbia River Inter-Tribal Fish Commission
on the
The Endangered Salmon and Fisheries Predation Prevention Act (H.R. 2083)
Water, Power and Oceans Subcommittee
House Natural Resources Committee
June 8, 2017

Chairman Lamborn, Ranking Member Huffman and distinguished Members of the Water, Power and Oceans Subcommittee, on behalf of 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 in the Columbia River. We support passage of H.R. 2083 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 with a current population over 325,000;
- The population is so abundant that NOAA Fisheries calculates that 9,200 animals could be lost annually from the population and result in no impact to the population;
- 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 8,969 salmon within ¼ mile of Bonneville Dam (146 miles from the Ocean) in 2016, this represented 5.5% of the Spring run crossing Bonneville Dam;
- At least three California sea lions are now above Bonneville Dam, more than 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 four 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 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 have been inadequate and hampered by protracted litigation by special interests exploiting ambiguities in the law.

The Solution - H.R. 2083; We support H.R. 2083 because:

- H.R. 2083 is informed by 17 years of intensive data gathering and predation observation by state tribal and federal natural resource managers;
- H.R. 2083 is guided by 10 years of on-the-river experience implementing Section 120 permits which the Pinniped Interaction Task Force has deemed inadequate;
- 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. 2083 provides management access to our tribes and CRITFC, an unfortunate oversight of the original Act;
- H.R. 2083 recognizes the value of both listed and non-listed species to the public and nation; and
- H.R. 2083 can help avoid the disaster 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 has 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 is so fundamental to our society that in 1855 when our four sovereign tribes¹ 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

¹ 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.

“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 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 Senate of the United States ratified all four treaties of 1855. 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 is 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. 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. 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 is large, roughly the same square mileage as the state of Texas. The Columbia’s 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 proceeding under authorities of the Northwest Power Act, but resources are limited. A petition to list lamprey under the ESA was previously found to be warranted but precluded. Sea lions are voracious predators of Pacific lamprey due to this slow swimming fish’s high fat content. Lamprey are still an important food to Native cultures. On the other hand, California sea lions, protected by the Marine Mammal Protection Act (MMPA) are at historically robust population levels and their take is all but prohibited by the MMPA.

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 Accords² 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.³ 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 are the first of the First Foods. Tribal spiritual and ceremonial life in the Columbia Basin are synchronous with the return of spring Chinook salmon. In Longhouses from the mouth of the river to the headwaters, salmon is served in First Salmon Ceremonies marking their return to the people. Sea Lion predation on these sacred fish have caused impacts to tribal ceremonial life by reducing ceremonial harvest and damaging ceremonial fish.

Following the ceremonial period salmon fishing transitions to 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 careful fish handling, 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.

² The Nez Perce Tribe is not a Columbia Basin Fish Accord signatory

³ See "Salmon Win A Triple Crown" at http://www.critfc.org/text/wana_w09.pdf

While the sea lion problem occurs year round in the lower Columbia River, a mainstay of our salmon culture and 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. Many 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.

Marine Mammals – A Growing Management Problem

California Sea Lions, 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.

Since passage of the MMPA, California sea lions have enjoyed a robust recovery exceeding 300,000 animals coastwide. Additional management tools are appropriate for this fully recovered population to maintain balance in the ecosystem and protect the most at-risk salmonid populations. The current Section 120 sea lion removal authorization is cumbersome and inadequate. To illustrate, consider the current process for removing an animal.

1. Each sea lion must be individually identifiable – this requires trapping, branding, and releasing the animal.
2. Individual sea lions must be observed at Bonneville Dam for 5 days.
3. Individual sea lions must be observed eating a salmon at Bonneville Dam.
4. Individual sea lions must be subjected to hazing while at Bonneville Dam.
5. Once an individual sea lion meets these criteria, that data and a request to include the animal on the removal list is made to NOAA Fisheries.
6. NOAA Fisheries reviews the data and decides if an animal should be included on the removal list.
7. The specific animal on the removal list must be retrapped and it can be removed from the system.

As you can imagine this process is fraught with challenges. First, it requires trapping an individual animal multiple times and we find that about 30% of the animals are “trap shy”, that is they are captured and branded and never captured again, yet they are nevertheless observed subsequently to trapping in the area eating salmonids. Second, sea lion diets are diverse near the ocean becoming more salmon –centric upstream. Sea lions near Bonneville Dam are all eating salmon. Third, renewable natural resource management is based on populations – not individuals. There is no defensible biological reason to restrict sea lion management to the individual animal.

This year's spring chinook salmon run was lower than expected and delayed. Poor returns are associated with poor outmigration conditions for juveniles and warm ocean conditions. Next year's salmon run experienced even worse outmigration and ocean conditions than this year's run and poor returns are again anticipated. We need new management tools now. Ballard Locks

showed us that sea lions can be the final blow to an entire salmonid run, we need to learn from history and take actions to not repeat history.

Hazing – Dangerous, Insufficient and Deadly

Section 120 permits issued by NOAA Fisheries require non-lethal hazing to take place in advance of lethal removal and concurrently with lethal removal actions. Since 2005 CRITFC, along with 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 wish to continue implementing hazing functions as well as estimating sea lion abundance in the lower river. We are also collaborating with the states to develop techniques that may in future 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.

CRITFC and the salmon recovery community suffered a tremendous loss this spring. On April 7th, while hazing during high flow conditions, CRITFC's hazing boat hit a large swell, overturned and eventually sank. The hazing crew was eventually rescued from the 53 degree water, but one experienced technician, Greg George, lost his life. Our tribes cannot emphasize enough, we can't haze our way out of this problem and asking the tribes or states to increase this dangerous activity is inappropriate.

Justification of Support for H.R. 2083

Improving spring Chinook returns in recent years have led to more sea lion and salmon conflict. If co-managers remain constrained by the insufficient measures available under current law, it will be difficult to answer to the region, ratepayers, taxpayers and the region's fishermen, who have invested billions of dollars in salmon restoration across the Columbia Basin.

CRITFC has consistently supported legislation that will create more efficiency and effectiveness of Section 120 of the MMPA. H.R. 2083 is the best of the several bills that the House has considered since 2007. H.R. 2083 is informed by evaluations from fisheries and marine mammal experts and will allow us to employ a management regimen that is appropriate for the Columbia River taking into consideration the years of data, observation and resources available. In so doing it can help co-managers ease 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 while placing an emphasis on species interaction, timing and genetic sensitivities of the endangered spring Chinook population. The legislation is also limited solely to the Columbia River above the I-205 bridge and its tributaries each of which contain listed species. It relies on the taking of California sea lions within biological limits spread over the total California sea lion population. The exemption is warranted to give the fishery managers the ability to respond swiftly to avoid the arbitrary identification processes and extraordinary delays that puts the species, our investments, and our livelihood at risk. We recognize the importance of NEPA as law and policy and consider a NEPA review being undertaken concurrently during H.R. 2083's implementation as the best outcome.

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 employ a robust staff of 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 have been provide permits 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. However, the real challenge has been NOAA's ability to shepherd decisions through the NEPA process and capability to withstand ill-founded 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.

Conclusion - Our Strong Recommendation for Passage of H.R. 2083

Congress passed two landmark conservation laws – The Endangered Species Act and the Marine Mammal Protection Act – that have come into conflict with one another. H.R. 2083 would amend the Marine Mammal Protection Act to provide co-managers a tool, specifically tailored to the Columbia River, to reconcile conflict thus 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 mitigated. We have exhausted available options.

We need real tools 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
Director of Governmental Affairs
hudc@critfc.org
Phone: 503-238-0667

Columbia River Inter-Tribal Fish Commission
700 NE Multnomah, Suite 1200
Portland, OR 97232
www.critfc.org



Sea Loins on Jetty at Columbia River Mouth.



Sea Lions massed on Columbia River sand bar.



Sea Lion damage to tribal ceremonial fish.



Sea Lions overrun Port of Astoria's East Mooring Basin.