

**TESTIMONY OF  
THE COLUMBIA RIVER TREATY TRIBES  
BEFORE PACIFIC FISHERIES MANAGEMENT COUNCIL  
MARCH 9, 2009  
SeaTac, Washington**

Good day Mr. Chairman and members of the Council. My name is Herb Jackson. I am a member of the Fish and Wildlife Committee of the Nez Perce Tribe. I am here with Bruce Jim from the Warm Springs Tribe, and Rapheal Bill of the Umatilla Tribe to provide Testimony on behalf of the four Columbia River treaty tribes: the Yakama, Warm Springs, Umatilla and Nez Perce tribes. We will each read part of our testimony.

Salmon are of critical cultural importance to the tribes. Our relationship with the fish goes back to time immemorial. Our tribes depend on salmon to meet our ceremonial and subsistence as well as our economic needs. Our ceremonial and subsistence needs take precedent over other needs. Our rights to these fish are protected by treaties with the United States.

**The tribes are extremely upset by a proposal we expect from WDFW to implement mark selective recreational fisheries in Ocean Areas 1 and 2 and at Buoy 10 at the mouth of the Columbia River.**

The *U.S. v. Oregon* parties will manage 2009 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." The tribes have had a bad experience with the way the states have implemented mark selective in-river spring Chinook fisheries in ways that have allowed the non-treaty harvest to exceed the allowed tribal harvest in many years. The tribes believe that the implementation of mark selective fisheries impacting fall Chinook stocks will cause similar problems for tribal fisheries. **We are very concerned that if these fisheries are implemented this year that they will expand in future years and soon the non-treaty fisheries catches will exceed 50% of the harvestable surplus.** This will adversely affect tribal fisheries and make it difficult to meet the spawning needs for fish.

Tribal staff had a brief opportunity to meet with the Salmon Technical Team (STT)

regarding concerns over mark selective fisheries and we appreciate the team's willingness to discuss issues with us. WDFW also shared the 2009 Ocean Sampling Plan with us which we also appreciate.

The tribes have a number of concerns with the proposed implementation of mark selective fisheries. First, the release mortality rates for ocean fisheries are high. We understand the STT has been instructed to use a 14% release mortality rate plus a 5% drop off mortality rate for Chinook and coho recreational fisheries. This means that the STT expects that 21% of all unmarked fish will die if handled in ocean recreational fisheries. Various scientific literature suggests that the actual release mortality rates could be over 50%. If the Council is underestimating the true release mortality rates in these fisheries, the actual number of unmarked wild fish that are killed in these fisheries may be significantly higher than the pre-season planning models suggest. The tribes believe that as a precautionary principle, the Council should model ocean recreational fisheries using higher release mortality rates. In addition, Buoy 10 fisheries may have a higher mortality on fish as it is in a transition zone from an ocean to freshwater environment where fish are stressed, and would experience a higher mortality than in either the ocean or freshwater environment. Unless the mark rate is very high, mark selective fisheries will have to sort through large numbers of unmarked fish and in the ocean will kill large numbers of wild fish in order to retain just a few marked fish. We believe there should be comprehensive research to determine the true release mortality rates before new mark selective fisheries are implemented.

Second, the tribes understand that the ocean FRAM calculates fishery impacts on the marked and unmarked components of various stocks. However, the tribes do not understand how the FRAM can calculate impacts to the unmarked portion of the Columbia River Upriver Bright (URB) stock. The *U.S. v. Oregon* Technical Advisory Committee does not do a forecast for the unmarked URBs. We believe that WDFW staff have made some estimates of unmarked URBs but we have not seen these estimates and do not have any idea if they are reasonable. We also do not understand the precise method by which mark rates for Chinook will be estimated pre-season. The tribes will not be able to accept the results of ocean fishery modeling until these and other questions can be answered to our satisfaction.

Third, we also understand that there is no way to model multiple encounters within any time step of the FRAM. We regard this as a serious shortcoming that renders the FRAM inappropriate for modeling mark selective fisheries. The tribes believe it is highly likely that

some fish may be caught and released in Area 2 fisheries and then caught and released in Area 1 fisheries and then potentially caught in the Buoy 10 fishery. We believe there may be significant additional release mortality with each successive encounter. Until research can be done to determine the level of mortality associated with multiple encounters, the Council should not recommend mark selective fisheries or it should model fisheries with appropriately precautionary release mortality rates to account for this risk.

Fourth, Party boat rules should be eliminated. The tribes believe that recreational fishermen should catch their own fish and quit fishing when they have captured their daily limit of fish. Party boat rules can allow boats to handle very large numbers of unmarked fish especially when mark rates are low. We believe these rules result in biased estimates of release mortality of the unmarked fish.

Fifth, it is imperative to the tribes that the STT and the states of Oregon and Washington provide estimates of impacts to Spring Creek Hatchery tules to ensure that mark selective fisheries do not harvest so many of these mass marked hatchery fish that it results in the tribes being forced to take actions in the tribal fishery to restrict tribal catch to meet the hatchery escapement goal. With the modest pre-season forecast for Spring Creek tules, we see this as a serious risk. We believe that the states should provide written assurances that if their fisheries result in the overharvest of this stock forcing the tribes to take actions to meet broodstock goals, then the states will reduce their fisheries in future years as a payback (or reduce their in-river fisheries as a result of ocean take in the current year).

Sixth, because of the requirements that the tribes have access to 50% of the harvestable surplus of fall Chinook destined to return to the tribal fishing areas, the tribes will need to know the actual impacts of ocean fisheries on our fish prior to the beginning of the in-river fall Chinook fisheries and Buoy 10 fishery in August and then again at the conclusion of the ocean fisheries in September. It is critical that this information be provided so that if the actual ocean fisheries have caught more of our stocks than was planned pre-season, then the Buoy 10 and in-river fisheries can be adjusted so that the tribal fishery will still have the opportunity to harvest its share of the fish. This will involve adequately sampling ocean fisheries, reading Coded WireTags in season, and making accurate assessments of the actual impacts to our fish. We understand the STT does not do any in-season management that can provide this information, nor does it do post season assessments of how many Columbia River fish are actually killed in ocean fisheries. We regard this as a serious short-coming that needs to be fixed. If this information can not be provided in a

timely manner, the tribes may need to take action within *U.S. v. Oregon* to ensure that the in-river non-treaty fisheries do not begin until we know if the combination of the actual ocean fisheries along with planned in-river fisheries will adversely affect the tribes opportunity to harvest 50% of the harvestable surplus.

Seventh, international agreements such as the Pacific Salmon Treaty use Coded Wire Tag information to evaluate the impacts of ocean fisheries on natural stocks, but they have to assume there are the same impacts on marked and unmarked fish. The technical groups have strongly recommended that if there are such fisheries, there must be Double Index Tag groups so the difference in impact to wild fish can be estimated. Even then, it will be extremely difficult to assess impacts on a fishery specific. Thus, these fisheries will erode the ability to measure whether we are meeting international obligations. We should avoid situations where we cannot evaluate or quantify the impacts of these fisheries on the unmarked or natural components of these stock groups until we develop the necessary tools.

For the Council's information, we also have concerns about the in-river fisheries. We believe that Buoy 10 is a terrible place to implement mark selective fisheries for either Chinook or coho. We believe that fish are already under stress as they are making the transition from salt to fresh water. We think that handling and release will result in very high levels of release mortality, especially if ODFW insists on maintaining the rule allowing barbed hooks in this fishery. The *U.S. v. Oregon* Technical Advisory Committee does not currently have an agreed to release mortality rate estimate for Chinook at Buoy 10. Unless the states can provide research showing the basis for an appropriate release mortality rate for use in an estuarine environment, the tribes will not agree to this fishery. We also do not have an agreed to model to model in-river mark selective fisheries.

The Buoy 10 fishery primarily harvests Spring Creek Hatchery tules and Lower River hatchery fish. But it also harvests reasonable numbers of URBs many of which are unmarked wild fish, along with ESA listed Snake River fall Chinook. In 2008, fishery modeling in October suggested that the Buoy 10 fishery had a 1.2 percent harvest rate on URBs. If the Buoy 10 fishery is managed as a mark selective fishery, it would not be allowed to target or retain unmarked URBs including abundant wild fish returning to the Hanford Reach. Because of this the tribes do not believe the states would require the entire allowed harvest rate on URBs. The tribes will seek to have this allowed harvest rate for in-river fisheries reduced, because it will no longer be needed.

We also are concerned about the affect of mark selective fisheries on the supplementation

program for Snake River fall Chinook. Many of the supplementation fish are adipose fin clipped for monitoring and evaluation purposes – not simply to provide fish for non-Indian sport fisheries. In large part due to tribal restoration programs for Snake River Fall Chinook, over 16,000 Snake River fall Chinook reached Lower Granite Dam in 2008. This was a record return. The tribes believe this is further evidence that the long term supplementation of Snake River fall Chinook is working. This program has been successful in providing benefits to both tribal and non-tribal fishers while providing a buffer to get us through periods of low survival. The tribes have no problem with reasonable levels of harvest impacting these fish, but mark selective fisheries will compound the already difficult job of monitoring and evaluation.

The tribes remind the Council that it is also necessary that 50 percent of the upriver coho must be passed to the treaty fishing area upstream of Bonneville Dam. We believe there is a need to improve forecasting for upriver coho so harvest impacts can be better assessed on this stock. We are not satisfied with the way upriver coho are split out of the overall OPI forecast. The tribes believe that we should do a comprehensive assessment of the affects that coho selective fisheries have had both on wild stocks and on terminal fishery opportunity.

Some groups such as the National Marine Fisheries Service and the Washington Department of Fish and Wildlife are continually pushing to expand mark selective fisheries when clearly they have shown no benefit to natural origin fish stocks. We are disappointed that the federal government seems more concerned about simplistic implementation of mark selective fisheries than it does about assessing the true impact of mark selective fisheries on ESA listed fish or on fulfilling its trust responsibility to the tribes by protecting tribal fisheries. The federal government should be concerned that the intensity of mark selective fisheries on ESA listed stocks like lower Columbia River tules, may be rapidly increasing in intensity with mark selective fisheries in Canada, the Strait of Juan de Fuca, the Washington Coast and at Buoy 10. The Council's Model Evaluation Group has previously stated that mark selective fisheries are more problematic as they increase in intensity. Yet as of right now, we have not heard any concerns expressed by the federal government on how to address this increase in intensity.

Requirements to mass mark hatchery fish are responsible for many of these problems. The federal government is requiring that most federally funded hatchery programs mass mark 100% of their hatchery releases. Most state hatchery programs are also mass marking 100% of their fish. Most hatchery coho have been mass marked since the mid

1990's. The only coho populations to make fairly steady increases are the mid and upper Columbia populations which are heavily supplemented with unmarked hatchery fish. Most other coho populations are static or declining. Steelhead have been mass marked since the 1980's which did nothing to prevent ESA listings. And the Lower Columbia Coho ESU was listed as threatened after the large scale implementation of mark selective coho fisheries. Clearly mass marking coho and steelhead and implementing mark selective coho and steelhead fisheries has done nothing for wild coho populations.

Since nearly all federally funded hatchery Chinook are mass marked, there is ever increasing pressure to implement Chinook selective fisheries. The Pacific Salmon Commission has previously reported the many problems that Chinook selective fisheries cause for the coast wide Coded Wire Tag Program. The tribes' experience with spring Chinook selective fisheries has shown that mark selective fisheries have caused problems with the allocation of in-river catches. And mark selective spring Chinook fisheries have shown absolutely no benefit to natural stocks. Yet every year there is more and more pressure to increase mark selective fisheries. With the anticipated difficulties ahead in planning 2009 ocean fisheries, many people hope that selective fisheries will solve their problems. This is a false hope. The tribes believe that mark selective fisheries are absolutely the wrong way to work towards recovering salmon stocks and providing healthy fisheries for everyone. Mark selective fisheries have never been implemented in a way to produce any conservation benefit. They are only implemented to provide more and more fishing opportunity primarily for sport fisheries.

**The tribes strongly recommend that the Council not approve any options for mark selective Chinook fisheries impacting Columbia River fall Chinook.**

This concludes our statement. Thank You.