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TESTIMONY OF BILLY FRANK, JR., CHAIRMAN
NORTHWEST INDIAN FISHERIES COMMISSION
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
OVERSIGHT HEARING ON
THE IMPACTS OF ENVIRONMENTAL CHANGES ON TREATY RIGHTS, TRADITIONAL LIFESTYLES AND TRIBAL HOMELANDS
JULY 19, 2012

INTRODUCTION

Mr. Chairman and members of the Committee, I appreciate the opportunity to provide testimony on the Impacts of Environmental Changes on Treaty Rights, Traditional Lifestyles and Tribal Homelands. My name is Billy Frank, Jr. and I am the Chairman of the Northwest Indian Fisheries Commission (NWIFC). The NWIFC is composed of the 20 tribes with rights reserved by treaties with the United States and that are party to *United States vs. Washington*[1] *(U.S. vs. Washington)*.

TREATY RIGHTS AT RISK

Last summer we launched our Treaty Rights at Risk (TRAR) initiative to call on the federal government to take charge of salmon recovery in western Washington. The treaty rights of the western Washington treaty tribes to harvest salmon are in imminent danger. The danger exists due to diminishing salmon populations, which limits or eliminates our right to harvest. This is due to the inability to restore salmon habitat faster than it is being destroyed.

We have called on the federal government to implement its fiduciary duties by better protecting salmon habitat and assuring that our salmon recovery plans are implemented. The federal government has a trust responsibility to the tribes and the tribes' treaties are constitutionally-protected. It is imperative that we are successful with this initiative as salmon are critical to the tribal cultures, traditions and their economies.

In summary, we requested that the federal government:

- Assume federal control and responsibility over the implementation of salmon recovery plans in the region to assure that the federal obligation to the tribes to protect their treaty-reserved rights is met.
- Direct all federal agencies to stop allowing their other statutory obligations to supersede their obligations to the tribal treaty rights by applying disparate conservation burdens on the tribes.

[1] *United States vs. Washington*, Boldt Decision (1974) reaffirmed western Washington tribes' treaty fishing rights.

- Support the tribes by initiating litigation to declare the treaty-reserved right for instream flows needed for protection and restoration of salmon.
- Conduct a White House summit in the northwest to identify the state of salmon recovery and the solutions for achieving protection and recovery. We also requested that Congressional hearings be held to clearly identify the factors that are threatening the tribes' treaty rights and the impediments to achieving recovery.

Meaningful change needs to happen soon as our economies, culture, traditions and way of life don't exist without these natural resources. Without these natural resources our treaty rights are meaningless. Salmon are disappearing due to the continued loss of habitat and federal agencies are using the Endangered Species Act as a tool to place a disparate conservation burden on tribes. They are applying more stringent conservation standards to tribal fisheries and hatchery programs than to those in the region that degrade salmon habitat. The federal government needs to enforce its own laws and stop placing an inequitable application of the conservation burden for recovery on the tribes.

The federal government has not focused sufficient attention on improving the habitat. These resources are dependent on good habitat. Our habitat is on a downward spiral and we need to reverse this trend. Despite millions of dollars being spent on salmon recovery, we are losing habitat faster than we can restore it. Our resources are disappearing because the state and federal governments are allowing critical habitat to be damaged and destroyed.

With that said, we are encouraged by the initial response from the federal government. We all agree on the need to strengthen the tribal and federal relationship to address obstacles to salmon recovery. We have already developed recovery plans and identified barriers to salmon recovery in most watersheds. Now we need a commitment from the federal government to coordinate the effort to tackle the most pressing obstacles in each watershed and to provide the leadership necessary to achieve successful implementation of our salmon recovery plans. We need a fundamental change in the way the federal agencies conduct their business if we are to be successful in achieving recovery.

TREATY TIMES TO MODERN DAY

When our ancestors signed treaties, ceding millions of acres of land to the United States government, they reserved the right to fish, hunt and gather in all traditional areas. These constitutionally-protected treaties, combined with the federal trust responsibility and extensive case law, including the *U.S. vs. Washington* decision, all consistently support the role of tribes as natural resource managers, both on and off reservation. In Washington State, these provisions have developed into a successful co-management partnership between the federal, state and tribal governments. This collaboration has helped us to deal with many problems, but still requires additional support to meet many new challenges such as ocean acidification and climate change.

The tribes have developed sophisticated natural resource programs designed to protect and enhance their treaty rights. Tribal programs have served as the backbone of salmon recovery, providing the technical, policy and legal framework for this incredibly difficult task. Tribes

perform complicated harvest, hatchery and habitat management tasks that neither the state nor the federal government can effectively carry out.

CLIMATE CHANGE

Indian people have always lived along the coastlines of Washington State where our salmon, shellfish and other foods come from. For many thousands of years we migrated from the shore to the upper reaches of our watersheds, gathering foods, medicines and materials as each came into its season.

Through our treaties with the U.S. we ceded most of the land that is today western Washington. But in doing so, we were also placed on reservations and lost the ability to move away from the harm that climate change is already causing to our way of life. Our reservations cannot escape the rising seas, coastal erosion and the many other effects of climate change that threaten our existence as Indian people. As our climate changes, it impacts our homes, our cultures, our economies and the treaty protected resources upon which we have always depended.

Our glaciers are fast disappearing, and with them the cold, clean water that salmon need to thrive. Ocean acidification is threatening the survival of shellfish by preventing the shells of their young from forming and the food supply for salmon and other important fish species. Expanding low oxygen zones are appearing more frequently off our coasts, resulting in massive fish-kills. Storms are becoming more violent. Floods are increasing and so is the damage they cause.

Indigenous coastal people are among the first affected by our rapidly changing climate. Because we know our natural systems better than anyone else, we are the first to realize changes. This traditional knowledge that combines our heart and minds comes from our place-based way of life. This information has been gathered over the centuries through our everyday lives and shared through our songs, stories and ceremonies.

Sharing that traditional knowledge to help address the many aspects of climate change on indigenous communities is the aim of the inaugural First Stewards symposium being held this week in Washington, D.C. at the Smithsonian's National Museum of the American Indian. Regional panels of tribal and indigenous leaders, policy makers, scientists and others will share climate adaptation strategies from coastal and island ecosystems nationwide.

The symposium is a joint effort of the Makah, Hoh and Quileute tribes and the Quinault Indian Nation in Washington State in cooperation with indigenous communities throughout the nation, scientists and governmental and non-governmental organizations including the NOAA Office of National Marine Sanctuaries, Smithsonian's National Museum of the American Indian, The Nature Conservancy, and Western Pacific Regional Fishery Management Council.

SALMON RECOVERY

Just as we are a place-based people, our treaty rights are place-based too. For those rights to have meaning there must be resources for us to harvest. Otherwise our treaties are relegated to

empty promises, which is an all too common theme in Indian Country. Restricting our right to harvest continues to be much of the focus when habitat is the real problem. A steadily increasing population, combined with poor land use choices, increasing pollution, loss of viable salmon habitat and other factors contribute to the loss of habitat and our right to harvest.

Because salmon live out their lives in both fresh and marine waters, they are one of the best indicators of the overall health of our ecosystems and the effects of climate change and habitat loss. The reality is that wild salmon populations continue to decline at an alarming rate throughout western Washington, primarily because of lost and degraded spawning and rearing habitat. This trend shows no sign of improvement and comes despite drastic harvest reductions, careful use of hatcheries, extensive habitat restoration projects and a huge investment of effort and funding. As a result, our treaty rights are at risk as never before because we are losing ecosystems faster than we can restore them.

That's why we are asking the federal government to align its agencies and programs, and lead a more coordinated salmon recovery effort. We want the United States to take charge of salmon recovery because it has a trust obligation to the tribes and the authority to ensure both the recovery of salmon and protection of tribal treaty rights.

Until now, the federal government's main response to declining salmon runs has been to restrict harvest. That's a recipe for failure. Activities effecting habitat must be held to the same standard as harvest if we are going to recover salmon.

Before tribes can fish, we are required to show that our fisheries will contribute to salmon recovery under the Endangered Species Act. We feel strongly that those who damage or destroy habitat must be held to the same standard. No amount of fishery restrictions can restore salmon unless they have enough good spawning and rearing habitat.

We believe that salmon recovery must take place at the watershed level because that's where salmon begin and end their lives. We have already developed recovery plans and identified barriers to salmon recovery for most watersheds in western Washington. Those plans must be implemented and the barriers identified need to be fixed, and it needs to happen soon.

Protecting and restoring salmon habitat has always been the key to salmon recovery in western Washington. Hatcheries help provide limited fishing opportunities, but over time we have become increasingly reliant on hatchery salmon to help make up for the loss of natural salmon production from our rivers and streams.

Most hatcheries were built to make up for lost natural salmon production caused by habitat damage and destruction. Today, the Chinook and coho we harvest are largely supported by hatchery production. This is a direct reflection of the huge amount of natural salmon production we have lost, and continue to lose every day.

Hatcheries are not a substitute for wild salmon because they also require good salmon spawning and rearing habitat. Hatchery salmon were never intended to replace naturally spawning salmon. But that is what is happening after more than a century of habitat degradation. We've become

dependent on hatcheries and the fish they produce because we are losing the battle to recover naturally spawning salmon and their habitat. Tribes currently depend on hatcheries to support our treaty fishing rights, to provide salmon for our tables, our cultures and our economies.

All fishermen – Indian and non-Indian – rely on hatcheries, because to some extent, hatcheries support most fisheries. Some facilities produce fish for harvest, which helps reduce fishing pressure on naturally spawning salmon. Others are dedicated nurseries where weak wild stocks and their offspring are protected from disappearing altogether.

Western Washington's White River Chinook wouldn't be here today if not for hatcheries. By 1977, fish-blocking dams and other habitat losses resulted in only 66 adult Chinook returning to the river. An egg bank was created that year to save White River spring Chinook from extinction, which was almost too late. In 1986 just six adults returned, but today those fish have a future. The Muckleshoot Tribe's White River Hatchery opened in 1989 in an effort to protect, preserve and restore those spring Chinook. Annual returns today number in the thousands and are a direct result of good hatchery management practices, habitat improvements in the upper watershed and collaborative efforts by the tribes, state and others.

Hatcheries are not a long-term solution to salmon recovery. But when they are managed as part of a river's ecosystem and are combined with conservative fisheries and habitat improvements, they can be effective tools that provide fishing opportunities for everyone.

If we are going to succeed in salmon recovery, the federal government must use its authority to honor our treaties. Because our treaty rights are both civil rights and property rights, they are protected under the U.S Constitution. The U.S. Attorneys' office was instrumental in helping us defend our treaty rights under *U.S. vs. Washington*. It may be time once again for the United States government to exercise its trust responsibility through the Department of Justice to protect tribal treaty rights and cultures.

FIELD HEARINGS

We respectfully request that the Senate Committee on Indian Affairs conduct field hearings in western Washington to better understand the significance of the threat to our treaty rights that is resulting from the continued decline in the resources those rights depend on. Western Washington tribes are leaders in protecting and sustaining our natural resources. The tribes possess legal authority, as well as extensive technical and policy expertise. They effectively manage programs to confront the challenges that face our region and the nation. The activities and functions the tribes perform benefit all citizens of the state of Washington and U.S.

We are facing many environmental and natural resource management challenges in the Pacific Northwest caused by human population expansion and urban sprawl. Those challenges include increased pollution problems ranging from storm water runoff to de-oxygenated or "dead" areas in the Hood Canal, parts of Puget Sound and in the Pacific Ocean. The pathway to the future is clear to us. Federal, state and tribal governments must strengthen our common bond and move forward with the determination and vigor it will take to preserve our heritage.

The tribes are strategically located in each of the major watersheds, and no other group of people is more knowledgeable about the natural resources. No one else so deeply depends on the resources for their cultural, spiritual and economic survival. Tribes seize every opportunity to coordinate with other governments and non-governmental entities to avoid duplication, maximize positive impacts, and emphasize the application of ecosystem management. We continue to participate in resource recovery and habitat restoration on an equal level with the state of Washington and the federal government because we understand the great value of such cooperation.

CONCLUSION

Chairman Akaka and members of the Committee, our future and existence hangs in the balance right now. Together, we must focus on the needs of our children, with an eye on the lessons of the past. We have no illusions that we can leave a better world for our children, but we can leave the groundwork for recovering wild salmon, slowing the effects of climate change, and developing strategies for adapting to those changes.

In the end, our treaty fishing rights are based on abundance, and it is that abundance that must be restored for those rights to have meaning. That abundance must come from a combination of improved habitat and hatchery production. The federal government must honor its treaties and exert it's authority by exercising its trust obligation to the tribes to protect those resources. We look forward to continuing to work with the federal government on these vitally important issues and ask for Congress to continue to support our efforts to protect and restore our great natural heritage. Thank you.