



# Northwest Indian Fisheries Commission

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**TESTIMONY OF ED JOHNSTONE, CHAIRMAN  
NORTHWEST INDIAN FISHERIES COMMISSION  
BEFORE THE HOUSE NATURAL RESOURCES SUBCOMMITTEE ON WATER,  
WILDLIFE AND FISHERIES  
OVERSIGHT HEARING ON  
SEA LION PREDATION IN THE PACIFIC NORTHWEST**

**December 3, 2025**

Chair Hageman, Ranking Member Hoyle and Honorable Members of the Subcommittee, my name is Ed Johnstone, and I am the Chair of the Northwest Indian Fisheries Commission (NWIFC). The NWIFC is composed of the 20 treaty tribes that are party to *United States v. Washington*, which upheld the tribes' treaty-reserved right to harvest and manage various natural resources on and off-reservation, including salmon and shellfish and other aquatic resources. On behalf of the NWIFC, I'm providing testimony for the record on the issue of pinniped predation on salmon species and the impacts that this and other related Marine Mammal Protection Act (MMPA or Act) concerns have on the successful implementation of salmon recovery and salmon management objectives within Puget Sound and Washington coastal waters.

I appreciate the opportunity to testify in front of the Subcommittee hoping to bring attention to the overall impacts to tribal communities, economies and lifeways, and the continued exercise of tribal treaty rights – especially those reserved rights to hunt, fish and gather in all our usual and accustomed stations on and off-reservation(s). Given the onslaught of pressures we face, it is now more important than ever for the federal government, who has a trust responsibility to support active and adaptive management, supplementation, and restoration of fisheries – all of which are vital to the tribes physical, cultural and economic wellbeing, as well as an important link in our nation's food supply chain.

## **KEY REQUESTS & MANAGEMENT CONCERNS**

The MMPA requires modification to address environmental change and resulting ecosystem stressors. Lack of clear management goals and authority for the National Oceanic and Atmospheric Administration (NOAA) precludes its ability to achieve sustainable populations of marine mammals and their associated ecosystems in a changing environment.

In addition to the reports that are cited herein and thereby incorporated into this testimony by reference, the tribes in western Washington recommend modification of the following elements to address immediate management and environmental issues:

- **The MMPA should consistently recognize the management authority and co-management status of the treaty tribes in western Washington.**

The MMPA recognizes treaty rights in name but currently does not include an explicit mechanism for joint federal-tribal management action or plans as it does for both states and their management entities, and also for Alaska Natives through Sec.119 (*co-management agreements*)<sup>1</sup>. This inconsistency must be addressed not only to resolve the disparate treatment between treaty tribes in western Washington and Alaska Natives under the Act, but to bring the Act into alignment with its own scope and intent.

It should be noted on this latter point, , that there is an existing savings clause within the MMPA, brought forth via a 1994 amendment, wherein it is the expressed intent of this Act to “... [not] to alter any treaty between the United States and one or more Indian tribes...”<sup>2</sup>. However, in the implementation of the Act, the reserved treaty rights of tribes have been regularly and indefensibly restricted and otherwise altered, if not disregarded altogether. This is not only inconsistent with a plain reading of the Act itself- especially in light of the 1994 amendment, but is also inconsistent with longstanding, well established legal canons of construction as outlined and defined by the courts when interpreting Indian treaties, the reserved rights doctrine, and reserved rights of tribes vis-à-vis other statutes and regulations.

It should be a priority to resolve this disparity through identification of a clear recognition of the pre-existing rights and status of treaty tribes in western Washington as natural resource co-managers. The establishment of a mechanism through which treaty tribes and our federal trustees can enter into co-management plans and agreements is a primary request that would provide a necessary tool for successful and sound ecosystem management, species management objectives and needs as set forth under both the MMPA, and for other species of concern such as, but not limited to, those salmon species currently listed under the Endangered Species Act (ESA). Furthermore, for most watersheds in western Washington the treaty tribes are best situated in terms of proximity, staffing and capacity to provide management responses. This suggests that a move towards an immediate co-management framework is not only ideal, but is *achievable and actionable*, in an immediate timeframe.

- **Option sustainable population (OSP) as currently defined for implementing the MMPA does not ensure sustainability for marine mammals or ecosystem(s).**

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<sup>1</sup> Section 119 of the Marine Mammal Protection Act (MMPA) authorizes co-management agreements between Alaska Native organizations and federal agencies (like NOAA Fisheries and the Fish and Wildlife Service) to provide a framework for conserving marine mammals and managing their subsistence use. These agreements allow for collaboration, incorporate Indigenous Knowledge, and promote the sustainable health of marine mammal populations

<sup>2</sup> Pub. L. 103–238, §14, Apr. 30, 1994, 108 Stat. 558, provided that: “*Nothing in this Act [see Short Title of 1994 Amendment note above], including any amendments to the Marine Mammal Protection Act of 1972 [16 U.S.C. 1361 et seq.] made by this Act (1) alters or is intended to alter any treaty between the United States and one or more Indian tribes[...]*”

As currently defined and implemented, OSP within the MMPA does not promote or ensure sustainability for either marine mammals or the ecosystems that they depend upon. In implementation of OSP, levels have focused more on “quality of life” – an arguably arbitrary notion and ‘metric’, than on sustaining and considering current conditions and carrying capacities of ecosystem(s). The latter of which is supposed to be a key factor in both the calculation of and maintenance of OSP, wherein the Act specifies that OSP is a target to be set within the context of carrying capacity of the environment<sup>3</sup>. Essentially, this is to ensure that a population can maintain productivity but does not grow so large as to deplete its resources or affect other resources and ecosystem functions critical to overall resilience and sustainability. Thus, selection of, or improved management of a metric more closely bound and linked to ecosystem(s) or habitat carrying capacity would lead to a better balance between abundance and ecosystem health. For example, in fisheries management, we’ve had success utilizing management metrics such as maximum sustainable population or maximum sustainable yield. If OSP proves to be insufficient in supporting effective species management relative to, and in consideration of the carrying capacity of ecosystems, utilizing other management metrics such as those more familiar in/to fisheries management frameworks might be better suited to improving overall species management under the MMPA.

- **The relationship between the MMPA and the Endangered Species Act (ESA) should be clarified.**

Currently on the West Coast, the MMPA functionally prohibits effective predation abatement measures, daylighting a clear regulatory and policy gap and question as to which statute takes precedent, especially in instances where one protected species (i.e. marine mammals under the MMPA) is having a significant impact on the protection, conservation and recovery of another protected species such as salmon listed under the ESA.

In western Washington, pinnipeds have been allowed, and continue to be allowed, to drive salmon runs to functional extinction. For example, within Puget Sound, artificial structures such as that of the Ballard Locks in Lake Washington have interfered with salmon migration and anti-predation behaviors by creating areas where salmon are otherwise forced to congregate (*such as fish ladders and/or inadequate fish passage structures*) and that result in increased vulnerability to predation by harbor seals and sea lions. In the 1980s and 1990s, under the MMPA a task force was formed to try to address this issue and the predation impact that pinnipeds were having on salmon runs. These intensive management efforts,

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<sup>3</sup> 16 U.S. Code § 1362 (9): *The term “optimum sustainable population” means, with respect to any population stock, the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.*

often taking the form of hazing and relocation of problem individuals of the species – most notably California sea lions, were not successful and has since led to the functional extirpation of Lake Washington Steelhead<sup>4,5</sup>. The MMPA as implemented is allowing this predation pressure to continue, not only in the Lake Washington (WRIA 8) Watershed, but across all watersheds in Puget Sound and Washington coast. Not only are these predators impacting salmon populations, a treaty resource and thus also affecting the meaningful exercise of the treaty right of taking fish, but it is allowing the extirpation and ultimately extinction of a keystone species of the ecosystem. This is not only inconsistent with the expressed intentions of both ESA and MMPA, but it has resulted in the functional mismanagement, or total lack thereof, of marine mammals.

Presently, it has been only through Congressional action that pinniped predation abatement programs have been established for a small subset of ESA listed salmon stocks. These predation abatement efforts could be streamlined and broadened to more critical salmon stocks if the ESA was established as the controlling federal legislation. This would better protect and sustain this key stone species, as well as the health of the overall ecosystem. Furthermore, many of the depredation measures to date, and as authorized under the MMPA, prioritize non-lethal removals and abatement measures; an approach that for decades we can now show and effectively demonstrate are ineffective, not to mention are too onerous, cumbersome and time-consuming to have any effective management or curtailment of pinniped predation on salmon, especially ESA listed salmon<sup>6</sup>.

- **The management authority of NOAA to enforce and implement the MMPA should be clarified.**

It has been the policy position of the West Coast Region that the agency does not have authority to manage pinnipeds. This policy position has resulted in pinnipeds becoming an unregulated apex predator, which pose existential threats to already depressed salmon stocks, not to mention the threat to overall ecosystems and the severe and cascading impacts to ecosystem function, resiliency, food web dynamics and trophic level interactions/disruptions. As a matter of urgency and in implementing the full purpose and intent of the MMPA, and as simply a measure of reasonable and prudent management objectives and policy, NOAA should have the authority *and responsibility* to react appropriately as the lead management agency to ensure that goals of the MMPA are being fulfilled in its entirety.

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<sup>4</sup> Cram, J., N. Kendall, A. Marshall, T. Buehrens, T. Seamons, B. Leland, K. Ryding and E. Neatherlin 2018. Steelhead At Risk Report: Assessment of Washington's Steelhead Populations. Washington Department of Fish and Wildlife Report FPT 19-03.

<sup>5</sup> See also: Washington State Academy of Sciences. (2022). Pinniped Predation on Salmonids in the Washington Portions of the Salish Sea and Outer Coast. Seattle, WA: WAS, 1-81.

<sup>6</sup> See also: Technical Report on Pinniped Predation on Salmon at the Ballard Locks. (2024). Seattle, WA.

**CONCLUSION**

The treaties between the federal government and Indian tribes, as well as the treaty-reserved rights to harvest, manage and consume fish and shellfish, are the “supreme law of the land” under the U.S. Constitution (Article VI). It is, therefore, critically important for Congress and the federal government to provide continued support in upholding the treaty obligations and carrying out its trust responsibilities. Just as we are a place-based people, our treaty rights are place-based too. For those rights to have meaning there must be resources for us to harvest. Otherwise, our treaties are relegated to empty promises, which is an all-too-common theme in Indian Country.

An important and supplemental component of these obligations is to also then execute statutory authorities, such as that prescribed under the MMPA, in a responsible and timely manner that accounts for active management of species, especially marine mammals. This should be conducted in a way that is consistent with ecosystem-based management approaches that takes into account other necessary management programs and efforts while simultaneously providing for improved salmon management, salmon recovery, and habitat and ecosystem protections.

We respectfully urge you to continue to support our efforts to protect and restore our treaty-reserved rights and natural resources that in turn will provide for thriving ecosystems and economies for both Indian and non-Indian communities alike. Thank you.