



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northwest Region
7600 Sand Point Way N.E., Bldg. 1
Seattle, WA 98115

April 8, 2010

The Honorable Harry Smiskin, Chairman
Confederated Tribes and Bands of the Yakama Nation
P.O. Box 151
Toppenish, Washington 98948-0151

Dear Chairman Smiskin:

NOAA Fisheries received and considered with interest the testimony of Rapheal Bill provided on behalf of the Yakama, Warm Springs, Umatilla and Nez Perce tribes to the March meeting of the Pacific Fisheries Management Council related to a proposed 2010 mark-selective recreational fishery for Chinook salmon in ocean waters. NOAA Fisheries notes the tribes' opposition to the mark-selective fishing proposals and heeds their cautionary comments. I would like to provide some perspective on the proposal as viewed by NOAA Fisheries.

Like most public agencies and tribal governments, NOAA Fisheries is charged with the simultaneous pursuit of several public policies – some of which appear at times to conflict. NOAA Fisheries strongly supports treaty Indian fishing rights and seeks to meet its trust responsibility and maintain a strong government-to-government relationship with tribes. It administers the Endangered Species Act which, among other things, places difficult conservation constraints on fish harvesting and other activities. At the same time, NOAA Fisheries supports sustainable tribal and non-tribal commercial and recreational fish harvest under both the Magnuson/Stevens Act and the Mitchell Act.

NOAA Fisheries believes that mark-selective fishing can be an important tool in implementing policies that further some of these objectives without adversely affecting others. Specifically, NOAA Fisheries believes that properly designed, managed and monitored, mark-selectivity can support fisheries and not illegally or unduly affect treaty Indian fishing rights, whether those rights are exercised through *U.S. v. Oregon* or other management agreements. Mark-selective fisheries cannot be managed to frustrate any tribe's access to its treaty-reserved harvestable share of fish.

In time, NOAA Fisheries believes that mark-selective fisheries can help to sustain viable fisheries while reducing harvest-induced mortality rates on depressed natural-origin fish.



NOAA Fisheries' support for consideration of a mark-selective fishery for Chinook is not unconditional. Precautions must be taken to ensure that this emerging tool does not result in unexpected effects in either the biological arena or in harvest sharing. Confidence in rates of encounter and release mortality must be sufficiently high to ensure proper planning of the fishery to meet biological outcomes and harvest objectives. However, NOAA Fisheries does not believe that *all* uncertainty must be removed prior to implementation of any mark-selective Chinook fisheries in the ocean. 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. In this regard, it seems appropriate to initially consider modest proposals in order to manage risk while increasing experience. It seems equally appropriate to consider proposals for fishing areas where there is higher confidence in encounter and release mortality rates rather than in areas of transition or warmer waters where more research may be appropriate.

NOAA Fisheries will approach the April meeting of the PFMC with an open mind toward the proposal for a mark-selective recreational Chinook fishery. I look forward to considering the specifics of the proposal in order to fairly evaluate whether it acceptably meets management criteria, including the assurance that the new fishery would not impair treaty Indian fishing rights. I hope you also will approach the proposal with a perspective that seeks to ensure proper implementation of treaty Indian fishing rights, but which also seeks to maximize the benefits to all fisheries while fulfilling our conservation responsibilities.

Sincerely,



Barry A. Thom
Acting Regional Administrator

cc: Paul Ward
Phil Rigdon
Steve Parker