



YUROK TRIBE

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Yurok Tribe

Written Testimony Regarding

H.R. 5548, Fishery Failures: Urgently Needed Disaster Declarations Act

January 14th, 2020

INTRODUCTION

The Yurok Tribe is a federally recognized Indian tribe whose reservation is located on the Lower Klamath River in Northern California, spanning from the river's mouth at the Pacific Ocean upriver to the Yurok village of Weitchpec. With more than 6,300 tribal members, the Yurok Tribe is the largest Indian tribe in California. The fishery resources of the Klamath and Pacific Ocean are the mainstay of the life, economy, and culture of the Yurok Tribe. *See Mattz v. Arnett*, 412 U.S. 481, 486-87 (1973). The Klamath River Indian fishery is “not much less necessary to the existence of the [Yurok] Indians than the atmosphere they breathed.” *Blake v. Arnett*, 663 F.2d 906, 909 (9th Cir. 1981).

A pillar of the Tribe's legal rights is its federally reserved fishing right which was reserved in the creation of the Yurok Reservation. The Tribe enjoys commercial, subsistence, and ceremonial fishing rights on the lower 45 miles of the Klamath River which it exercises each year under strict regulation by the Yurok Tribal Government. *See, Baley v United States*, No. 18-1323 (Fed. Cir. Nov. 14, 2019) (confirming Yurok fishing rights for commercial, subsistence, and ceremonial purposes). In this way, the Tribe maintains its fishing way of life. Tribal members are able to fish commercially to provide financial stability to their families,

ceremonially to support ancient practices necessary to maintain Yurok world balance, and for subsistence purposes to continue a fishing way of life.

The Tribe's fishing way of life, its mainstay since time immemorial, however, has been disrupted deeply by the Klamath River fisheries collapse. In 2016, 2017, and 2018 the Tribe and United States Department of Commerce have declared commercial fisheries disasters for the Yurok Klamath River fishery. The Tribe is starting the fisheries disaster declaration process for 2019 now. The fisheries disasters have been catastrophic to the social fabric and economic security of the Yurok Tribe. While the nominal disaster relief funding the Tribe received has been helpful, the amount has not been sufficient to address the economic loss and the uncertain administrative process and lack of communication from federal agencies was burdensome. Perhaps, most difficult was the over 3-year timeframe from declaring the disaster to receiving the funding. We are pleased to support H.R. 5548, Fishery Failures: Urgently Needed Disaster Declarations Act (Fishery FUNDD Act) as the bill addresses some of the key obstacles in the existing disaster relief process.

A. The Yurok Reservation Was Created to Preserve the Yurok Tribe's Fishing Way of Life

Yurok people have always lived on their sacred land along the Pacific Coast and inland on the lower Klamath River. The Yurok people are a fishing people—placed on the Klamath River and coast of the Pacific Ocean by the creator to be a fishing people. The Spirit People, Wo-ge', made the land for them and the Creator, Ko-won-no-ekc-on Ne-ka-nup-ceo, put them there. Yurok people believe they were placed on the Klamath River to care for it. The Tribe's creation story tells that the river was made to support the Yurok People and as long as they do not take more resources than they need from the river, it would always provide for their livelihood. Since

time immemorial the Yurok people have carefully managed their use of the Klamath River and its resources living according to the guiding principles in the creation story. They thrived using the river as its main economic source, while preserving its health.

With an understanding of the river's central role in Yurok culture and life, "a strip of territory one mile in width on each side of the (Klamath) river" was set aside for the Yurok people by Executive Order in 1855 as the "Klamath River Reservation." C.J. Kappler, 1 Indian Affairs Laws and Treaties 816-17 (1904); see also *Mattz*, 412 U.S. at 483. The reservation was "ideally selected for the Yuroks," and "[n]o place can be found so well adapted to these Indians, and to which they themselves are so well adapted." *Mattz*, 412 U.S. at 486, n.6. The federal government created the reservation to ensure the Yurok people could continue their fishing and river-centric way of life on their ancestral homeland—it was no accident that the Klamath River was the geographical heart of the 1855 reservation and continues to be so today. The present-day Yurok Reservation extends for one mile on each side of the Klamath River approximately forty-five river miles to just upstream of the confluence of the Klamath and Trinity Rivers at the Yurok village, Weitchpec. See *Mattz* 412. U.S. at 4.

Following the reservation's establishment, the Lower Klamath River fishery was understood to be in Yurok control. Non-Indians had to negotiate with Yuroks for the right to fish—fish heads, holding prized fish cheeks, could be kept only if Yurok individuals specifically waived their right to them—or participate in the canneries at the mouth of the river.¹ The Klamath River fishery was protected as the most important resource of the Yurok Reservation and when the first non-Indian commercial fishery was established on the Klamath in 1876, the

¹ Memorandum from Office of the Solicitor, U.S. Dept. of the Interior, to the Secretary of the Interior, Fishing Rights of the Yurok and Hoopa Valley Tribes 8 (Oct. 4, 1993) (hereinafter *Solicitor's Opinion*) (citing U.S. Dept. of the Interior, *Environmental Impact Statement—Indian Fishing Regulations* 2 (Hoopa Valley Reservation, California) (April 1985)).

federal government responded by sending military to protect the Yurok fishery “because under no circumstances were the Yuroks to be deprived of the Salmon as it is their main subsistence.” *Id.* at 11-12 (internal quotations omitted).

Given the central importance of the Klamath River and its fishery to the Yurok people, courts have had no trouble concluding that the Executive Orders creating the Yurok Reservation vested the tribe with federally reserved fishing rights.² The Yurok fishing right includes fishing for commercial, ceremonial and subsistence harvests. *Eberhard*, 789 F.2d at 1359 (“[T]he right reserved [to take fish from the Klamath river] includes fishing for ceremonial, subsistence, and commercial purposes.”).

Yet, for much of the 1900s the State of California disputed the Yurok Tribe’s federally reserved fishing rights on the Yurok Reservation claiming it didn’t exist and therefore, the Yurok had no right to commercially fish on the Klamath River. The argument was legally laid to rest in 1973 in *Mattz v. Arnett*, 412 U.S. 481, in which the supreme court held the Yurok Reservation was still Indian Country, and the Yurok Tribe had federally reserved fishing Rights. This triggered the “fishing wars” of the late 1970s in which the Tribe continued its fight for fishing rights. It wasn’t until the 1980s that the Tribe was able to commercially fish without protest: just in time for the fishery collapse to begin.

B. The Collapse of the Klamath River Fishery

The many fish species found in the Klamath River on the Yurok Reservation have been staples of Yurok culture and are tribal trust species: Coho salmon; spring and fall Chinook

² See, e.g., *Parravano v Masten*, 70 F.3d 539, 547 (9th Cir. 1995) (“this court and the Interior Department have recognized a trust obligation to protect the Yurok ... rights to harvest Klamath Chinook”); *United States v. Eberhard*, 789 F.2d 1354, 1359 (9th Cir. 1986) (“The right to take fish from the Klamath River was reserved to the Indians when the reservation was created”); see also Solicitor’s Opinion at 18 (“The history of the creation of the [Yurok Reservation] ... plainly shows a purpose by the United States to reserve for the Indians what was necessary to preserve and protect their right to obtain a livelihood by fishing.”).

salmon; pacific lamprey; summer and winter steelhead; green and white sturgeon; cutthroat trout; rainbow trout and eulachon. At one time, prior to upper-basin development, the Klamath River had the third-most productive salmon run on the west coast. The Yurok and other Klamath basin Indian tribes managed the river and fishery sustainably, and it was a resource that provided for the basin's native peoples for thousands of years.³ Fish were used for subsistence, ceremonial, and trade purposes. Accounts from the mid-1800s exclaimed that the Klamath salmon “crowded in numbers” all the way up the river from the river mouth to Klamath Falls, Oregon—salmon occupied the entire river basin.⁴ One estimate is that prior to non-Indian settlement, the Klamath Basin tribes consumed over two million pounds of salmon from runs with over 500,000 fish. *Id.* In fact, “the salmon fishery permitted the [basin tribes] to develop a quality of life which is considered high among native populations.”⁵

Significant fishery habitat degradation and habitat loss due to the creation of the Klamath Irrigation Project in 1905 authorizing Upper-Klamath basin land-use changes from open wetlands to irrigated agriculture coupled with the building of four major dams on the Klamath River has devastated the Klamath River fishery. These changes have caused some fish species to go extinct (eulachon, or, “candlefish”), while others struggle for survival on the Endangered Species List (Coho salmon⁶), and still others are severely depleted due to degraded habitat conditions and frequent disease problems (Chinook and Coho salmon⁷). The negative impact on

³ See generally U.S. Dep’t of Interior, *Current Effects of Implementing the KHSA and KBRA on Indian Trust Resources and Cultural Values V.1.1* 1-3 (Feb. 2012).

⁴ Solicitor’s Opinion.

⁵ *Id.* at 8 (quoting *Anthropological Study of the Hupa, Yurok, and Karok Indian Tribes of Northwestern California: Final Report* 10, (American Indian Technical Services, Inc., Jan. 1982)).

⁶ In 1997, the National Marine Fisheries Service listed Coho as threatened under the ESA due to the decline from 150,000 to 400,000 fish spawning annually to approximately 10,000. 62 Fed. Reg. 24,588 (May 6, 1997); Appx2616, Appx2634 (2001 Klamath Project BiOp) (discussing Coho abundance decline).

⁷ See Bureau of Reclamation, *Record of Decision: Long-Term Plan to Protect Adult Salmon in the Lower Klamath River Final Environmental Impact Statement* (April 2017) (describing coordinated federal/state/tribal plan to protect salmon in the lower Klamath River, in part to protect tribal trust resources, using supplemental releases from

the fishery has been extraordinary, as has the impact to the Yurok people. In 2002, more than 60,000 adult salmon died, as they were returning to spawn, from a parasite infection related to low, warm flows in the Lower Klamath River. This fish kill, the largest in history, occurred entirely within the Yurok Reservation and was one of the most tragic events in the history of the Tribe. More bad was still to come.

In 2014 and 2015, 81% and 90%, respectively, of the sampled outmigrating juvenile Chinook salmon⁸ below Iron Gate Dam were infected by the fish disease *Ceratanova shasta* (C.Shata) that proliferates in low river flows caused in part by the Bureau of Reclamation's water management of the Klamath Project, supporting agricultural water deliveries over needs of endangered salmon and tribal trust species. The returning runs in 2016, 2017, and 2018 wiped out by C. Shasta were lowest on record. The Yurok Tribe closed its commercial fishery due to record-low salmon returns in 2016. Then again in 2017, for the first time in modern history, due to the lowest returning salmon run ever, the Yurok Tribe closed its tribal salmon fishery to both commercial and subsistence fishing, meaning that no Yurok tribal member could legally fish for salmon within the Yurok Reservation. Since time immemorial, 2017 was the first time ever Yurok people did not fish Klamath River fall Chinook salmon. In 2018, another record low returning salmon run forced the Tribe to cancel the commercial fishery for a third year in a row. In 2019, fish mangers predicted an average run size, and the tribe excitedly authorized a commercial fishery and tribal members eagerly invested in fishing gear to partake in the harvest. It never materialized. The salmon never came home to the Klamath River. Our allowable harvest was 29,161 but we harvested only 3,800 not for lack of effort but because there were no

Lewiston Dam on the Trinity River when disease rates spike and Klamath River flows are insufficient to combat fish disease), available at https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=28314.

fish. This was one of the lowest harvests on record, and the Tribe once again is considering declaring a fisheries disaster.

The low salmon returns have resulted in extreme economic hardship for Yurok People. The effect of the current fishery crises on the Yurok people is devastating and clear connections have been drawn between the depressed fishery and substance abuse, mental health calamities, and suicide.⁹ As the health of the Klamath fishery goes, so does the health of the Yurok people. In good years, the Klamath River and its banks are dotted with Yurok fishers, young and old, harvesting fall Chinook for subsistence purposes, often at traditional family fishing spots that have been used continuously by that family for thousands of years. This is an act of self and cultural preservation and how Yurok people connect to each other and their homeland. Without the fish, Yurok people aren't able to make this critical connection to their homeland and continue their ancestors' way of life.

C. The Yurok Tribal Fishery

In light of the importance of the Klamath River to Yurok People, one of the Tribe's highest priorities is to protect and preserve the resources of the Klamath River and its tributaries, and in particular, to restore the anadromous fish runs to levels that can sustain Yurok people. The Yurok Tribe pursues its fishery restoration goals through responsible fishery management and regulatory programs, participation in various forums to reach long-term solutions to Klamath Basin problems and when necessary, litigation. The Tribe has devoted a large share of scarce funding resources to budgets for fishery management and regulation. The Tribe employs the second highest number of

⁹ See Joe Mozingo, *How a Remote California Tribe Set Out to Save Its River and Stop a Suicide Epidemic*, L.A. TIMES, May 19, 2017, available at <http://www.latimes.com/local/california/la-me-salmon-demise-yurok-suicides-20170519-htmstory.html>; Jose A. Rel Deal, *Sick River: Can These California Tribes Beat Heroin and History?*, N.Y. TIMES, Sept. 4, 2018, available at <https://www.nytimes.com/2018/09/04/us/klamath-river-california-tribes-heroin.html>.

fisheries scientist and biologist in the State of California, second to only the State of California.

The Tribe has enacted a fisheries ordinance to ensure that the fishery is managed responsibly, in a sustainable manner, and has a longstanding record of resource protection that relies on tribal police and game wardens to enforce the fisheries ordinance, and a tribal fisheries court and tribal attorneys to prosecute ordinance violations. The Tribe's fisheries, watershed restoration, and environmental departments are well respected and recognized as knowledgeable leaders in fisheries management in the Klamath Basin. The Yurok Tribal Council and the Tribal members they represent are well known for taking and supporting responsible actions to protect fisheries resources.

Despite this Tribe's careful management and significant legal rights—securing to the Tribe the opportunity to harvest a sufficient amount of fish from the Klamath River to provide for its economic livelihood—the Klamath fishery has collapsed. Instead, the fisheries on the Klamath River have been devastated by actions occurring off of the Yurok Reservation beyond the control of the Tribe, limiting the Tribe's catch to levels insufficient to support our tribal members.

The Yurok Tribal harvest of fall Chinook has been compromised and diminished nearly every season for which Tribal harvest information is available. For the time period 1990 – 2019, there were only three seasons of relatively substantial fall Chinook commercial fishing opportunity for the Tribe; 1996, 2012, and 2013. In addition, other fish species such as Coho salmon, spring Chinook and Steelhead, among others, have been unable to support adequate subsistence much less any commercial harvest opportunities. As noted, the overall depressed state of Klamath River fisheries is a continual disaster for the Yurok Tribe and its members.

The Yurok Tribal Council has provided limited commercial fishing opportunities for Tribal Members, dependent upon annual stock status and associated harvestable surplus of Klamath fall Chinook. For the years 2007 -2016, some level of commercial fishing opportunity was allowed in all

years except for 2016. This opportunity, however, was minimal in many years due to severely depleted stock status. During this time period, Tribal commercial fishermen harvested an average of 26,680 (range of 9,205 – 81,642) Chinook salmon per year for commercial purposes. As depicted in Table 1, during 2012 and 2013, the Klamath River fishery was at its least compromised condition. The Tribe’s harvest was valued to have an economic impact of \$7 -\$11 million (\$3.1 - \$4.1 million ex-vessel value). If the Tribe had an opportunity to harvest in the last several years, we would have reasonably expected similar revenue.

Table1. Yurok Tribal Commercial fall Chinook harvest, ex-vessel value, and estimated economic impact, 2007 – 2016.

Year	Requa Buyer	Estimated Find Own Market Sales	Total Commercial Ex-Vessel Value	Requa Buyer Fish Sold	Find Own Market Fish Sold	Total Commercial Fish Sold	Estimated Economic Impact*
2016		NO COMMERCIAL FISHERY					
2015	\$624,775	\$285,455	\$910,231	12711	4553	17264	\$2,330,640
2014	\$356,420	\$208,453	\$564,873	6355	2850	9205	\$1,242,675
2013	\$2,196,000	\$1,894,065	\$4,090,064	30220	22166	52386	\$7,072,110
2012	\$2,301,266	\$818,330	\$3,119,595	62874	18768	81642	\$11,021,670
2011	\$740,174	\$136,083	\$876,256	12983	1528	14511	\$1,958,985
2010	\$714,014	\$175,659	\$889,673	11769	2619	14388	\$1,942,380
2009	\$504,793	\$147,300	\$652,093	12236	2559	14795	\$1,997,325
2008	\$760,103	\$195,948	\$956,051	10345	2182	12527	\$1,691,145
2007	\$536,889	\$274,042	\$810,930	16655	6758	23413	\$3,160,755
Average 2007-2015	\$970,493	\$459,482	\$1,429,974	19,572	7,109	26,681	\$3,601,965
* Estimated economic impact using methods devised for California salmon troll fishery - \$135/fish. (http://fishbio.com/field-notes/the-fish-report/the-economics-of-salmon)							

The Yurok Commercial fishery provides economic opportunity to the Tribal community that far exceeds the ex-vessel value (i.e. the price paid to the Fisher). For example, the ripple effect to the economy from lack of commercial fishery related commerce includes, but is not limited to, the following type of impacts: Tribal and Tribal member owned businesses such as campgrounds, hotels, restaurants, retail stores, a gas station, a casino, festivals, and fishing guide services. Economists use

various methods to assess the overall economic effects from loss of commercial fishing activities, those effects that go well beyond the ex-vessel wholesale price paid to commercial fishers, one such method (<http://fishbio.com/field-notes/the-fish-report/the-economics-of-salmon>) for the California troll salmon fishery simply applies a factor \$135 per each fish for which there is foregone commercial opportunity. Using this method, the Yurok commercial fishery impact in 2012, during a year that was very productive was approximately \$11 million. If the Yurok Commercial fishery would have been productive in 2016, 2017, 2018 and 2019, the community could have realized \$44 million.

Comparatively this amount may seem small, however, on the Yurok Reservation fishing is one of the only sources of economy. The average annual income of tribal members living on reservation is \$11,000 annually, primarily due to a lack of job opportunities on or near the reservation. The loss of fisheries income has very significant impacts on already impoverish families. The loss means families don't have money to buy clothes, purchase food or gas, or pay utilities bills. Over the last four years the loss is exponential, compounding each year with the lack of income from fisheries leading our families further and further into poverty and despair. These are families that don't have other sources to rely on – no family, trust funds, or savings – and don't have access to credit or loan programs to supplement income during hard years.

During these periods of tribal members losing fisheries income, they rely on the Yurok Tribal government for services such as commodity foods, Temporary Assistance for Needy Families (TANF), general assistance, various housing programs, and emergency assistance. While supporting our tribal members it a critical role of tribal self-governance, the Tribe has limited financial resources and the burden of lost fisheries income over the last four years has been tremendous.

D. The Yurok Tribe's Experience with Fisheries Disaster Relief Funding

The Yurok Tribe has or will received disaster relief funding for 2006, 2016, 2017, and 2018. Our experience in the last three years has been similar in each year. While we are grateful for the much needed disaster relief, we have suggestions for improving the process and program. The primary issues we experienced were: 1) very long timeframe from disaster declaration to receiving the funding; 2) ambiguous process within Department of Commerce, NOAA to receive funding; 3) lack of prioritization for direct compensation to fisherman, and 4) lack of appropriations for fisheries disaster relief.

As to the first issue, it took three years to receive the 2016 disaster relief funding, even though the Tribe promptly submitted the necessary documents and quickly responded to NOAA requests for more information. The delay in receiving funding meant that tribal members were not able to recover significant economic losses which caused very real harm to Yurok families described above. As previously, the delay in receiving the funding to assist members imposed a significant burden on the Yurok Tribal government. The Tribe still has not received the 2017 or 2018 funding, and it is unclear at this time when it will be received. The long wait time forced us to frequently consult with NOAA regarding the status of the funding. We appreciate the agency's willingness to keep in close contact, however there was little information available for extended periods of time regarding when the funds would become available. This made navigating the process difficult.

Importantly, NOAA noted in all three years that grant proposals dedicating funding to vocational training would be prioritized over those with the majority of funding to direct compensation to fisher people. For a tribal fishery, this is entirely inappropriate, especially for Yurok Tribal members. Funding should be prioritized for compensation to fisher people for lost

income. As noted previously, the Yurok Tribe reserved its aboriginal fishing way of life in the creation of the Yurok Reservation. The federal government has a trust responsibility to the Yurok people to protect our fishing harvest opportunities and, when there is a commercial fishery failure, to compensate the Tribe for such losses. Further, we are a fishing people who will continue that way of life. Its bad policy to force us to assimilate to another profession by prioritizing vocational training because the fishery has collapsed.

Finally, the amount authorized for fisheries disaster relief should be much larger. Fishermen feed America. The Klamath River fishery has potential to supply the United States public with wild salmon – one of the most nutritious foods on the planet – if river and salmon recovery was supported. This brings immense value to the Nation. Yet, the amount of disaster relief funding is so nominal that it demonstrates a lack of support for this potentially nationally important fishery. By way of contrast, Klamath Basin farmers have received over \$70 million from Congress in the last 10 years for drought relief, while the Yurok Tribe has only received around \$4.4 million in fisheries disaster relief. This is an unfounded inequity that not only plagues the Klamath Basin but other fisheries across the Country. This nation’s skilled and hardworking fishing people should be equally supported and valued as are the nation’s farmers.

E. The Yurok Tribe Supports the Fishery FUNDD Act

The Fishery FUNDD Act makes important changes to the fisheries disaster relief process. Prominently, it acknowledges the vital role of subsistence fishing to Tribal communities by making tribal subsistence fisheries disasters eligible to receive federal fisheries disaster relief funding. This is critical to the United States upholding its treaty obligations to Native American Tribes and to continuing the long tradition of tribal fishing ways of life. Further the bill, streamlines the timeframe for receiving the disaster relief funding. This is critical to the

communities receiving the funding to ensure its meaningful and helps ease the economic burden of loss fisheries income.

The Tribe also supports the bill's authorization for direct funding to fisher people. We note again, in the recent years of fishery disaster relief, agencies expressed a preference for funding proposals that limited direct compensation to fisherman and instead prioritized vocational training for fisher people. The Yurok people are a fishing people. We will work to restore our fishery back to its historical glory. While we have other skills and talents and may be forced to take other jobs to make ends meet, we are a fishing people who will not take on other permanent vocations. The bill's authorization for direct funding to fisher people allows us the option of continuing our fishing way of life by easing the economic burden of fisheries failures.

We recommend a change to the bill. The determination of the revenue lost from a failed commercial fishery should not be limited to a comparison between the average annual revenue the fishery generated during the most recent 5-year period and the revenue generated during the year of the failure, as explained in section 2 (F) of the bill. Our concern is that such a determination doesn't account for the fact that fish stocks can go through extended periods of decline, such as Klamath fall Chinook are currently experiencing which could result in unequitable amount of disaster relief not representative to actual losses. We welcome the opportunity to work Congress to develop a better approach.

As final point we highlight the following: It must be a national priority to protect our nation's fisheries. We must invest financially in, and adopt laws and policies, restoring rivers and oceans. For over 200 years, this Nation has prioritized development of rivers to support agriculture, power development, and other industry needs regardless of the impacts to rivers and oceans. On the Klamath, this approach has ruined the river, not just the salmon runs, but the

ecosystem. Our salmon and our river can't tolerate this anymore. Continuing this approach will result in extinction of salmon, sturgeon, steelhead, eels, candle fish, and eventual collapse of the River. It is time the nation adopts laws to support, restore, and protect our nation's fisheries, including the Klamath. Salmon have huge potential to recover if rivers and oceans, critical habitat, are restored. They are critical to the Nation's food security and ensuring healthy diets for our citizens. Tribal governments from across salmon country have immense capacity to be strong co-managers with federal and state entities to restore fisheries across the Country. The Fishery FUNDD Act is a good start toward supporting fisher people, and we should do more legislatively to support tribal, state, and federal restoration of our Nation's fisheries.

CONCLUSION

Thank you for the opportunity to provide testimony on the Fishery FUNDD Act. It is an important step toward protecting this Nation's commercial fisheries and fishing people.