

**Testimony of Olney Patt, Jr., Executive Director
Columbia River Inter-Tribal Fish Commission
Presented to the Senate Committee on Indian Affairs
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Mr. Chairman, esteemed members of the Senate Committee on Indian Affairs, my name is Olney Patt, Jr. I am the executive director of the Columbia River Inter-Tribal Fish Commission serving its member tribes: the Confederated Tribes of the Umatilla Indian Reservation; the Confederated Tribes of the Warm Springs Reservation of Oregon; the Confederated Tribes and Bands of the Yakama Nation; and the Nez Perce Tribe. I wish to thank the Committee for the opportunity to address you today. In January of this year, our Commission had the pleasure of hosting the Tribal Fisheries Co-management Symposium in Portland, Oregon. Many of the tribal organizations here today attended that gathering as well as staff from this Committee. We're pleased that this hearing is, in large part, inspired by and modeled upon, that symposium.

I'm here today to speak to you about our Commission's development, successes and challenges, and voice the member tribe's support for the development and introduction of legislation supporting Indian Fish and Wildlife Management. The time has come.

One creature, more than any other, exemplifies the pride and perseverance of our people. We call him Wy-Kan-Ush. He is brother salmon. And this bond, this sacred relationship between land, water, salmon and ourselves, has unified, stabilized, and humbled the people, providing countless centuries of health, prosperity and well-being.

Holding on to this relationship has been a struggle no less profound than the American struggle for civil rights, human dignity, and equality. While the treaties contained noble words, alone they were not sufficient to govern those driven by land acquisition, hoarding of water rights and an overall dominion over nature.

Since 1855, when our treaties were signed, the reserved rights therein have repeatedly been tested.

- The treaties were violated when a fishwheel operator attempted to bar Indian fishermen from crossing his land. But the United States Supreme Court, in 1905 and 1919, ruled in two cases that the Yakama fishermen had the right to cross the land to exercise their treaty right.
- The treaties were violated when the State of Washington said the Indian fishermen would have to obtain state licenses to exercise their treaty

rights. But in 1942, the United States Supreme Court ruled the state could not require the fishermen to pay license fees.

- The treaties were violated when the State of Washington insisted the treaties reserved no rights not enjoyed by non-treaty fishermen and, under the instruction of then state Attorney General Slade Gorton, in defiance of a federal court order, issued discriminatory fishing regulations. But the United States Supreme Court in 1978 ruled the treaty language secured the tribes a right to harvest a share of each run that passes through tribal fishing areas.

Though the courts ruled in the tribes' favor, states continued to find ways to circumvent these rulings while populations of salmon, steelhead, lamprey, sturgeon, and the region's other resident and migratory fish species continued to decline. Tribal fishermen decided to take matters into their own hands and tribal, state and federal government leaders took notice.

Tribal elected leaders whose duties included protecting treaty-fishing rights recognized that court rulings were not the sole answer to implementing the treaties. A broader inter-governmental approach was needed to deal with the myriad negative impacts on salmon runs that the governments could address through rules, regulations and other legal processes. There was a particular need to address mitigation for hydropower impacts on salmon and the general status of the runs, which, in the late 1970s, were under study for endangered species status.

In response to these problems and under the authority of the newly passed Indian Self-determination Act, the tribes resolved to form the Columbia River Inter-Tribal Fish Commission to ensure a unified voice in the overall management of the fishery resource. The Commission is comprised of the Fish and Wildlife Committees established by each governing body. The Commission acts by consensus.

In the years following the Commission's 1977 formation, the addition of biologists, hydrologists, attorneys, enforcement personnel and public information specialists have increased its collective capacity. These professionals help the Commission carry out its purposes by providing expert testimony, scientific analysis, and, in general, meaningful participation in the many governmental processes affecting treaty resources. The Commission and its staff have assisted in establishing on-reservation fisheries programs that implement on-the-ground salmon restoration efforts in Columbia tributaries, including the Yakima, Umatilla, Clearwater and Warm Springs rivers. These successful recovery programs, combined with the Commission's core research and analysis, as well as a centralized enforcement effort, put the tribes in a key fisheries management role that has grown and evolved during the past quarter century. Though the federal district court in Oregon still retains jurisdiction over *US vs. Oregon*, the crucial

court case still guiding the basin's treaty fisheries, the tribes, through the Commission and tribal fisheries programs, participate in every inter-governmental process on the river affecting water quality, fisheries management, habitat protection, and mitigation.

The Commission has initiated or participated in many local, national and international agreements to restore and recover salmon in the basin.

They include:

- The Pacific Salmon Treaty between the United States and Canada, ratified in 1985.
- The fish and wildlife provisions of the regional Power Act of 1980, resulting in expenditures of more than \$1 billion for salmon protection, mitigation and enhancement during the last 15 years.
- The 1996 federal Memorandum of Understanding among relevant federal agencies to coordinate salmon recovery.
- The Columbia River Fish Management Plan of 1988 that allocated salmon harvests among the tribes and the states of Oregon, Washington and Idaho.
- The Columbia Basin law enforcement coordinating committee initiated in the early 1980s.

Having a seat at the table has furnished the states and federal government with the tribal perspective on the salmon resource, but key decisions still need to be made on important factors responsible for salmon's decline in the basin. Though many hoped that endangered species protection would assist the restoration effort, conflicting federal mandates have limited the effectiveness of Endangered Species Act authority. In addition, while the tribes have successfully used hatcheries as a tool to rebuild salmon runs, the controversial state and federal practice of mass-marking and the failure to meaningfully reform hatchery policy to rebuild wild stocks has restricted tribal restoration efforts. Furthermore, while the tribes have developed a well-regulated fishery, the years without commercial harvests have eroded the market for tribal salmon, especially in light of the proliferation of farm-raised salmon.

These and other challenges are what the Columbia Basin's treaty fishing tribes are facing. But the tribes now have highly capable fisheries programs and an inter-governmental agency that can act under the authority of treaties, the supreme law of the land, to protect tribal sovereignty and resources. With this capacity, and these challenges, I reiterate, the time has come for a strengthened relationship with Congress through Indian Fish and Wildlife Management legislation.

On behalf of our member tribes, I thank you again for this opportunity. The Commission's individual member tribes will provide additional materials for the record. We look forward to your questions.

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