

TESTIMONY OF THE HONORABLE KENNETH CHOKE, CHAIRMAN

NISQUALLY INDIAN TRIBE

**BEFORE THE HOUSE NATURAL RESOURCES SUBCOMMITTEE ON WATER, WILDLIFE, AND
FISHERIES**

OVERSIGHT HEARING ENTITLED “*SEA LION PREDATION IN THE PACIFIC NORTHWEST*”

DECEMBER 3, 2025

Chair Westerman, Chair Hageman, Ranking Member Hoyle, and Honorable Members of the Subcommittee, thank you for the opportunity to testify today. My name is Ken Choke, and I have the honor of serving as Chairman of the Nisqually Indian Tribe, a signatory to the Treaty of Medicine Creek of 1854. Under that treaty, the Nisqually people reserved—not received—the right to fish at our usual and accustomed places, a right repeatedly affirmed by the federal courts, including in the landmark *United States v. Washington*, 520 F.2d 676 (9th Cir. 1974), (“*Boldt Decision*”). As the Supreme Court has made clear, treaties are the supreme law of the land. *See Worcester v. Georgia*, 31 U.S. 515 (1832). They carry with them a federal trust responsibility to ensure that tribal rights remain meaningful.

Today, I am here because unchecked pinniped predation in Puget Sound is undermining that treaty right and threatening the survival of the very salmon populations upon which our culture and economy depend.

I. Treaty Rights Require That Fish Must Be Available to Harvest

The Nisqually Indian Tribe has treaty reserved rights enshrined in the Treaty of Medicine Creek of 1854 and upheld by federal courts in *U.S. vs Washington*, also known as the 1974 *Boldt Decision*, and in numerous decisions in the intervening years. These rights include, at their most fundamental of understanding, the ability to continue to exist as the Nisqually Indian Tribe in exchange for allowing the peaceful settlement of Americans in our traditional territories. The tribal leaders that were signatory to our Treaty envisioned the perpetual survival of our people, our traditions and culture, our use of our homelands, and the access and use of the natural resources that have been central to our existence since time immemorial.

A treaty fishing right has meaning only if fish exist in harvestable numbers. Courts have recognized this principle repeatedly: the United States must ensure that tribal treaty rights are not rendered “empty promises.” The United States fulfills its trust obligations by delivering services and programs to tribal nations, and protecting our treaty rights and trust resources in the face of inconsistent and possible detrimental actions. This conflict and inconsistency is clear in the implementation of the Marine Mammal Protection Act (MMPA), the Endangered Species Act (ESA), and the federal government’s trust responsibilities and treaty obligations.

For the Nisqually Indian Tribe, salmon are not merely a food source. They are the foundation of our economy, our way of life, and our cultural identity. We value time on the Nisqually River exercising our treaty rights in a similar way that others value attending the church of their choice.

Treaty rights obligate the federal government to protect the habitat and conditions necessary to sustain those fisheries, including in the face of competing federal regulations and actions. But that right cannot be exercised when our fisheries are closed or drastically reduced—not because of tribal harvest, but because too few fish survive the gauntlet of predation before reaching our nets or the spawning grounds.

II. Declining Salmon Returns and Rising Predation Pressure

In recent decades, Nisqually River Chinook, chum, and steelhead populations have declined to deeply concerning levels, many are now listed under the Endangered Species Act which necessitate closures or severe limitations on our tribal harvest—even when we have done everything asked of us in conservation, habitat restoration, and co-management.

At the same time, populations of harbor seals, California sea lions, and Steller sea lions have increased significantly throughout the Salish Sea under the protections of the Marine Mammal Protection Act (MMPA). While the MMPA has been successful in preventing the collapse of marine mammal populations, its implementation today does not allow for adaptive management where predator numbers far exceed ecological balance.

In 2022, the Washington State Academy of Sciences stated that, “The preponderance of evidence supports the hypothesis that current populations of pinnipeds are likely impeding the recovery of salmon populations in Washington waters. As such, strategic lethal removal of pinnipeds is an approach that may be required for understanding the magnitude of impacts of pinnipeds on salmonids, either at local scales or at the ecosystem scale.”¹ Further, the Academy stated, “...a management experiment of this scale and complexity would involve substantial investment in scientific capacity and political will over long time periods.”² The Academy also recognized the complexity of the Marine Mammal Protection Act and the limited administrative options available to intervene and the “...constraints it creates effectively block[s] most pinniped removal...”³

In the Nisqually estuary and throughout south Puget Sound, tribal and federal scientists have documented:

- High rates of predation on juvenile and adult Chinook and steelhead smolts, especially during outmigration, and adult winter chum salmon. Pinnipeds are devastating both wild and hatchery runs of returning salmon.
- Targeted foraging by seals and sea lions around river mouths, ferry terminals, docks, and marinas, exploiting artificial pinch points created by human structures.
- Repeated predation by individual pinnipeds that learn to take advantage of vulnerable fish and even actively target tribal fishing gear.

¹ *Pinniped Predation on Salmonids in the Washington Portions of the Salish Sea and Outer Coast*, Washington State Academy of Sciences, at 44 (Nov. 2022).

² *Id.*

³ *Id.* at 45.

For ESA-listed Nisqually River Chinook and steelhead, losing even a modest number of out-migrating juveniles or returning adults can halt recovery efforts entirely.

The Tribe has made extraordinary sacrifices—restricting or closing our own fisheries, investing tens of millions of dollars in habitat restoration, and engaging in rigorous co-management—yet predation outside our control is eroding the gains we and our partners have worked so hard to achieve.

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III. Consequences for Tribal Treaty Rights

For the Nisqually Tribe, the impact of unchecked pinniped predation is not theoretical. It means:

- Fewer fish reaching spawning grounds, undermining recovery goals.
- Fewer hatchery adults available for treaty and non-treaty fisheries
- Further reductions or closures of treaty fisheries even when the Tribe is not the source of the decline.
- Strained co-management with the State of Washington as we collectively attempt to meet escapement goals while our access is continually restricted.
- Eroded the cultural continuity of teaching our children, through fishing, who they are as Nisqually people.
- Undermining of the federal trust responsibility, by allowing one federal statute to effectively nullify a treaty protected right.

When federal law protects abundant species so rigidly that it systematically eliminates another species—and in doing so, eliminates a reserved tribal right—the federal trust responsibility is not being met. Treaty rights cannot be honored in theory while the fish necessary to exercise those rights are lost in practice.

IV. The Tribe's Actions and Commitment

The Nisqually Tribe has invested millions of dollars and countless hours in salmon recovery:

- Restoring more than 900 acres of Nisqually estuary, one of the largest estuary restoration projects on the West Coast.
- Implementing conservative, science-based harvest management, often limiting our own fishing opportunities to protect weak stocks.
- Conducting long-term monitoring, tagging, and predation research with NOAA, WDFW, and partner tribes.

- Working across jurisdictions to improve water quality, habitat connectivity, and climate resilience.

We are fulfilling our treaty responsibilities. But we cannot restore salmon alone when predation removes a significant portion of the runs before they ever reach adulthood and the spawning grounds.

V. How Congress Can Help Balance the Scales of Salmon Restoration, Respect for Treaty Rights, and Marine Mammal Protection

We are not asking for the elimination of seals or sea lions. We are asking for balanced, adaptive management that recognizes *all* federal obligations—including treaty obligations.

Specifically, we urge Congress to:

1. Modernize the MMPA to allow timely, science-based management to address predation on ESA-listed salmon and treaty fisheries.
2. Streamline the Section 120 process so both state and tribal fish and wildlife managers can remove pinnipeds in estuaries and critical migration corridors and restore a ceremonial and subsistence practice of harvesting pinnipeds by the tribe utilizing geographically appropriate means not limited to chemical euthanasia.
3. Fund long-term predation research, including tagging, diet analysis, and monitoring of key Puget Sound sites.
4. Increase funding for tribal-led and co-managed predation research and management, including tracking, diet studies, smolt survival monitoring, and estuary assessments.
5. Support habitat restoration and salmon recovery programs, which remain essential but insufficient without predation management.
6. Support tribal-led co-management programs, which combine Indigenous knowledge with western science.
7. Affirm the federal trust responsibility to ensure that tribal treaty fishing rights remain viable—not symbolic.

VI. Conclusion

For the Nisqually people, salmon are our relatives, not resources. We have cared for them since time immemorial, and our treaty confirmed our right to continue that relationship. The treaty our ancestors signed requires that our right to fish be honored—not only in law, but in practice. Today, that right is being eroded by an imbalance that Congress has the power to correct.

The question before you is not simply about wildlife management—it is about the United States' legal and moral obligation to honor the promises it made to our ancestors and to ensure that the treaty right to fish remains meaningful for future generations. We seek a path forward that

protects marine mammals *and* protects the salmon upon which our culture, economy, and identity depend.

Thank you for hearing our concerns and for your commitment to upholding treaty rights. I am happy to answer any questions.