

**TESTIMONY OF  
THE COLUMBIA RIVER TREATY TRIBES  
BEFORE PACIFIC FISHERIES MANAGEMENT COUNCIL  
April 12, 2010  
Portland, OR**

Good day Mr. Chairman and members of the Council. My name is Virgil Lewis. I am a member of the Fish, Wildlife, and Law and Order Committee of the Yakama Nation. I am here with Rapheal Bill, Herb Jackson, and Bruce Jim to provide Testimony on behalf of the four Columbia River treaty tribes: the Yakama, Warm Springs, Umatilla and Nez Perce tribes.

The tribes are disturbed by the inadequate response from the states to respond to our concerns about the proposed mark selective recreational fisheries in Ocean Areas 1 through 4 in June. We testified to these concerns at the March meeting. We have received little indication that the states are willing to address any of these concerns. We received an email copy late Sunday of a draft Washington monitoring plan that is not substantively different from the draft monitoring plan we received at the March meeting. Clearly we have not had time to fully analyze this plan.

At the March PFMC meeting, we told the Council that it is necessary to directly monitor mark selective fisheries in order to determine the number of unclipped fish that are handled and released. Angler interviews are inadequate for estimating the encounter rate in mark selective fisheries. We understand that Washington is not willing or capable to implement a program to directly monitor handle rates in Areas 3 and 4 and Oregon also has no plans to directly monitor its mark selective fisheries. This is not acceptable. Without direct monitoring, the estimates of the effects of mark selective fisheries are questionable and not reliable enough for making management decisions.

The tribes met with NMFS late in the day on Sunday. We were encouraged that NMFS seems willing to seek funding to assist in the ocean monitoring programs and is willing to investigate paying for analyzing existing genetic data for ocean fisheries. The tribes anticipate further meetings with NMFS to discuss these and other issues during the week this week. NMFS needs to understand that a

verbal promise to investigate a few of the issues of concern to the tribes is not alone sufficient to eliminate tribal opposition to the mark selective fishery proposal before the Council.

At the March meeting we brought up concerns that Double Index Tag Groups need to be in place in order to estimate mortality rates in mark selective fisheries. The U.S. Fish and Wildlife Service has Double Index Tag Groups in place for its Columbia River programs at places like Spring Creek Hatchery. Other programs, such as Priest Rapids Hatchery and Ringold Hatchery have no double index tag groups on fish returning in 2010. There will likely be a Double Index Tag group at Priest Rapids starting with 2010 releases. It is reckless and irresponsible to implement mark selective fisheries impacting fall Chinook without full double index tagging in place.

The southern U.S. fishery managers have worked very hard to develop harvest plans under the Pacific Salmon Commission process that appropriately manages and monitors Alaskan and Canadian fisheries that impact southern U.S. stocks. Inadequate implementation of mark selective Chinook fisheries erodes the ability to measure if Pacific Salmon Treaty obligations are being met. Situations where the impacts of mark selective fisheries on the unmarked or natural populations cannot be evaluated or quantified must be avoided. The reporting of impacts in existing and future mark selective fisheries must be detailed enough to meet the needs of both the PSC and *U.S. v Oregon* processes. It is very upsetting to see Council area fisheries proposed that will adversely impact not only tribal fisheries, but international agreements as well.

The *U.S. v. Oregon* parties have agreed to manage 2010 in-river fisheries according to the 2008-2017 *U.S. v. Oregon* management agreement. This agreement states, **"If mark selective fisheries are implemented that impact upriver fall Chinook, the non-treaty ocean and in-river fisheries may not harvest more than 50% of the harvestable surplus of upriver fall Chinook, consistent with the applicable federal allocation caselaw."**

We need to have post season analysis of the actual ocean Chinook catches to determine how many upriver fall Chinook are killed in ocean fisheries so that the *U.S. v. Oregon* Parties can assess the actual percent of harvestable surplus caught by both treaty and non-treaty fisheries.

The experience of recent years indicates that with the way the states have implemented mark selective in-river spring Chinook fisheries, the result was non-treaty harvest substantially exceeding the allowed tribal harvest and tribal wild harvest rates being forced up because of mark selective fisheries. Steelhead mark selective fisheries have also been implemented in ways that result in significant catch imbalances in favor of non-treaty fisheries. It took several years for the states and tribes to resolve catch balance issues for spring Chinook. The clarified understanding of catch balancing will be implemented for the first time in 2010 and the tribes will be carefully monitoring the results to ensure we actually have this issue resolved.

The tribes believe that the implementation of mark selective fisheries impacting Columbia River fall Chinook stocks, such as those being considered for ocean fisheries, will cause similar allocation issues. The tribes are very concerned about the continuing expansion of mark selective fisheries and the inability to measure the effects on allocation and achievement of conservation goals. Expansion of mark selective fisheries has the potential of shifting the burden of conservation on to tribal fisheries, which is contrary to federal treaty fishing rights case law.

We also do not believe that coho mark selective ocean fisheries have been monitored and evaluated in a manner consistent with the requirements of the *U.S. v. Oregon* Agreement. The requirement in the *U.S. v. Oregon* Management Agreement is: **“The Parties agree to implement fisheries in the Pacific Fishery Management Council (PFMC) and Columbia River Compact that provide treaty Indian and non-treaty fisheries the opportunity to each harvest 50% of the upriver adult coho available for harvest south of the U.S. – Canada border. The provision for 50% of the defined upriver adult coho run size to non-treaty fisheries shall include any catches in sport fisheries above Bonneville Dam as well as sport and Commercial fisheries below Bonneville Dam and in the ocean. The upriver coho run is comprised of both early and late stocks.”**

The tribes are concerned about the process by which coho forecasts are made. There is no tribal involvement in this process. As co-managers of the resource, the tribes must be provided with information that affects treaty fishing. Information concerning the forecast for upriver coho for 2010 and the estimated mark rate has not been provided to the tribes nor does it appear to be included

in Council documents. The tribes question the validity of the estimates. Observed mark rates in ocean coho fisheries seem to be substantially different than the forecast mark rates. The Salmon Technical Team reports projected non-treaty coho catches that comply with the Management Agreement requirement, but there is no post-season assessment of impacts on Columbia River stocks, relative to the Management Agreement requirement. A final post season report of impacts from all fisheries, both ocean and in-river is essential element for assessing the effects of the Management Agreement. A final post season report is necessary to calculate harvest sharing between treaty and non-treaty fisheries. Post season reports need to be more than just fishery model runs. They need be an analysis of the fish that were actually caught. The tribes expect the state and federal agencies to live up to their commitment to provide information necessary to evaluate compliance with the Management Agreement. In a letter to the Columbia River tribal chairs NMFS stated that, "NOAA Fisheries expects managers to apply the experience gained from existing mark-selective fisheries to any new proposal and to continue to adaptively manage these fisheries as information is increased and uncertainty reduced." We agree and think that that this is exactly why NMFS should require a full multi-year analysis of the roughly ten year history of ocean coho mark selective fishing before they consider adopting any Chinook mark selective fisheries in federal waters.

As a federal agency NMFS has a treaty trust responsibility to ensure that non-treaty fisheries are managed consistent with federal treaty fishing rights case law. As part of that treaty trust responsibility, NMFS must require appropriate monitoring and evaluation and reporting of all fisheries, including any mark selective fisheries, so that tribal fisheries are protected from adverse impacts.

Additionally, we would like to remind the states of Oregon and Washington that the tribes object to their proposal to implement mark selective Chinook recreational fisheries in the mainstem Columbia River during the summer Chinook management period. The tribes have a number of policy and technical concerns. The upper Columbia River summer Chinook are not listed for protection under the ESA. The state proposal reduces landed catch and increases incidental mortalities in order to extend fishing time by a few days. The tribes see this as wastage. Tribal fishermen are taught not to play with their

food. The state proposal suffers from many of the same technical problems as the proposed mark selective fishery in the ocean. There is no agreement on the incidental mortality rate, monitoring plans are inadequate, and there in Double Index Tag group. Assessing the impacts of the proposed fishery with any degree of certainty is impossible.

The technical concerns extend to the proposed ocean fishery. The monitoring is inadequate to properly estimate the impacts of the proposed ocean fishery on upper Columbia River summer Chinook. The *U.S. v. Oregon* Management Agreement assumes that ocean harvest of summer Chinook is small and consistent on an annual basis. Implementation of fisheries targeting marked Chinook in June may invalidate that assumption. To test the assumption all harvest data including ocean fishery interceptions needs to be evaluated. The tribes ask the Council to direct the Salmon Technical Team to assess recent year actual interceptions of upper Columbia Summer Chinook in PFMC area fisheries on an annual basis.

In summary, the tribes continue to stress that mark selective fisheries are a poor way to manage fisheries and that they will do nothing to rebuild salmon stocks. Council members should vote against any mark selective Chinook fisheries in the ocean for this year or in any year until the following actions are taken:

1. Ensure an appropriate analysis of past coho mark selective fisheries is complete which includes an assessment of ocean and in-river impacts on Columbia upriver coho as indicated in the *U.S. v. Oregon* Management Agreement.
2. Analyze existing genetic data especially concerning current impacts to wild fish and ensure funding is available for future genetic sampling of ocean fisheries.
3. Ensure that post season impacts to Columbia River up-river fall Chinook can be provided based on analysis of actual fish caught and not simply re-running models which assume impacts will be similar to some base period. This is critical to measure where fisheries stand relative to 50% of the harvestable surplus.

4. Ensure that plans are in place and funding is available for on-the-water direct observation of mark rates in all catch sampling areas where there are either coho or Chinook mark selective fisheries.
5. Agreed to forecasting methodologies need to be developed to adequately forecast marked and unmarked components of Columbia River Chinook and coho stocks.
6. And there must be an analysis of the risks associated with the possibilities of multiple encounters from the increasing intensities of mark selective fisheries.

In summary, we as co-managers of the salmon resource, need give up the false concerns that not implanting mark selective fisheries will somehow impact the mitigation responsibility of the Mitchell Act or that mark selective ocean fisheries will somehow, as if by magic, reduce the number of hatchery fish that spawn naturally. In general, the tribes are not as concerned with the issue of hatchery fish spawning naturally since hatchery fish came originally from wild fish. What we need to do is to get on with the tasks of restoring habitat and addressing the real issues affecting the productivity of our fish. We need to restore these fish so we can all go fishing.

This concludes our statement. Thank You.