

**House Committee on Natural Resources
Subcommittee on Indian and Insular Affairs**

**Tulalip Tribes Testimony
Oversight Hearing on “Federal Indian Trust Asset Management: Progress Made But
Improvement Needed”**

Good afternoon, Chairman Hurd, Ranking Member Leger Fernandez, and members of the Subcommittee. My name is Glen Gobin, Tulalip Tribes Tribal Council. On behalf of the Tulalip Tribes, we thank you for this opportunity to testify today on Indian trust asset management. My testimony will focus on the Tulalip’s experience in trying to utilize the Indian Trust Asset Reform Act (ITARA or the “Act”).

The Tulalip Tribes is the successor in interest to the Snohomish, Snoqualmie, and Skykomish people and allied bands signatory to the Treaty of Point Elliott of 1855. Within the Treaty, our ancestors reserved the right to fish at all usual and accustomed grounds and stations and to hunt and gather upon all open and unclaimed lands. The United States holds a trust responsibility to protect the Tribes’ rights and interests as reserved in the treaty. The Tulalip membership continues to exercise these rights today. We are a fishing people. Fishing has sustained us culturally and economically as it has since time immemorial.

The Tulalip community is on a 22,000-acre Reservation bordering the Interstate 5 corridor, 35 miles north of Seattle. The Tulalip Tribes membership consists of approximately 5,500 members with approximately 2,800 living on the reservation. Today, forty percent of the Tulalip Indian reservation is in non-Indian fee status due to the history of the General Allotment Act and over 10,000 non-Indian residents live on the reservation. The geographic location of the Tulalip Indian reservation, the non-Indian resident count, combined with the Tribal economic development created by the Tribes draws thousands of daily visitors.

ITARA was signed into law in 2016. The Act streamlines the process of Indian trust resource management, strengthening Tribal sovereignty and furthering Tribal self-determination. Title II of Act allows the Secretary of the Interior to enter into Indian Trust Asset Management Plans (ITAMPs) with Indian tribes. Once approved, ITAMPs allow tribes to direct how they want their Indian trust assets to be managed.

Section 203(a) of ITARA requires interested tribes to submit application materials, including a tribal resolution. If the Department accepts a tribe’s application and allows it to participate in the demonstration project, the tribe can then submit a proposed ITAMP for the Secretary’s consideration. Section 204(a)(2) of ITARA requires proposed ITAMPs to identify the Indian trust asset(s) that will be subject to the plan, in addition to other information.

In March of 2019, the Tulalip Tribes sent a tribal resolution and letter to the Department requesting to participate in the demonstration project, per the requirements of Section 203(a) of the Act. Tulalip identified the Tulalip tidelands located on the Puget sound shoreline as the Indian trust asset to be subject to the plan. The Tulalip tidelands are all tidelands within the

reservation lying above the line of extreme low tide, and are reserved for the use and benefit of the Tribes.

The Tulalip Tribes has jurisdiction to manage and regulate Reservation tidelands use by reason of the Treaty of Point Elliott, 12 Stat. 927, the Executive Order of December 23, 1873, and the Tribal Constitution. The treaty and executive order established and set aside the Tulalip Indian Reservation as a homeland for a seafaring and fishing tribe. The protection and management of the Reservation tidelands by the Tribes is both necessary and indispensable to protect and preserve the use of the homeland for such purposes as well as the Tribes' treaty fishing rights, political integrity, economic security, and health and welfare of its members. The Tribe utilizes portions of 638 self-governance funding to manage and protect the tidelands.

We had several meetings with the Department discussing the tidelands where upon request we provided information to the Department regarding the location of the tidelands, ongoing asset and resource management on the tidelands, and surface lease information of the Tidelands.

The Puget Sound shoreline is one of the most important physical features of the Tulalip Reservation to the Tulalip Tribes its members, and non-tribal residents. The shoreline is where many ancestral settlements and burial sites are located and where tribal fishing, gathering, cultural activities, and recreation continue to this day.

The Tulalip people have depended on the shoreline to such an extent that the tidelands were not allotted to individual Tribal members by the Federal government and the tidelands, together with all of Tulalip Bay, are reserved for the use and benefit of the Tribes. Unfortunately, much development has occurred along the Reservation shoreline over the years. Today, the shoreline is studded with marinas, parking lots, public buildings, houses, cabins, docks, bulkheads, and beach access stairways, causing negative impact on shorelines on the Reservation and throughout Puget Sound.

Fish and shellfish resources are of vital importance to the economy, culture, subsistence, and identity of the Tulalip people. The right to harvest these resources is secured for the exclusive use of the Tribes under the Treaty of Point Elliott as confirmed in *U.S. v. Washington*. The tidelands provide essential habitat and food for these Tribal resources and protection of these tidelands is essential to preserve the use of the Reservation as a homeland for the Tulalip people and preserve its use for treaty fishing activities.

The impacts of bulkheads are of concern. Their negative impacts to fish and shellfish resources and their habitat are well-documented and include increased beach erosion, loss of beach sediments, and lowering of the beach due to the reflection of wave energy off of hard bulkheads back onto the beach, Beach starvation," which is the loss of beach sand and sediment that occurs when bulkheads block the supply of sediment that erodes from the bluff. The fine sediments tend to be lost, which means less habitat for the creatures that are prey for juvenile fish, and loss of plants and shade, which are important to fish habitat, as bank vegetation is removed when bulkheads are built.

Water quality has decreased dramatically as pollutants make their way into Puget Sound from roads, homes, parking lots, septic systems and other forms of development. Fish populations, including salmon, herring, bottom fish, and many others, have declined. Shellfish beds have been closed for public health reasons. Tribal fish and shellfish resources and habitat have been severely degraded by the numerous bulkheads and other physical alterations to the shoreline. Docks, pilings and buoys have interfered with Tribal net fisheries. Information from the Tulalip Natural Resources Department shows that there are approximately 73 docks and piers and 124 mooring buoys along the Reservation shoreline while there are less than 15 private docks and buoys along the rest of Snohomish County's shoreline, excluding Everett. Many of these private structures and uses are on Tribally owned tidelands without permission or compensation to the Tribes. The Tribes and its members are increasingly prevented from gaining access to the tidelands reserved for their use.

By Tribal code, the Tulalip Tribes regulates bulkheads, docks, stairways, and other shoreline structures, however, the Tribe has not been satisfied that it adequately addresses the impacts of shoreline development stated above. There have been ongoing demands by several departments to revise or expand the Tribes' requirements. It has also been pointed out that there are several feasible alternatives to bulkheads including vegetation management, drainage and ground water control, replenishing scoured beaches with sand, and anchoring drift logs to the beach. Additionally, the Tribe has expressed concern over the need to protect Tribal property interests by requiring leases for private structures constructed on Tribal tidelands. While in the past, Tribal tidelands were leased to private parties for a variety of uses, this practice has fallen out of use. Now there are numerous private structures located on Tribal tidelands that are not currently, or may have never been, leased from the Tribes.

After several meetings with representatives from the Department of the Interior, we were told in unambiguous terms that the ITARA demonstration project was limited to forestry resources and surface leases. The law does not limit what "trust assets" are subject to the plan and there is no language in the bill that would support a limited or narrow reading of the scope of trust resources.

Tulalip renewed its efforts to enter into an ITAMP in 2023, this time with a new Administration. The Department told us to send a draft plan and that they would review it and determine whether the tidelands would qualify as an Indian trust asset pursuant to the law. Separately, we heard that the Department was making the same determination as the prior administration and limiting the plan to forestry resources.

Under a "plain reading of the law" doctrine, a statute must be based solely on the literal meaning of the words used, without needing to consider additional context or interpretations. Here, the law is clear and does not allow for multiple interpretations of what an Indian trust asset is. Instead, the Department is turning the plain meaning rule on its head and unilaterally limiting the scope of Title II and frustrating tribes' efforts to include non-forestry resources in ITAMPs.

While the Tribe will continue to manage its tidelands in cooperation with the Department, it would prefer to include the tidelands in a Trust Asset Management Plan to better achieve the

Tribe's management objectives. The Department's narrow and unfounded interpretation of ITARA, however, is frustrating this effort.

To avoid further confusion and misinterpretation of the law, we recommend that Congress amend ITARA to remove these roadblocks and make the demonstration project permanent.

We thank you for the opportunity to provide testimony on this critical matter for Indian Country.