

**TESTIMONY ON THE NATIVE AMERICAN FISH  
AND WILDLIFE MANAGEMENT ACT, S 2301**

**TO THE UNITED STATES SENATE COMMITTEE ON INDIAN AFFAIRS**

**April 29, 2004  
Washington DC**

**BY BILLY FRANK, JR., CHAIRMAN  
NORTHWEST INDIAN FISHERIES COMMISSION**

Honorable Chairman and members of the Committee, on behalf of the member tribes of the Northwest Indian Fisheries Commission, we are pleased to appear before the Senate Committee on Indian Affairs to provide supportive comments on the Native American Fish And Wildlife Management Act (NAFWMA). Today, we will provide some general comments, with the intention of providing more specific comments pertinent to S. 2301 over the coming weeks. We sincerely thank you and your staff for your extensive investment of time and energy in this legislation.

This legislation provides opportunities to help encourage more positive relationships between the tribes and federal agencies, to strengthen collaborative efforts to effect good stewardship, strengthen the infrastructure of tribal natural resource management and marketing programs, support related tribal education and enhance public understanding about tribes and their priorities. These are all critical objectives, and there are many good reasons to support the principles of this legislation. One of the primary reasons is to encourage positive working relationships between the tribal governments and state and federal governments, as well as non-governmental entities. There are many excellent examples of “win-win” relationships when these entities make genuine efforts to work together. In the Pacific Northwest, for example, we have achieved worthwhile in-common objectives in the management of fish, wildlife and other natural resources through the co-management of harvest, enhancement and the restoration and protection of habitat.

Unfortunately, there are also cases in which there is supposed to be federal-tribal cooperation, but it hasn't materialized. We have had “up and down” relationships with various agencies, ranging from the Corps of Engineers to the U.S. Fish and Wildlife Service. There is need for Congress to direct all federal agencies, without exception, to work with tribes and fulfill federal trust obligations to the tribes. It has now been 30 years since the U.S. v. Washington decision, and 150 years since the signing of the treaties. It is

time for federal agencies to take their responsibilities and mutually beneficial opportunities to work with tribes seriously enough to work together on a regular basis, if we are to effectively meet the ongoing challenges to the natural resources that sustain us all.

The 20 Treaty Indian Tribes that direct and participate in the Northwest Indian Fisheries Commission's programs are located on the Washington Coast and throughout the Strait of Juan de Fuca, Hood Canal and the Puget Sound. Our tribes have long been known as the fishing tribes by others across the continent. We have always relied on salmon as well as other fish, wildlife, trees and plants for economic and cultural identity and purpose. We learn from our ancestors and we teach our children to respect and care for these resources because we know their health and well-being, and the habitat that sustains these resources, are directly connected with our own survival and quality of life.

Anyone who has listened to the tribes over the decades, or observed our actions as people of the land, realizes that we strive to be true to our heritage as natural stewards. S 2301 should be a tool to help enhance federal support for the Pacific Northwest tribes, as well as others, which will help bring continued improvement to our cooperative natural resource management programs. That support should include more direct and dependable funding for our management programs. It should include support for tribal education, public education and marketing of our harvests. Supporting viable marketing comes hand-in-hand with support for programs intended to restore and sustain fish and wildlife resources, and the habitat they need to survive. Tribes have distinguished themselves as outstanding managers, and support for their programs will benefit all citizens of the United States.

The tribes served by the Northwest Indian Fisheries Commission support the passage of NAFWMA, generally speaking, because this legislation will protect, enhance and clarify tribal management authority. Also, through this legislation, Congress will reassert its role as our special trustee, as stated in the U.S. Constitution.

Today, we will provide some fundamentals we believe are pertinent to this legislation. We do this because we are aware that the current bill is a work in progress, which is subject to ongoing change and we believe these fundamentals are important to retain.

- The United States has obligations and responsibilities for protection, proper management and enhancement of fish and wildlife resources.
- The federal government has outstanding obligations and responsibilities for the protection and proper management of fish and wildlife. These obligations are based on treaties, executive orders, statutes, and legal precedents, as well as the needs of tribal members as citizens of the U.S.
- These obligations extend beyond mere protection and management to insuring access, availability and suitability of natural resources for Indian people for commercial, subsistence and cultural uses.
- The federal obligation transcends mere paternalism, and must reflect various tribal interests and approaches. It must reflect a government-to-government approach which

respects tribal self-determination and self-governance. Tribes may be at different levels of understanding or interest, and the federal government must be positioned to meet the needs of the tribes on their terms, and not the terms of the federal bureaucracy.

- Tribal management capabilities must be strengthened and enhanced.
- Tribes are natural resource managers. Such management is culturally based, and predates written history. It is also embodied in treaties, court decisions and sometimes in legislation. Tribes are sovereign entities, and have primary management on-reservation and, in some areas, shared management off-reservation. As such it is important to understand that tribes must have clear authority to enforce natural resource regulations on all lands within reservation boundaries.
- Tribes must have clear authority to develop codes, enforce regulations, prosecute violators and otherwise manage all lands and waters under their authority.
- Tribal governments must be accorded policy standing and ability to fully participate in off-reservation inter-jurisdictional decision making.
- Without tribal involvement, overall natural resource management efforts will suffer, harming all interests in the state, region, and country. Tribal shellfish management programs, for example, are seen as a key to resolving critical off-reservation issues surrounding beach certification procedures. In addition, tribal enhancement planning efforts offer an increase in finfish and shellfish availability for both tribal and other users. Tribes have also extensively participated in a number of forums designed to protect treaty harvest and habitat protection rights. These efforts, which benefit Indian and non-Indian alike, will suffer without tribal infrastructure and capability.
- Provisions need to be in place that authorize the federal government to provide funding to tribes based on treaties, executive orders, or other federal obligations. Tribal natural resource management programs are second to none in their effectiveness and efficiency. But even the best programs face limiting factors, such as adequate and stable financial support.
- Often, tribes do not have clear, direct and specific access to funding sources such as Dingell-Johnson, Pittman-Robertson, Wallop-Breaux funds, forest legacy programs or Land and Water Conservation funds, even though tribal land and waters are factored into their funding equations. Funding should not have to come through the affected states, which may have different views of priorities and needs, and sometimes have objectives that differ from those of the tribes. Access to funds should be secured directly to the tribes, **even if alternate stable sources of funding must be provided.**
- It must be recognized that funding not only needs to be adequate in terms of amount, but also needs to be stable in its delivery to the tribes. One major problem tribes have faced over the past ten years has been fluctuations in funding due to inconsistent bureaucratic initiatives. Shortages caused by these and other problems create difficulties securing and retaining key staff. Tribes have seen a number of professional staff members leave their employ to take positions with collateral agencies offering more stability and pay.
- Tribal management skills and capabilities need to be enhanced. It is important for tribes to receive help with training and professional career development. Such assistance is critical if the tribes are to be successful in enticing Indian students into

the field of natural resource management and environmental protection. Tribal staff members need to keep current in their fields just like any other professional. Opportunities for further education and training and placement between federal agencies and tribes would be very useful to tribal programs.

- It is a federal as well as tribal responsibility to inform and educate the non-Indian public about Indian human rights and the many contributions tribes make toward public benefit. Improved public opinion resulting from such efforts will result in more collaborative spirit, less racism and less detraction from tribal achievement of their potential.

### **General Comments On The Draft Bill**

As indicated, we intend to provide more specific input on this bill over the next few weeks, based on the foregoing fundamentals. Generally speaking, however, there is need for greater Congressional support for tribal fish and wildlife programs, ranging from more direct and increased funding support for natural resource management and related education programs to provide greater assistance in marketing of harvested resources.

We will likely reserve comment on the sections dealing with Alaska Fish and Wildlife, and Buffalo Management—assuming those programs do not negatively affect resources in our region. We consider tribal members in other regions our brothers and sisters and support their efforts whenever possible.

It is important for the definition of reserved rights to protect tribal rights that have never been relinquished by tribes—not just rights specifically reserved by treaty.

If the legislation calls for plans, surveys of resources, etc., such reports should be requested by tribes, and affected agencies should be directed to be responsive to those tribes within reasonable timeframes.

Most tribes with significant fish and wildlife resources have comprehensive plans and resource management programs in place. This is the case in the U.S. v. Washington Case Area, for example. The bill should not supercede or require modifications in plans that may already be in place, nor imply that such plans be in place as a precondition to tribal fish and wildlife management activities.

Reviews to determine where additional funding is needed to support tribal natural resource management programs should be government-wide, e.g., include the Environmental Protection Agency and other agencies as well as Interior, Commerce and Agriculture. Obviously, such reviews should also include full consultation with affected tribes, tribal-endorsed regional management forums, etc.

Education is critical to successful natural resource management. This legislation provides outstanding opportunities for the expansion of natural resource-related careers in Indian Country. It also provides an opportunity for the federal government to take a step toward meeting its responsibility in public education regarding the tribes. This is essential to the

advancement of Indian/non-Indian understanding and cooperation.

The Tribal Seafood Assistance Program addressed in the bill provides a good opportunity tribes can take advantage of, on a voluntary basis, to move forward with their marketing programs. There are serious problems in marketing that the federal agencies could help solve, with good direction from Congress. Support is needed to help establish new markets for tribal salmon, shellfish and other seafood, e.g., through federal contracts, such as the military, as well as through domestic and international marketing support. There should also be support for tribal programs related to fish certification, tribal product development and related research, e.g., through the National Marine Fisheries Service's products research program.

The bill could help reaffirm that fish resources are important to the entire nation and that habitat degradation and pollution problems affect the health of these resources. There should be reaffirmation that tribal resource harvest rights are affected by such environmental challenges and that the federal government has a responsibility to prevent such problems from occurring. As such there should be documentation of such problems and there should be federal support for related tribal research and education, including public education.

Grants for market research and pilot programs should be linked with the Tribal Seafood and Resource Marketing Assistance Program described in the bill. No-cost loans should also be available, and linked with reasonable documentation requirements. Resulting research could be made available to all tribes. These loans and grants should focus on expanding domestic and international markets and promotion of the sale of tribal products and resources. These loans and grants should also support the further development of tribal infrastructure, in support of tribal self-determination and economic advancement.

### **Conclusion**

The Native American Fish and Wildlife Management Act is an important step forward for the federal/tribal relationship. We encourage its passage, with inclusion of changes suggested by tribes. If the Committee focuses on the main concepts we have spoken to, and makes them cornerstones for the Native American Fish and Wildlife Management Act, tribal fish and wildlife management will be greatly aided.

We stand ready to assist you in any way we can to make this a successful effort. A final suggestion would be to establish a formal work group to consider the issues addressed by S. 2301. Again, we wish to thank you and your staff for your outstanding work on this bill.