

**TESTIMONY OF THE COLUMBIA RIVER TREATY TRIBES
BEFORE PACIFIC FISHERIES MANAGEMENT COUNCIL**

April 13, 2019, Rohnert Park, CA

Good day members of the Council. My name is Bruce Jim, Sr. I am the chair of the Warm Springs Fish and Wildlife Committee and a treaty fisher on the Columbia River. I am here to provide testimony on behalf of the four Columbia River treaty tribes: the Yakama, Warm Springs, Umatilla and Nez Perce Tribes.

Our tribes wish to share some of our perspectives on the plight of the Southern Resident Killer Whales. We share the perspectives of the western Washington tribes on this issue.

Orcas can only be recovered only if all three major factors affecting their status are addressed. These include pollution, ship noise and traffic, and prey availability.

If the federal government and the state of Washington are not willing to deal with point and non-point sources of pollution in the Puget Sound basin, then actions with the other two major factors will not be effective. Actions taken to address pollution will benefit all other fish and animal species as well as tribal people. Pollution needs to be addressed not simply for the sake of orcas.

Ship traffic and noise is a challenging issue. Some things like banning whale watching tours orcas could be done relatively easily, but other solutions will probably involve both regulatory and technological changes. But again, these must be addressed or other actions will not be effective.

Addressing prey availability should focus on producing more fish rather than simply catching less fish.

Producing more fish can be done through increasing hatchery production. However, changes to hatchery production needs to be done in consultation with tribal governments and done in ways that respect treaty rights and tribal fisheries. The hatchery production system in the Columbia River upstream of Bonneville is complex and is the result of difficult negotiations among the U.S. v. Oregon parties and deals with all of the parties' various needs and objectives and goals for salmon recovery. Any changes to production needs to take into account this complex system. We point out that the tribes have been asking for the fish we have been promised for many decades, even since the treaty's were signed. These promises need to be upheld as we produce fish for orcas. We also note that if upgrades and maintenance to our existing facilities were properly funded we would get more adult fish out of our current production.

As we mentioned on Thursday, if we dealt with bird and non-native fish predation, we would also increase the production of adult fish.

We have the least confidence of reducing fisheries as a way to increase prey availability. Many fisheries occur in more terminal areas from where orcas feed. Other fisheries occur in areas and

at times that may not compete with orcas. It will be exceptionally difficult to determine what the effect of any fishery limit will be on food availability for orcas.

Treaty fisheries, however, must be considered as part of the environmental baseline. Any restrictions to treaty fisheries are subject to the conservation necessity principle. There are numerous legal decisions describing aspects of this. Among them is one by The Ninth Circuit Court of Appeals stated the following¹:

Direct regulation of treaty Indian fishing in interests of conservation is permissible only after the state has proved unable to preserve a run by forbidding the catching of fish by other citizens under its ordinary police power jurisdiction.

In other words, the courts have stated as part of the conservation necessity principle that the regulation of Indian treaty activities is only permissible if it is not possible to achieve the conservation measures by imposing restrictions on non-treaty activities that impact the treaty resource.

This concludes our tribal statement.

¹ *U.S. v. Washington*, 520 F.2d 676, 686 (9th Cir. 1975), *citing Antoine v. Washington*, 420 U.S. 194 (1975).