

103
INDIAN FISH AND WILDLIFE ENHANCEMENT

Y 4. R 31/3: 103-5

Indian Fish and Wildlife Enhancement... HEARING

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SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS

OF THE

COMMITTEE ON

NATURAL RESOURCES

HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

INDIAN FISH AND WILDLIFE MANAGEMENT AND ENHANCEMENT

HEARING HELD IN WASHINGTON, DC

FEBRUARY 18, 1993

Serial No. 103-5

Printed for the use of the Committee on Natural Resources



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INDIAN FISH AND WILDLIFE MANAGEMENT AND ENHANCEMENT

THURSDAY, FEBRUARY 18, 1993

HOUSE OF REPRESENTATIVES,
COMMITTEE ON NATURAL RESOURCES,
Washington, DC.

The committee met at 9:44 a.m., in room 1310A, Longworth House Office Building, the Honorable Bill Richardson presiding.

OPENING STATEMENT OF CHAIRMAN RICHARDSON

Mr. RICHARDSON. The Subcommittee on Native American Affairs will come to order.

Indian fish and wildlife resources are an integral part of the economic and social structure of Indian tribes. Since time immemorial, Indian tribes have relied on fish and wildlife resources for subsistence, economic development, and cultural practices.

Today, we will be hearing from tribal witnesses from across the nation about their efforts to improve the management of these important resources. We will also hear testimony about the lack of federal involvement in, and assistance for, tribal efforts to improve fish and Indian habitat, increase native fish and Indian populations, and to undertake other conservation measures on tribal lands.

I'd like to remind all the witnesses that your entire written statements will be made part of the committee hearing record, so please feel free to summarize your statements within five minutes.

[At this time, I request the background be made part of the record:]

BACKGROUND FOR FEBRUARY 18TH HEARING ON INDIAN FISH AND WILDLIFE MANAGEMENT

HISTORY

Indian fish and wildlife resources have been, and continue to be, an integral part of tribal economic and social structure. In most treaties with the Federal government, Indian tribes reserved the right to fish, hunt and gather in their "usual and accustomed places". The right of Indian tribes to hunt, fish and gather have been the subject of several U.S. Supreme Court decisions. As a general rule, Indians enjoy the exclusive right to hunt and fish on their reservations. In *United States v. Winans*, 198 U.S. 371, 380-81 (1905) the Supreme Court considered the right of the Yakima Indian tribe to hunt and fish at their usual and accustomed places pursuant to an 1859 treaty. In deciding this case, the Supreme Court recognized the right of the Yakima Indian to use privately owned land in exercising their treaty fishing rights.

Traditionally, the Courts have interpreted Indian hunting, fishing and gathering rights very broadly. Tribal rights to hunt, fish and gather have been recognized by the courts to exist in ceded territories, aboriginal lands and on reservation areas.

Similarly, courts have recognized the importance of tribal hunting, fishing and gathering rights to tribal self-sufficiency. Economic interests in tribal fishing rights as well as subsistence interests were considered by the courts in several cases in the northwest.

In *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), the district court recognized the treaty fishing rights of the Tribes in Washington State and held that those fishing rights could not be limited by the States to certain species or type of fish, and these rights include wild fish and hatchery bred fish.

In recognizing the rights of tribal regulation of hunting and fishing rights, the Ninth Circuit held in *Settler v. Lameer*, 507 F.2d 231 (9th Cir. 1974) that:

"[i]t would be unreasonable to conclude that in reserving these vital [fishing] rights, the Indians intended to divest themselves of all control over the exercise of those rights. Prior to the Treaty the regulations for fishing had been established by the Tribe through its customs and tradition. The Indians must surely have understood that Tribal control would continue after the Treaty."

The importance of fish and wildlife resources to Indian tribes have been and continue to be recognized by the courts. While the courts have recognized the importance of these resources, the Bureau of Indian Affairs, Department of the Interior, has provided little support or assistance to tribal efforts to manage these resources. Efforts to improve fish and wildlife habitat, increase resident population of fish and wildlife, and undertake conservation measures have been left entirely to Indian tribes.

HEARING

This hearing will focus on fish and wildlife management issues for Indian tribes. Indian tribes are faced with a multiplicity of issues surrounding the effective management and enhancement of Indian fish and wildlife resources. These resources provide a significant resource base for subsistence, economic development and other cultural purposes for Indian tribes and their members. Many Indian tribes have expressed concerns that existing federal laws do not adequately provide for the protection and management of tribal fish and wildlife resources and do not address the operations of tribal facilities.

The Committee will receive testimony from wide range of Indian tribes from very distinct regions of the country. The tribal witnesses will provide testimony on their ongoing efforts to improve fish and wildlife habitat, to cooperatively manage these resources with states and other Indian tribes, to increase native fish and wildlife populations and to undertake conservation efforts on these lands. In addition, tribes will testify about the federal trust responsibilities to enhance Indian fish and wildlife resources.

The hearing record is going to remain open for two weeks.

I'd now like to recognize the ranking member, Mr. Thomas.

Mr. THOMAS. Thank you, Mr. Chairman.

I have no opening statement. I am interested very much in this issue, and again, in my home state, why fishing and hunting of course on the reservation is a very important item, and it pertains not only to the hunting and fishing itself, but the management of water. And there are jurisdictional problems there, so I'm interested in what we're doing.

Thank you.

Mr. RICHARDSON. I thank my colleague.

Our first panel this morning will be the Honorable Wainwright Velarde, Vice President, Jicarilla Apache Tribe, from Dulce, New Mexico, accompanied by Rudy Velarde, Assistant Director, Game and Fish Department, and Ms. Gloria Notah, Wildlife Manager, Department of Fish and Wildlife of the Navajo Nation in Window Rock, Arizona.

If you could please step up to the witness stand and take your seats.

I'd like to welcome you to the Subcommittee, especially since both of you are my constituents.

Window Rock, Ms. Notah, you probably are a resident of across the border, are you not?

Ms. NOTAH. That's correct.

Mr. RICHARDSON. So a special welcome to all of you.

We'll start with Mr. Velarde, the Honorable Velarde.

As I mentioned, please keep your summarizing remarks to five minutes, and then we will proceed with questions.

So Hon. Vice President, please proceed.

PANEL CONSISTING OF HON. WAINWRIGHT VELARDE, VICE PRESIDENT, JICARILLA APACHE TRIBE, ACCOMPANIED BY RUDY VELARDE, ASSISTANT DIRECTOR, JICARILLA APACHE GAME & FISH DEPARTMENT; AND GLORIA NOTAH, WILDLIFE MANAGER, DEPARTMENT OF FISH AND WILDLIFE, NAVAJO NATION, WINDOW ROCK, AZ

STATEMENT OF HON. WAINWRIGHT VELARDE

Mr. VELARDE. Good morning, Mr. Chairman.

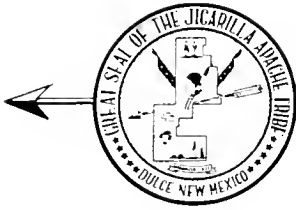
I'm Wainwright Velarde, Vice President of the Jicarilla Apache Tribe. And I'm accompanied by Mr. Rudy Velarde, member of the Tribal Council, and Assistant Director of the Jicarilla Apache Game and Fish Department.

I'm very pleased to be here to provide this committee with an overview of the Fish and Wildlife Management Program of the Jicarilla Apache Tribe, and the major issues as we see them.

I've prepared a formal statement and our Game and Fish Department has prepared a summary of our programs, that I would like to have entered into the record.

Mr. RICHARDSON. Without objection.

[The information follows:]



THE JICARILLA APACHE TRIBE

P O BOX 507 • DULCE, NEW MEXICO 87528-0507

JICARILLA APACHE TRIBE
DULCE, NEW MEXICO
FISH AND WILDLIFE MANAGEMENT
SUMMARY

Introduction

The following summary outlines the fish and wildlife resources and management programs on the Jicarilla Apache Reservation. Specifics are provided on tribal fish and wildlife management capabilities, program funding sources, staffing, and income derived from hunting and fishing license sales. The Jicarilla Apache Tribe has an aggressive, professional fish and wildlife program which provides quality hunting & fishing opportunities to both Indians and non-Indians.

The Jicarilla Apache Indian Reservation is located in north-central New Mexico and contains approximately 830,000 acres of land. The entire reservation is owned collectively by the Jicarilla Apache Tribe; there are no individual private holdings within the reservation. There is only one town located on the reservation, Dulce, where the majority of the 2800 tribal members reside. The rest of the reservation serves as habitat for indigenous wildlife species including elk, mule deer, black bear, mountain lion, turkey, and a wide variety of non-game, small game, and waterfowl species.

The Reservation contains 7 fishing lakes totaling 1200 surface acres, a 10 mile stretch of the Navajo River, and an 8 mile stretch of Willow Creek. All of these water support cold water fisheries. The largest natural lake in New Mexico, Stinking Lake (1300 acres), is located on the reservation and serves as the premier waterfowl breeding area in New Mexico.

Primary land uses on the Jicarilla Reservation are oil and gas production, commercial timber production, livestock grazing and recreational hunting and fishing.

1. Fish and Wild life Populations

The Jicarilla Game and Fish department conducts annual surveys to determine population size for dominant game species. The following figures reflect the most current estimates.



Rocky Mountain Elk

There are approximately 3000 resident elk on the Jicarilla Reservation. This number swells to approximately 5000 elk during winter when elk migrate to the reservation from surrounding mountains in northern New Mexico and southern Colorado. The Jicarilla Reservation is a major wintering area for portions of the San Juan Mountains elk herd.

Mule Deer

There are approximately 3,500 resident mule deer and 5000 winter migrant mule deer on the Jicarilla Reservation. The reservation has a well established reputation for producing exceptional trophy bucks, thanks to a conservative harvest strategy.

Pronghorn

Approximately 125-150 pronghorn roam the Jicarilla Reservation, descendants of animals transplanted from Colorado in the early 1980's. This transplant has dovetailed well with similar transplants made in recent years by the State of New Mexico and Bureau of Land Management on lands adjacent to the reservation.

Black Bear/Mountain Lion

The Jicarilla Reservation contains some of the best black bear habitat in New Mexico. Approximately 150 black bears reside year-round on the reservation. Mountain lions are relatively abundant due to the high numbers of mule deer and elk that constitute this species' prey base. Estimates of total lion numbers range from 60-75.

Turkey

Turkey have been increasing in number and expanding their distribution in recent years. There are approximately 300-750 turkey residing on the reservation.

Waterfowl

The Jicarilla Reservation contains the most extensive complex of wetlands in northern New Mexico and accounts for a significant proportion of the total waterfowl production in the state. Stinking Lake has long been recognized as a unique breeding site for resident waterfowl and a significant resting site for migrants. Counts of 10,000-15,000 waterfowl and waterbirds are common. The 7 fishing lakes and innumerable ponds and wet meadows scattered across the reservation also harbor a variety of nesting waterfowl and add to the biological diversity of the region.

Threatened and Endangered Species

There are two active Peregrine Falcon nests on the Jicarilla Reservation, and young have been consistently fledged from both nests for the past 5 years. These endangered falcons are dependent on the abundant waterfowl associated with reservation wetlands. There have been sightings of unpaired adult peregrines at two other locations on the reservation, and these birds may soon become established as additional breeding pairs.

The Mexican spotted owl, a candidate threatened species, also occurs on the Jicarilla Reservation, albeit in low numbers. Golden eagles nest on the Jicarilla Reservation, and the entire reservation serves as wintering grounds for both Bald and Golden eagles. Counts of 50-75 eagles each winter are common.

Small game/Non-game

The vast majority of land on the Jicarilla Reservation is undisturbed wild country which supports literally hundreds of mammal and bird species. The mix of habitat types and abundance of free water result in high biological diversity.

Fisheries

The Jicarilla Apache Reservation contains approximately 1200 acres of fishing waters, including 7 fishing lakes ranging from 35-450 acres in size, a 10 mile stretch of the Navajo River, and an 8 mile stretch of Willow Creek. All of these waters support cold water fisheries and are maintained through annual stocking. Each year approximately 160,000 trout, bass and catfish, totaling 16,000 pounds, are stocked in reservation lakes. These fish are stocked solely for the benefit of recreational fisherman.

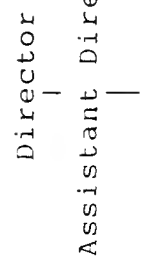
II. Fish and Wildlife Management Capabilities

The Jicarilla Apache Tribe has sole jurisdiction over fish and wildlife management and hunting and fishing recreation on the reservation. The Jicarilla Game and Fish Department, established in 1959, is responsible for all fish and wildlife management programs, setting season dates and harvest levels for fish and wildlife populations, and conducting any habitat improvement or 5 research projects. Department staffing consists of 23 individuals, as shown in the accompanying flow chart.

Funding for the department is from two sources: 1) revenues derived from the sale of hunting and fishing licenses and, 2) 93-633 wildlife and parks and outdoor recreation contracts from the Bureau of Indian Affairs. Revenues from the sale of hunting and fishing licenses are deposited annually in the Jicarilla Tribe's general fund.

JICARILLA APACHE TRIBE
 GAME AND FISH DEPARTMENT

Organizational Flow Chart



<u>Secretarial Division</u>	<u>Law Enforcement Division</u>	<u>Parks and Maintenance Division</u>	<u>Biological Division</u>
1 Financial Officer 2 Full-time Secretaries	1 Sergeant 8 Conservation Officers	1 Supervisor 2 Laborers 1 Janitor/Grounds Keeper 1 Mechanic	1 Certified Wildlife Biologist 3 Biological Technicians

The Game and Fish Department submits an annual budget to the Tribal Council, based on need and income generated. In some years the approved budget exceeds the income generated. In other years income exceeds the approved budget. Funding levels for FY1993 were:

Jicarilla Game and Fish Department Funding

	Tribal Funds	\$507,432.36
638	Contract Funds	\$133,250.00
	Total	\$640,681.36

Since the Tribe is not eligible for Pittman-Robertson or Dingell-Johnson funds, a separate account has been established by the Jicarilla Tribal Council to generate funds for habitat improvement projects. Each year 10% of the total income derived from the sale of hunting and fishing licenses is set aside in a Wildlife Management Account. These funds are used for habitat improvement projects, research projects, fish purchases or other fish and wildlife management activities not funded under the Game and Fish Department's annual budget. In FY1992 there was approximately \$50,000.00 set aside in this account.

Each division of the Game and Fish Department functions separately but in coordination with other department divisions. The major duties of each division are:

A. Secretarial

This division is responsible for selling fishing and hunting licenses, accounting related to department expenditures and income, dispensing public information and all normal office secretarial work (word-processing, filing etc...)

B. Law Enforcement

This division is responsible for patrolling the 330,000 acre reservation and enforcing the Game and Fish Code (Title 10), Health, Safety and Welfare Code (Title 6) Tribal Offenses Code (Title 7), Traffic Code (Title 8), Range Code (Title 9) and Environmental Protection Code (Title 14).

All employees of this division are commissioned officers of the Tribe and have jurisdiction to issue citations, arrest, and seize equipment from both Indians and non-Indians on the Jicarilla Reservation.

C. Parks and Maintenance

This division is responsible for the maintenance and of all department buildings, vehicles and equipment, as well as maintenance of all campground and recreational sites on the reservation. It is also responsible for maintaining a 14,500 acre elk game park fence, and for feeding approximately 600 elk in the park during winter months.

D. Biological Division

This division is responsible for monitoring fish and wildlife populations; implementing game, fish and habitat projects and; providing recommendations for fishing and hunting seasons and harvest levels. This division also addresses any potential impacts to fish and wildlife from other tribal and federal actions.

Each year the Game and Fish Department is charged with completing, at a minimum, the following tasks.

- Set annual fishing and hunting regulations, including season dates, legal weapons, bag limits, permit numbers etc...
- Monitor harvest of all fish and wildlife from the reservation by species, age and sex.
- Administer the tribes Animal Damage Control Program.
- Conduct aerial classification surveys to determine age:sex ratios for mule deer, elk and pronghorn populations.
- Stock reservation waters with fish for recreational fishermen.
- Monitor water chemistry, water levels and aquatic vegetation growth in reservation lakes, as they relate to fish survival and recreational fishing.
- Maintain campgrounds located at 4 reservation lakes.
- Patrol reservation and enforce Tribal Codes.
- Assist tribal and client hunters during fall hunting seasons.

- manage the trophy hunting program for non-indian hunting clientele.
- Conduct wildlife surveys and impact assessments for other land use programs including timber sales, grazing programs, oil and gas exploration and road construction.
- Plan and implement habitat improvement projects.
- Maintain department building and storage sheds, 15 vehicles, 2 snow-cats, 5 snowmobiles, 3 generators, 2 boats/motors and other miscellaneous equipment.
- Winter feed approximately 600 elk in the Horse Lake Mesa Game Park.
- Promote the Tribe's hunting and fishing program through extensive mailings, public contact and display booths at hunting and fishing expositions.
- Prepare reports, data files, correspondence and funding proposals for department projects.
- Prepare and monitor contracts for animal damage control, data processing and map compilation, fencing projects and construction of wildlife waters.

In addition to these annual tasks the Jicarilla Game and Fish Department posted several noteworthy accomplishments in recent years, including:

- Revision of the Tribal Game and Fish Code (Title 10) to include mandatory fines, a civil restitution schedule, and seizure and forfeiture statute; making this one of the nation's strictest Game and Fish Codes.
- For 8 years the Jicarilla Apache Tribe has requested and received approval for special migratory waterfowl seasons from the U.S. Fish and Wildlife Service. The Tribes seasons have always been more conservative than federal guidelines.
- In FY1991 the Jicarilla Tribe received funding from the North American Wetlands Conservation Council for the Jicarilla Wetlands Project. This project was aimed at improving waterfowl nesting success on the Jicarilla Reservation.

- In 1982 the Jicarilla Game and Fish Department began an 8 year study to determine the migration pattern of mule deer and elk on and around the Jicarilla Reservation. Eighty nine elk and mule deer were captured, fitted with radio-transmitting collars, then released and tracked for up to 4 years. This study confirmed the migration patterns used by elk and deer and allowed the Tribe to refine its management program to account for migration of big game across tribal, state and federal jurisdictional boundaries.
- In 1989 the San Juan Interstate Wildlife Working Group was formed. This group of wildlife biologists from tribal, state and federal land management agencies along the Colorado - New Mexico border was formed to address the migration of mule deer and elk in the region. The impetus for establishing this group was the Jicarilla Tribes migration study mentioned above.
- In 1987 the Jicarilla Tribal Council closed all mule deer hunts on the Jicarilla Reservation for 3 years. This was done in response to declining mule deer numbers. The season reopened in 1990, and since then the number of permits issued has been very limited. In 1987 the tribe began urging the State of New Mexico to curtail its mule deer hunts on state controlled lands around the reservation. Finally in 1992 all lands around the Jicarilla were placed under a restricted mule deer permit system by the New Mexico Game and Fish Department.
- In 1992 the Jicarilla Game and Fish Department received a \$6,000 grant from the Rocky Mountain Elk Foundation for a habitat project designed to increase forage for elk. The RMEF is widely recognized for its contributions to land management agencies conducting habitat improvement projects.

III. Hunting and Fishing Opportunities/Income.

Hunting

The Jicarilla Apache Tribe's hunting program is divided into two separate categories: hunts for tribal members and hunts for non-member clients.

The tribal member hunts are designed to give tribal members opportunities to hunt mule deer, elk, black bear, mountain lion, turkey and small game, primarily for recreational purposes. All permits are limited in number and tribal members must adhere to specific season dates, bag limits and weapon restrictions. For information on the total number of hunting permits issued to tribal members in 1992 see Table 1.

The non-tribal hunting program is strictly a Trophy Hunting operation. Limited numbers of permits are issued to clients on a first-come or random drawing basis, depending on the hunt. Fees charged for these permits is relatively high and the emphasis is on harvesting trophy quality animals. All client hunters are required to hire Jicarilla Apache guides. Table 2 lists the number of client hunting permits sold in 1992.

Total number of hunting licenses issued and user-days of hunting recreation provided in 1993 is summarized below.

Jicarilla Apache Reservation

<u>License</u>	<u>Number Issued</u>	<u>User-days</u>
Elk	654	4,578
Mule Deer	140	1,260
Black Bear	33	165
Mountain Lion	18	180
Turkey	55	660
Waterfowl	115	575
Non-Game	<u>136</u>	<u>2,040</u>
Total	1151	9,458

In 1993 approximately 75% of the total hunting licenses and user-days were accounted for by tribal members. The remaining 25% were accounted for by non-member client hunters.

Table 3 summarizes income derived from the sale of tribal member hunting licenses on the Jicarilla Reservation in 1992. Table 4 summarizes income from the sale of non-member client hunting licenses in 1992.

Table 1. 1992 Tribal Member Hunting License Sales.
Jicarilla Apache Reservation.

License	Number Available	Number Sold	Percent Change From 1991
Spring Turkey	30	30	-14%
Small/Non-game	No Limit	136	+12%
Bear	25	6	-66%
Mountain Lion	25	9	-25%
Archery Elk-Bull	20	20	-55%
Archery Elk - Cow	10	8	-
Rifle Bull Elk	20	20	-50%
Cow Elk	500	294	+87%
Cow Elk(Dulce Res.)	10	10	+233%
Mule Deer - General	75	75	+33%
Mule Deer - Senior	25	25	+150%
Mule Deer - Elder	No Limit	20	-15%

Table 2. 1992 Non-Tribal Member Hunting License Sales,
Jicarilla Apache Reservation.

License	Number Available	Number Sold	Percent Change From 1991
<u>Reservation Hunts</u>			
Archery Bull Elk	5	3	0%
Early Bull Rifle	35	37	-2%
Late Bull Rifle	20	17	-5%
Cow Elk	100	100	+85%
Southern Cow Elk	50	51	-
Mountain Lion	25	8	-33%
Spring Turkey	25	25	0%
Spring Bear	15	15	+7%
Fall Bear	10	7	-46%
Mule Deer	20	20	0%
<u>Game Park Hunts</u>			
Bull Elk	25	17	-5%
Cow Elk	30	30	-11%
Spring Bear	5	5	0%
<u>Complimentary</u>			
Bull Elk	-	21	-36%
Cow Elk	-	2	-83%
<u>Raffles/Donations</u>			
Bull Elk	-	1	-
Cow Elk	-	23	-

Table 3. Summary of the 1992-93 tribal member hunting license revenues, Jicarilla Apache Reservation.

License	Sold	Price	Total Income
Spring Turkey	30	\$20.00	\$600
Small/Non-Game	146	\$10.00	\$1460
Bear	6	\$20.00	\$120
Mountain Lion	9	\$20.00	\$180
Archery Elk-Bow	20	\$100.00	\$2000
Archery Elk-Cow	8	\$20.00	\$160
Rifle Elk-Bull	20	\$100.00	\$2000
Cow Elk	294	\$20.00	\$5880
Cow Elk (Dulce Res.)	10	\$100.00	\$1000
Mule Deer - Gen	75	50.00	\$3750
Mule Deer - Senior	25	0.00	0
Mule Deer - Elder	20	0.00	0
Total			\$17,150

Table 4. Summary of 1992-93 non-tribal member big game license revenues. Jicarilla Apache Reservation.

License	Sold	Price	Sales
<u>Reservation</u>			
Archery Bull Elk	3	\$4000	\$12,000
Early Bull-Rifle	37	\$4000	\$148,000
Late Bull-Rifle	17	\$4000	\$68,000
Cow Elk	100	\$400	\$40,000
Southern Cow Elk	51	\$300	\$15,300
Mountain Lion	8	\$250	\$2,000
Spring Turkey	25	\$75	\$1,875
Spring Bear	15	\$650	\$9,750
Fall Bear	7	\$650	\$4,550
Mule Deer	20	\$4,000	\$80,000
<u>Game Park Hunts</u>			
Bull Elk	17	\$4,000	\$68,000
Cow Elk	30	\$500	\$15,000
Spring Bear	5	\$650	\$3,250
Total		--	\$477,725
Total Sales	1991-92		\$492,500
Difference			\$14,775

Fishing

Fishing licenses are sold to tribal members and non-members on a unlimited basis. All reservation lakes and the Navajo River are open to the public. In 1993 there were 2,855 fishing licenses sold which generated approximately \$15,000. There were approximately 25,000 user-days recorded by fishermen on the Jicarilla Reservation in 1992.

The fishing program on the Jicarilla represents the best potential for improvement of habitat, expansion of recreational opportunities and increased user-days and income. All of the reservation's lakes are at relatively high altitude and require aeration to prevent fish from dying during winter. However, the lack of funds to bring electrical power to there lakes prevents the tribe from installing aeration systems and fulfilling the potential of these lakes to provide recreational fishing opportunities.

SUMMARY

The Jicarilla Apache Tribe has a long history of managing its fish and wildlife resources to provide recreational hunting and fishing opportunities for indians and non-indians alike. The reservation has a well deserved reputation for producing exceptional trophy mule deer and elk: a product of conservative, professional management. The Jicarilla Tribe funded fish and wildlife management programs entirely with tribal funds until 1982. Since 1982 the tribe has received a small 638 contract to assist the program, but today that contract amounts to only 20% of the total program budget. In 1988 the Jicarilla Tribe recognized the need for funding habitat improvement and research projects, and established the Wildlife Management Account. Ten percent of all license sales revenues are set aside annually in this account.

The Jicarilla Game and Fish Department has been a leader in the region for research and management of mule deer and elk populations, and their conservative harvest program for mule deer is now being adopted by the State of New Mexico. The Tribe has shown a degree of commitment to their fish and wildlife resources and professionalism in the management of their resources equal to, or above most state game and fish agencies. This has been without the benefit of Pittman-Robertson and Dingell-Johnson monies that are available to state wildlife agencies. The Jicarilla Reservation already provides considerable hunting, fishing and outdoor recreational opportunities to the general public. With additional funding proposed under the Wildlife Enhancement Act, the Tribe can expand these opportunities, improve habitats and ensure the future of its fish and wildlife populations.

Mr. VELARDE. Located along the continental divide in Northwestern New Mexico, the Jicarilla Apache Reservation enjoys a richness of wildlife that would be regarded as a national treasure if it were located in a national park or a national forest.

Because this treasure is located on Indian land, however, no one but us seems to feel any responsibility to protect it.

The Jicarilla Apache Tribe takes this responsibility very seriously.

Our culture and religion are tied very closely to the natural world, and much of the wildlife in our region plays an important part in our ceremonial life.

For more than 30 years, our tribe has been spending more than half a million dollars per year for enhancement and management of fish and wildlife resources on our reservation.

We have a resident population of more than 3,000 elk and 3,500 mule deer. Another 2,000 elk and 5,000 mule deer migrate into our reservation from higher elevations during the winter season.

More Boone and Crockett mule deer have been taken from the Jicarilla Apache Reservation since 1960 than from any comparable area of North America.

Elk and mule deer support a residential population of 60 to 75 mountain lions throughout the reservation.

An estimated 150 black bears reside year round on the reservation. Wild turkeys are prospering on the reservation and may number 750 birds.

The most extensive complex of woodlands in Northern New Mexico is located on the Jicarilla Apache Reservation. Sinking Lake, the largest natural lake in New Mexico is within the reservation and is a unique breeding site for residential waterfowl as well as significant resting sites along the Pacific flyway. Counts of ten thousand to fifteen thousand water birds are not uncommon.

At least two active peregrine falcon nests can be found on the reservation. Small numbers of Mexican spotted owl have been reported on the Jicarilla reservation.

Golden eagles' nests on the reservation, and both golden and bald eagles spend winter months on the reservation. Counts of 50 to 75 eagles each winter are common.

The Tribe's staff of 23 people for a reservation of some 850,000 acres is almost three times as many people as the State of New Mexico devote to an area ten times the size of the reservation for fish and game management.

In 1987, after examining and cross-examining the Tribe's Game and Fish Department personnel in discovery proceedings, the State of New Mexico conceded that the Tribe has a far more intensive wildlife management program for the reservation than any other state has to offer.

The Tribe was instrumental, in 1989, to establish the San Juan Interstate Wildlife Working Group, composed of wildlife biologists from state, tribal and federal wildlife management agencies along the Colorado-New Mexico border.

In short, the Jicarilla Apache Tribe has taken a leadership role in game and fish management for a significant portion of the Rocky Mountain region for both New Mexico and Colorado, but has re-

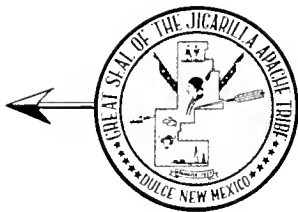
ceived none of the assistance that both states receive from the Federal Government.

We are convinced that if Congress were considering the Dingell-Johnson and Pittman-Robertson legislation today, Congress would make some provision for tribes to participate in those programs.

We urge this committee not to allow that original oversight to become an excuse for failing to correct an obvious injustice.

Thank you.

[Prepared statement of Mr. Velarde follows:]



THE JICARILLA APACHE TRIBE

P. O. BOX 507 • OULCE, NEW MEXICO 87528-0507

**TESTIMONY OF VICE PRESIDENT VELARDE
BEFORE THE HOUSE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
February 18, 1993**

**Oversight Hearing
Indian Fish and Wildlife Management and Enhancement**

Name and Capacity of Witness:

Wainwright Velarde
Vice President, Jicarilla Apache Tribe

TESTIMONY

Chairman Richardson and Members of the Subcommittee on Native American Affairs:

My name is Wainwright Velarde. I am the Vice-President of the Jicarilla Apache Tribe. With me today is Rudy Velarde, the Assistant Director of the Jicarilla Apache Game and Fish Department.

Fish and Wildlife Management by Indian Tribes is a topic of great importance to my Tribe, and I am honored to be here today to discuss these issues with this subcommittee. I will make some brief remarks, and then Rudy Velarde and I will respond to any questions from the subcommittee. We have provided the subcommittee copies of a more lengthy written statement summarizing the fish and wildlife management programs of the Jicarilla Apache Tribe.

The Jicarilla Apache Reservation is located in Northern New Mexico, within the congressional district of the subcommittee chairman, Mr. Richardson.

The Reservation consists of over 830,000 acres of land, all of which is held in trust for the Tribe. Unlike many other Tribes, we do not have large tracts of non-Indian land within our Reservation. Because of this solid land base, our Tribal Government is able to manage our natural resources effectively, without the state trying to impose its own laws and regulations on non-Indian lands within the reservation.



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House Subcommittee on Native American Affairs
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The Reservation population is approximately 3000, of whom 2800 are members of the Jicarilla Apache Tribe. The relatively small number of non-members residing on the Reservation strengthens the ability of the Tribal Government to manage our resources effectively.

Off-reservation hunting and fishing rights are an important issue for many of the Indian tribes, but these are not issues for our Tribe. The treaty and executive orders establishing our reservation did not preserve the hunting and fishing rights the Tribe held in the larger area we occupied before the reservation was established. Our rights to manage fish and wildlife are confined to the boundaries of the Reservation.

Within those boundaries, the Tribe has exclusive authority to manage fish and wildlife. The state of New Mexico has occasionally attempted to regulate hunting and fishing on our Reservation, but we have gone to federal court to stop that interference with our sovereignty, and the federal court has supported our position.

Our Reservation is rich in natural resources, including oil and gas, timber, good grazing lands, as well as fish and wildlife. We manage those different resources so that we are able to develop and enjoy each of them without causing unnecessary impacts on the environment or on other natural resources.

For example, the Jicarilla Apache Reservation is a significant producer of natural gas. At the same time, our Reservation has been known for many decades as one of the best areas in the United States for trophy hunting of mule deer and elk. We also have significant populations of bear, turkey and other game and non-game wildlife. In addition, the lakes and streams within the Reservation provide valuable habitat areas for fish and waterfowl.

From this brief description of our Reservation and our Tribe, it is clear that the Jicarilla Apaches have been blessed with great natural resources. Still, it is important for this subcommittee to understand that we have had to work hard and to devote substantial amounts of the Tribe's income to protect and manage those natural resources. Specifically in the area of wildlife management, the Tribe has received very little assistance, financial or technical, from the United States or from the state of New Mexico.

The Tribe established its own Game and Fish Department in 1959. The Department now consists of 23 full time employees, including a professional wildlife biologist, three biological technicians and 9 individuals working full time in enforcement of the Tribe's Game and Fish Code.

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These numbers may appear small to those of you who are not familiar with our Reservation or with northern New Mexico. For comparison, the Game and Fish Department of the state of New Mexico has 7 law enforcement officers and 1 biologist for the entire northwest quarter of the state outside of Indian lands. That area is about ten times the size of the Jicarilla Apache Reservation.

I mention these figures to show that our Tribe takes fish and wildlife management very seriously, and we are willing to put the necessary resources into an effective program.

Our Game and Fish Department is fully qualified to conduct surveys and monitoring under the Threatened and Endangered Species Act. We review and comment on environmental assessments prepared for timber sales and oil and gas development. We have conducted radio telemetry studies to determine migration patterns of elk and mule deer. Those studies have produced valuable data that was not known to the game and fish departments of New Mexico or Colorado.

It is also important for this subcommittee to know that our Game and Fish Department has cooperated with other tribes, the neighboring states and the federal government on issues arising from game and fish management. We were very active in initiating and establishing the San Juan Interstate Wildlife Working Group. That group has representatives from the Jicarilla Apache Tribe, the Southern Ute Tribe, the US Forest Service, the Bureau of Land Management, and the states of Colorado and New Mexico. This group meets periodically to share information and coordinate management of migratory big game herds that pass through each jurisdiction.

The Jicarilla Apache Tribe has a proven record of conservative and scientifically-based game management. For example, in 1987 our Game and Fish Department was concerned about the declining populations of mule deer. The state of New Mexico was permitting unlimited deer hunting in the areas surrounding our Reservation. We tried to get the state to limit the number of deer hunting permits for state-controlled hunts in surrounding lands. The state refused, because of the desire to continue getting revenue from unlimited permits sales. The Tribe then took the drastic step of completely prohibiting deer hunting within the Reservation for a three year period. This was a difficult decision for the Tribal Council, because deer hunting is a very important part of our culture. But the Council accepted the scientific evidence developed by our Game and Fish Department. At the end of the three year ban, we restored deer hunting on a very limited basis. As a direct result of our actions banning all deer hunting, the deer populations improved significantly. In addition, in 1992 the state Game and Fish department finally agreed to limit deer hunting on the lands surrounding our Reservation. We are pleased that the state has finally agreed to the conservative management policies for the deer herd first proposed and implemented by the Tribe.

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We are very proud of our Game and Fish Department and the high professional standards it has achieved. This subcommittee needs to know that this level of success has not been inexpensive. The annual budget for the Game and Fish Department is approximately \$640,000. Of that total, \$133,000 comes from a PL 638 contract with the BIA. The remaining \$507,000 comes from Tribal funds. Tribal funds cover 79% of the cost of operating the Game and Fish Department.

We receive no funds from the state of New Mexico and no funds from the United States other than the PL 638 contract. We receive no money from the federal wildlife and fish restoration funds. We receive no technical assistance from the BIA or the US Fish and Wildlife Service.

In part because outside funding was not available to the Tribe, we created a special habitat fund to provide money for habitat improvement projects. 10% of the gross revenue from the sale of tribal fishing and hunting licenses is deposited in that habitat fund. The balance of the revenue from license sales goes into the general fund of the Tribe, to pay for the many other governmental services we provide within the Reservation.

We have spent scarce tribal revenues on the Game and Fish Department because we recognize the importance of proper management of fish and wildlife resources. But it is becoming increasingly difficult to pay for these programs without the kind of federal financial assistance that is available to all the states and territories. The Indian tribes are the only governments in the federal system who do not share in the federal wildlife and fish restoration funds. We believe this situation is grossly unfair, and must be corrected.

The written materials submitted to the subcommittee provide additional details on our Game and Fish Department.

Mr. Velarde and I would be happy to answer any questions at this time.

Mr. RICHARDSON. Ms. Notah.

STATEMENT OF GLORIA NOTAH

Ms. NOTAH. Mr. Chairman and members of the Subcommittee, my name is Gloria Notah. I'm a wildlife manager with the Navajo Nation's Department of Fish and Wildlife.

I'm presenting testimony this morning on behalf of President Peterson Zah and the Navajo Nation.

The Navajo Nation appreciates this opportunity to provide our concerns regarding Indian management of fish and wildlife programs on tribal lands.

We commend the Subcommittee and the House Natural Resources Committee for addressing this issue.

The Navajo Nation is the largest Indian reservation in the United States, consisting of approximately 18 million acres of land which spans into the states of Arizona, New Mexico and Utah.

Navajo Nation lands contain valuable and critical habitat for numerous species of fish and wildlife.

In addition, there are 9 federally listed threatened and endangered species found on Navajo Nation lands.

In 1956, the Navajo Nation created the Department of Fish and Wildlife to manage the fish and wildlife resources on Navajo lands for the benefit of present and future generations.

Subsequently, fish and wildlife management codes were established for the protection and enhancement of Navajo fish and wildlife resources.

Although the Navajo Department of Fish and Wildlife manages to carry out its management responsibilities, the Department has confronted numerous obstacles in advancing this mandate.

First and foremost is the lack of statutory authorization for Indian tribes, including the Navajo Nation to participate in and receive funding from any Federal programs.

The Navajo Nation is unable to participate in Federal legislation, such as the Federal Aid in Sport Fish and Wildlife Restoration Act, which is also known as the Pittman-Robertson and Dingell-Johnson Act, and also the Endangered Species Act.

The Pittman-Robertson and Dingell-Johnson Act assess excise taxes on fishing and hunting supplies and motor boat fuel. This Act generates over \$400 million annually, and provides funding to all 50 states and U.S. territories.

However, this measure does not allow for Indian tribes, including the Navajo Nation, to participate in this Federal aid program.

Indian tribes should be allowed to participate in Pittman-Robertson and Dingell-Johnson since tribal members contribute significantly to these programs when they purchase taxed hunting and fishing supplies.

Furthermore, Indian tribes, including the Navajo Nation, contribute significantly to meeting the national demand for hunting and fishing opportunities.

The Navajo Nation has a developed Fish and Wildlife management program, which provides recreational fishing and hunting to the demand of the general public, Indian and non-Indian alike.

Therefore, we should be afforded the same benefits given to states and territories under Pittman-Robertson and Dingell-Johnson.

Indian tribes are also excluded from receiving direct Federal funding under Section 6 of the Endangered Species Act. Only states are authorized and funded to conduct inventories and develop management plans for threatened and endangered species.

Indian tribes must apply to states to receive this funding. There needs to be an avenue in place where tribes can receive Section 6 funding directly from the Federal Government, rather than through the states.

In 1977, the Navajo Nation enacted its own Endangered Species Code. This code protects not only federally listed threatened and endangered species, but also threatened and endangered species that are indigenous to the Navajo Nation.

There's a demand for individual threatened and endangered species management plans on the Navajo that would address critical factors that are not currently addressed by the existing federal threatened and endangered species management plans and guidelines.

Those critical factors that are of concern to the Navajo Nation are cultural and traditional beliefs, economic feasibility, and economic development and land use priorities.

Section 6 of the Endangered Species Act must be amended to authorize tribes to receive funds directly for development of threatened and endangered species management plans.

An additional obstacle facing the Navajo Nation in carrying out its management responsibilities is the continual decrease in funding allocations from the Bureau of Indian Affairs through the Indian Self Determination Act, also known as Public Law 93-638.

In 1991, the Department contracted the total fish and wildlife responsibilities from the Bureau. This included three wildlife biologist positions.

As a result of the continual decrease in funding, that's indicated in Attachment A of our written testimony, the Department lost 2 of the 3 wildlife biologist positions at the end of 1992.

In 1993, the Department renegotiated with the Bureau and managed to increase the allocation slightly. However, this amount is still grossly inadequate for the Department to manage the Navajo Nation's vast fish and wildlife resources.

A continued lack of P.L. 93-638 funding demonstrates the BIA's failure to uphold its trust responsibility to the Navajo Nation in the management of fish and wildlife resources.

This lack of responsibility has forced the Navajo Nation to begin seeking alternative funding sources in other federal programs and the private sector.

Thank you.

[Prepared statement of the Navajo Nation follows:]

**THE
NAVAJO
NATION**

P. O. DRAWER 308 • WINDOW ROCK, ARIZONA 86515 • (602) 871-6352-55

PETERSON ZAH
PRESIDENT

MARSHALL PLUMMER
VICE PRESIDENT

TESTIMONY OF THE
NAVAJO NATION
BEFORE
THE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
OF THE HOUSE NATURAL RESOURCES COMMITTEE
ON
THE OVERSIGHT OF INDIAN MANAGEMENT
OF TRIBAL FISHERIES AND WILDLIFE PROGRAMS

Mr. Chairman and members of the Subcommittee, the Navajo Nation appreciates this opportunity to provide our concerns regarding tribal management of tribal fisheries and wildlife programs. We commend this Subcommittee and the House Natural Resources Committee for holding this oversight hearing.

The Navajo Nation is the largest Indian reservation in the United States, consisting of approximately 17 million acres which spans into the states of Arizona, New Mexico and Utah - - similar in size to the state of West Virginia. Navajo lands vary from mountains, to forests, to lakes and streams, to the well known desert dry red rock. These lands contain valuable and critical habitat for numerous species of fish and wildlife such as rainbow trout, brown trout, largemouth bass, numerous small game species, pronghorn antelope, black bear, mule deer, and a small population of

elk and numerous furbearer and waterfowl species. There are nine federally listed threatened and endangered species found on the Navajo Nation, including an endangered fish located on the San Juan River (Ptychocheilus lucuis) and the Humpback Chub.

In 1956, the Navajo Nation created the Navajo Department of Fish and Wildlife to manage the fish and wildlife resources on Navajo lands for the benefit of our present and future generations. Presently, the Navajo Department of Fish and Wildlife consist of four sections: Wildlife Law Enforcement; Management/Research; Natural Heritage; and, Animal Damage Control. The Wildlife Enforcement section is responsible for the enforcement of all fish and wildlife laws and regulations. The Management/Research section evaluates, monitors, manages and researches certain populations of small and big game, furbearers and game fish. The Natural Heritage section is responsible for the collection, management and dissemination of biological and ecological information on threatened and endangered species and communities. It is the only program of its type in the United States on an Indian reservation. The Animal Damage Control section oversees the alleviation of wildlife damage to agricultural resources such as crops and livestock. There are approximately thirty professional staff in the four sections of the Navajo Department of Fish and Wildlife. Twenty staff members are located in the central office in Window Rock, Arizona, and ten staff members are located in the field. Each person is charged with overseeing the Navajo Nation's vast land, habitat and species resources.

The Navajo Department of Fish and Wildlife has confronted numerous obstacles in carrying out its responsibilities. Foremost is the lack of statutory authorization for

Indian tribes to participate in and receive funding from many federal programs. Another real problem is the competition for scarce federal dollars and a lower priority given to fish and wildlife versus human needs which are so great.

LACK OF TRIBAL PARTICIPATION IN FEDERAL PROGRAMS

The Navajo Department of Fish and Wildlife is constrained in efforts to enhance its fish and wildlife programs by the inability of the Navajo Nation to participate in federal legislation such as the Federal Aid in Sport Fish and Wildlife Restoration Act, otherwise known as the Pittman-Robertson and Dingell-Johnson Act (PR/DJ) and from the Endangered Species Act. These two acts are readily available to fund off reservation activities, but do not allow for tribal participation.

Pittman-Robertson and Dingell-Johnson Act (PR/DJ)

The PR/DJ Act assess excise taxes on fishing and hunting supplies and motor boat fuel. The PR/DJ generates over \$400 million annually and provides funding to all 50 states and United States territories for a wide variety of recreational fisheries and wildlife enhancement projects. However, this measure does not allow for Indian tribes, including the Navajo Nation, to participate in this federal aid program. Tribes should be able to participate in PR/DJ since tribal members contribute significantly to these programs when they purchase taxed hunting and fishing supplies. Furthermore, the national demand for hunting and fishing expeditions on tribal lands by tribal and non-tribal members is immense. The Navajo Nation, through its Department of Fish and Wildlife has met such requests by issuing approximately 2,100 big game permits in 1991-1992. Sixty-six percent were issued to tribal members and 34 percent to

non-tribal members. In 1991, approximately 11,726 fishing and small game permits were issued. Of this total, 28 percent were issued to tribal members, 13 percent to non-tribal members and the remaining 59 percent was unknown. The Navajo Nation, like many other tribes, has a developed fish and wildlife management program which provides recreational fishing and hunting to the demand of the general public, Indian and non-Indian. Since Indian tribes contribute significantly to federal aid programs and meet the national hunting and fishing demand, they should be afforded the same benefits given to states and territories under PR/DJ.

Section 6 of the Endangered Species Act

Indian tribes are also excluded from receiving direct federal funding for wildlife management under Section 6 of the Endangered Species Act. Only states are authorized and funded to conduct inventories and develop management plans for endangered species. Indian tribes must apply to states to receive such funding. Since states typically do not receive additional administrative overhead costs this is either assumed by the state or passed on to the tribe. This disincentive means tribes usually receive little or no Section 6 funding from the states. Furthermore, the interests of the state may be different than the tribe or, states may encroach onto the tribe's land. As to the latter, for example, the endangered fish (Ptychocheilus lucuis) located in the San Juan River on the Navajo Nation is currently the subject of an extensive research program by the New Mexico Department of Game and Fish which receives substantial Section 6 funding. The Navajo Department of Fish and Wildlife receives no such funding for the study and management of this species whose prime habitat is located

in the Navajo Nation. The interest of the Navajo Nation must include our own independent studies and evaluation. Otherwise we are dependent on the state or outsiders as to the status of our own tribal species.

Also, the guidelines under the Endangered Species Act for the management of threatened and endangered species are not site specific and do not address the conditions found on many Indian reservations. In 1977, the Navajo Nation enacted it's own endangered species code in an effort to address the particular conditions of threatened and endangered species indigenous to the Navajo reservation, including other federally listed species. However, funding is needed to further develop individual species management plans which recognizes those unique factors found on the Navajo reservation. Section 6 of the Endangered Species Act must be amended to authorize tribes to receive funds directly for development of their threatened and endangered species management plans.

Land and Water Conservation Fund

Legislation should also redress the current inequities existing in federal funding of outdoor recreation programs under the Land and Water Conservation Act of 1965 (LWCA). The LWCA is a fund, drawn primarily from federal offshore oil and gas revenues, that is to be used towards the development of federal and state outdoor recreational resources and facilities. As is the case with federal aid programs for fish and wildlife restoration programs, tribes are systematically excluded from receiving funding under LWCA. Congress should amend the Act to make tribes eligible to receive direct federal funding for the development and/or restoration of tribal

recreational facilities and resources on a basis equal to that of the federal government and the 50 states.

DECREASE OF BUREAU OF INDIAN AFFAIRS FUNDING

A portion of the Navajo Department of Fish and Wildlife's Management/Research section and all of the Wildlife Law Enforcement section are funded by the Bureau of Indian Affairs (BIA) through the Indian Self Determination Act (Public Law 93-638). Funding for these sections has continually decreased over the past four years. (See Attachment A) In 1990, the Navajo Department of Fish and Wildlife's "638 contract" allocation was \$332,800.00. In 1991, this contract allocation totalled \$260,800.00. In 1991, the Navajo Department of Fish and Wildlife contracted the total fish and wildlife responsibilities from BIA. This included three wildlife biologist positions. In 1992, the contract's total allocation dropped to \$251,019.00 which was inadequate to fund all programs and activities under the P.L. 93-638 contract. As a result of this continual decrease in funding, the Navajo Department of Fish and Wildlife lost two of the three contracted wildlife biologist positions at the end of 1992. In 1993, the original allocation to the Department was \$258,433.00, which would have resulted in large cutbacks in programs and services; however, the Navajo Department of Fish and Wildlife renegotiated with the BIA and received an additional \$25,670. Although funding was slightly increased in 1993, this amount is still grossly inadequate for the Navajo Department of Fish and Wildlife to properly evaluate and monitor the Navajo Nation's fish and wildlife resources spanning into three states.

The current funding level of the Wildlife Law Enforcement section, which is completely funded under a P.L. 93-638 contract, is also insufficient. This section consists of five Wildlife Conservation Officers who must cover the entire Navajo reservation. These officers are responsible for enforcing tribal fish and wildlife laws and regulations and certain federal wildlife laws such as the Lacey Act Amendments of 1981, the Bald Eagle Protection Act and the Migratory Bird Treaty Act. Non-Indian violators cited by these officers are prosecuted by the United States District Courts. Any fines assessed by the United States District Courts are reinvested in the Navajo Nation but remain with the federal government. Since the Navajo Nation Department of Fish and Wildlife does not receive sufficient "638" funding, it could utilize the assessed fines as an additional source of funding to effectuate its wildlife enforcement responsibilities.

The continued lack of P.L. 93-638 funding demonstrates of the BIA's failure to uphold its trust responsibility to the Navajo Nation in the management of fish and wildlife resources. This lack of responsibility has forced the Navajo Nation to begin seeking alternative funding sources in other federal programs and the private sector.

TOWARDS TRIBAL SELF-MANAGEMENT

The Navajo Nation, like many other Indian tribes, has the technical expertise and experience to manage its own fish and wildlife resources. Also, it is increasingly being recognized by the courts that tribes, as sovereign governments, have the right to self-manage these resources. In 1983, the Supreme Court upheld the Tenth Circuit stating the State of New Mexico could not enforce its wildlife management laws

within the exterior boundaries of the Mescalero Apache Nation. Subsequent cases involving the Confederated Salish and Kootenai Tribes and the Jicarilla Apache Tribe have reaffirmed this position. In all these cases, the overriding factor in favor of the tribes was their experience and expertise in managing their wildlife resources. In observation of these facts, the Governor of New Mexico appointed in 1991 the Wildlife Working Group for cooperative management between the State and local Indian tribes. Last month, the State officially endorsed the Wildlife Working Group. The Navajo Nation looks forward to realizing the potential of this collaborative effort.

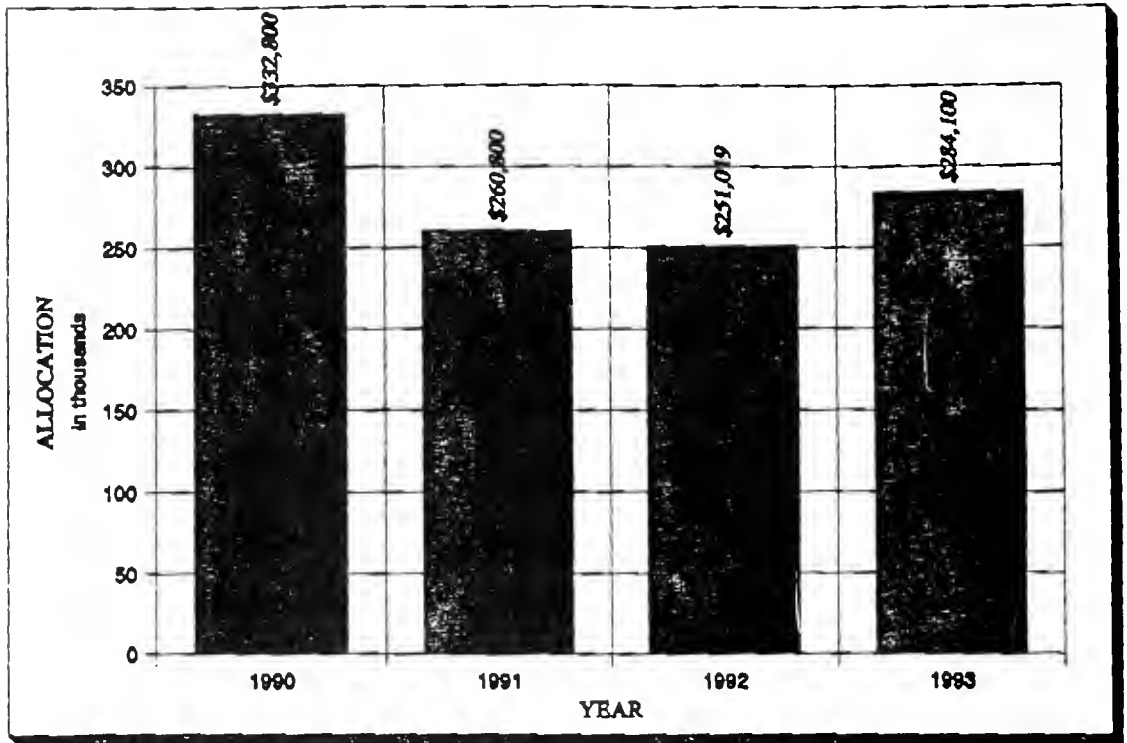
CONCLUSION

In sum, remedial legislation is urgently needed (1) to recognize the government-to-government relationship that exists between tribes and the federal government, by extending existing federal aid programs to tribes, and (2) to fulfill the federal government's trust responsibility to tribes by ensuring that they have the wherewithal to exercise their sovereign rights over their lands and resources.

Tribal self-determination must mean that tribes have the authority and sophistication to assume exclusive management of fish and wildlife resources on their lands. The greatest prohibitions are lack of statutory authorizations in significant federal acts and the lower priority of fish and wildlife in relation to other needs. The Navajo Nation urges this Subcommittee to overcome these two barriers by amending such federal laws and supporting increased funding as we have stated earlier. The Navajo Nation looks forward to working with this Subcommittee towards those goals.

ATTACHMENT A

NAVAJO FISH AND WILDLIFE DEPARTMENT
FUNDING HISTORY FOR
BUREAU OF INDIAN AFFAIRS P.L.93-638 CONTRACT



Mr. RICHARDSON. Thank you, Ms. Notah. I'd like to see if my colleague has any questions.

Mr. THOMAS. Thank you, Mr. Chairman.

I guess my questions would be more simply for clarification.

Do the agencies—for instance, Fish and Wildlife Service—participate in the programs that you speak of?

Ms. NOTAH. Mr. Chairman and members of the Subcommittee, the programs that I'm specifically referring to are programs that are only open to state participation.

The point I think is that, at least from the Navajo point of view, that we have the same capabilities and the same technical expertise as state fish and game departments in managing our fish and wildlife resources. And therefore, we feel that we have the right to compete for these resources on the same level as a state does.

Mr. THOMAS. But my question is, do you now get assistance from federal agencies in terms of the management of wildlife?

Ms. NOTAH. At least from the Navajo standpoint, the only federal assistance that we receive right now is through our Bureau of Indian Affairs.

Mr. THOMAS. I see.

And who's eligible to utilize these fish and wildlife opportunities?

Ms. NOTAH. We provide these opportunities both for tribal members and non-tribal members.

Mr. THOMAS. And there are non-tribal members who pay licenses to participate on the tribe?

Ms. NOTAH. But tribal members and non-tribal members pay to participate in these opportunities.

Mr. THOMAS. There are, of course, Pittman funds and others, but as I recall, our state game and fish is largely funded by license fees.

Is that true with you?

Ms. NOTAH. That's correct, yes.

Mr. THOMAS. So as I understand it, your main interest is having an opportunity to participate in the Pittman funds and those fees?

Ms. NOTAH. That's correct.

Mr. THOMAS. Thank you.

Mr. RICHARDSON. The Chair recognizes the gentleman from South Dakota, Mr. Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman. I apologize for being somewhat late this morning. We had a whip meeting going on outlining the legislative agenda for the remainder of this week and next week, and as well, I'm going to have to leave very soon for a caucus going on involving a subcommittee chairmanship that I'm going to be assuming.

So I regret that I have all of these things going on at the same time, because this is a critically important hearing going on today, and I commend you for your leadership in putting this together.

I'm going to be reviewing the written testimony because I think it is vitally important.

I have no questions here at this point.

However, I would like to extend a special welcome to Mr. Fred DuBray who is the Coordinator of Administration for Native American Bison Enhancement Project at Cheyenne River in South Dakota.

And I know that his testimony will be valuable in the overall work of this committee this morning.

So, again, I'm looking forward to reviewing all of the testimony and working with my staff in that regard.

And I apologize for having to leave here very soon now.

Mr. RICHARDSON. I thank the gentleman from South Dakota for his statement, and we recognize his many responsibilities.

Let me ask our two witnesses, what would you advise the Bureau of Indian Affairs, the Department of the Interior, and this subcommittee, to do in terms of carrying out the trust responsibilities to Indian tribes for the protection of tribal fish and wildlife resources?

In other words, what should we do to carry out our trust responsibilities to protect your fish and wildlife resources?

What would you like us to do that is not being done?

Mr. VELARDE. Well, with the Jicarilla Apache Tribe, I think as far as the Secretary is concerned with the Interior Department, it should be recognized and, again, on three levels, I think.

One is on the secretarial level. The Tribe would like to be recognized and be a part of this Pittman-Robertson and Dingell-Johnson bill together, also.

We would also like the President to have an order designating such a proclamation or recognition of our sovereignty to be able to regulate and manage our own game and fish.

And then on a legislative level, we would like to do likewise with the overall management of our reservations. Initiate some type of sovereignty bill to support those kinds of things.

Mr. RICHARDSON. Thank you.

Ms. Notah?

Ms. NOTAH. Mr. Chairman, remedial legislation is urgently needed to recognize the government-to-government relationship that exists between tribes and the federal government, by extending existing federal aid programs to tribes.

And to fulfill the federal government's trust responsibility to tribes by ensuring they have the right to exercise their sovereign rights over their lands and resources.

One of the major problems I think is that fish and wildlife matters are on a lower priority level in terms of other human needs. That needs to be increased.

Mr. RICHARDSON. Yes, did you want to add to this?

Mr. RUDY VELARDE. Yes, sir, Mr. Chairman. Thank you.

My name is Rudy Velarde, and I would like to suggest that the BIA consider the tribes individually because we are, each tribe, all different.

For example, rather than address us with a blanket type of a policy, if you would consider each tribe individually, because we are individuals, just by the mere fact of population, geography and the size and location of tribes.

Even regarding the economic development of different tribes, we're all different. So if the BIA tries to address us with a general type of a rule, it really doesn't help most of us.

But if they could consider us specifically, then they could accomplish more of their goals.

Thank you very much.

Mr. RICHARDSON. Mr. Velarde, you mentioned the extensive wildlife data collection that the Jicarilla Apache Tribe undertakes.

Are there similar types of efforts within the BIA that they are initiating, or would you call yours unique?

Mr. RUDY VELARDE. No, there's no information like this in existence. To my knowledge, we're the only ones that have this information. It costs the Tribe a lot of money to generate this information, and we're very proud to have this information.

And if anybody wants additional information, we're the main authority on what we're saying here, and we are recognized by the state courts and other hunting organizations throughout the United States.

For example, the big game shows and other big game organizations, they're the ones—if you go over there and you mention Jicarilla, they know exactly where we're at and what we can produce.

Thank you.

Mr. RICHARDSON. Of course, the Jicarilla's know this, but whenever members of Congress ask me where is the ideal place for recreational hunting, they mention the Jicarilla Apaches. I think you have a unique program there.

Mr. RUDY VELARDE. Thank you, Mr. Chairman.

Through the years, we also have several articles in national magazines with regard to our reservation, so we're pretty well recognized as far as hunting and fishing programs that we have.

Mr. RICHARDSON. Yes.

I'm going to recognize my colleague.

Mr. THOMAS. Thank you, Mr. Chairman.

Again, clarification.

You speak of the sovereignty and that sort of business.

Is there a confusion or an overlapping of jurisdiction with respect to state game and fish operations and fish and wildlife?

Is there a question about who has the authority to manage wildlife on your reservation?

Ms. NOTAH. Representative Thomas, if I may, I'd like to field that question.

I don't think there's a confusion about who has the right to manage these resources, at least with the Navajo it's fairly well clear that the Navajo Nation does have that responsibility for their own resources.

In many instances, we are doing just as much, or even much more than what the states are doing in terms of—

Mr. THOMAS. So it's not a conflict of jurisdiction generally?

Ms. NOTAH. No, it's not.

Mr. THOMAS. It's really money. Is that it?

Ms. NOTAH. It's primarily funding.

Mr. THOMAS. Okay. Thank you.

Mr. RICHARDSON. I thank my colleague.

Before I ask the Representative of American Samoa to chair the next panel, because I too, like Mr. Johnson, must leave because I have to go to the White House for a session with the Chief Executive, but I will return.

I would like to thank this group of witnesses.

I'd like to have the Honorable Thomas Maulson, the Chairman of Lac du Flambeau Tribe in Wisconsin come up to the table. He will be accompanied by Larry Wawronowicz, Director of the Natural Resources Department. In addition to Hon. Maulson, I'd like Mr. James Schlender, Executive Administrator for Great Lakes Indian Fish and Wildlife Commission from Odanah, Wisconsin. Mr. Ken Poynter, Executive Director, Native American Fish and Wildlife Society, Broomfield, Colorado. Mr. Fred DuBray, Coordinator, Administration for Native American Bison Enhancement Project, Cheyenne River Sioux Tribe, South Dakota.

The Chair recognizes the gentleman from American Samoa and asks him to come and assume the Chair.

Mr. MAULSON. Mr. Chairman, before you go—

[Mr. Maulson distributing gifts.]

Mr. RICHARDSON. Thank you for the gift.

Do you wish me to pass it on to the President?

Mr. MAULSON. Yes, sir.

Mr. RICHARDSON. I think there's some tobacco taxes in his packages. [Laughter.]

STATEMENT OF HON. ENI F.H. FALEOMAVAEGA

Mr. FALEOMAVAEGA [presiding]. First of all, I want to express, although in his absence, my appreciation for the outstanding leadership that the gentleman from New Mexico has undertaken, and not only for convincing the Chairman and the Ranking Minority Member of the Committee on Natural Resources that this is a very historical moment in the activities of the Committee on Natural Resources, that this is the first time that we have now established, in a long time, a specific subcommittee to handle Native American issues.

I think we've come a long way, and I want to express that feeling for the record, especially to the gentleman from New Mexico, Mr. Bill Richardson, for his initiative and for his leadership in accomplishing this task. And now we have a subcommittee to address the issues and the needs of our Native American community throughout the country.

I also want to express my personal thanks for the gift that has been presented here this morning.

It's ironic that our Native Americans had originally used tobacco for purposes of a very spiritual ceremony among Native Americans, and that is when the peace pipe is passed. And the purpose of the smoke is to enhance and to give some sense of unity spiritually among the elders when they meet.

And then when the Europeans got hold of it, they took it in a very different context. Now we're having very serious problems in the health, not only of the members of our country, but certainly throughout the world.

But the irony of it all is that I think we've understood, also from the Native Americans, that tobacco was used to cure the ills of animals.

But it's ironic that we now have problems of cigarette smoking in our country in a way that was never intended by the original users of tobacco; it was for a spiritual ceremony.

So I do accept, with gratitude, the gentleman's gift, and it will be placed prominently in my office. And maybe when we have a peace pipe ceremony, you'll come and smoke with us in my office.

I want to thank the gentleman for this gift.

I think, without question, we definitely do have some very serious problems, and this issue was posed to Secretary Babbitt about the need of our Native American community and the fish and wildlife, their needs, not only on reservations but the relationship that we have with the federal government, whether it be by regulation or by law.

I don't know. Seemingly, there seems to be some confusion or just lack of any real sense of cooperation with the needs of our Native American community.

So with that in mind, I want to proceed now and to hear from the testimonies of our friends here from Wisconsin and Colorado and from South Dakota.

And, so, Mr. Maulson, would you like to proceed?

PANEL CONSISTING OF HON. THOMAS MAULSON, CHAIRMAN, LAC DU FLAMBEAU BAND OF LAKE SUPERIOR CHIPPEWA INDIANS, WISCONSIN, ACCOMPANIED BY LARRY WAWRONOWICZ, DIRECTOR, CHIPPEWA NATURAL RESOURCES DEPARTMENT; JAMES H. SCHLENDER, EXECUTIVE ADMINISTRATOR, THE GREAT LAKES INDIAN FISH & WILDLIFE COMMISSION, ODANAH, WI; KEN POYNTER, MEMBER, PASSAMAQUODDY TRIBE OF MAINE, AND ACTING EXECUTIVE DIRECTOR, NATIVE AMERICAN FISH & WILDLIFE SOCIETY, BROOMFIELD, CO; AND FRED DUBRAY, COORDINATOR, ADMINISTRATION FOR NATIVE AMERICAN BISON ENHANCEMENT PROJECT, CHEYENNE RIVER SIOUX TRIBE, EAGLE BUTTE, SD, AND PRESIDENT, INTERTRIBAL BISON COOPERATIVE

STATEMENT OF HON. THOMAS MAULSON

Mr. MAULSON. Thank you very much, Mr. Chairman.

First of all, I'd like to address this body and identify my Ojibwa name is Badawiasch and I come from Wasagoning. Wasagoning is known as Lac Du Flambeau in the English context. I'm an Ojibwa. I am the Chairman of the Lac Du Flambeau Band, and my reservation is located in the north central part of Wisconsin, many hours from here.

It is approximately 144 square miles, 98,000 acres of land, including 150 lakes, 34 miles of creeks and rivers and streams, enriched with hunting, fishing and all these things that were echoed by the prior people here.

I know you have our testimony, and I'd like to just oversee it very lightly. I hope that you will take that time because of the tobacco that we've brought here today to you, to take a lot of time and listen, and see what Indian people are about today.

We have a major struggle to control the resources on our reservation, my reservation, my people. Approximately 51 percent of our reservation is owned by non-Indian people.

Today, we have an enhancement project going on in reference to making sure that our fish are plentiful for our people. But yet, the

State of Wisconsin does not return any type of revenues to my tribe in reference to making our hatchery operations go.

I feel we have the state-of-the-art hatchery, but yet it was built in the 1936 era. It is old, but yet it is fundamental, and continuously doing the things that we ask it to do.

I asked the legislation to state clearly the federal responsibilities to the tribes in references to the resources on reservation.

We need legislative support of all its natural resource programs, because we are the stewards of the last 500 years for the people that put their foot on this island. We need that support from you legislators, as nation to nation. It's important that we get that type of support.

We have to continuously identify the problems that we do have. We have many non-native people living within the confines of my reservation, as I stated earlier, but yet no dollars coming to my tribe in order to support its natural endeavor to exist as Ojibwa or Anishinabe people.

We have many white state jurisdictional issues on my reservation which definitely cause problems in reference to the use of their resources on my reservation.

We have many test cases out there, may it be the Montana case that deals with non-Indian people in reference to a jurisdiction. The State of Wisconsin has co-jurisdiction on my reservation also, but once again without putting any type of dollars in.

We asked to support the fact that we need also, as you heard echoed here this morning, Pittman-Robertson and Dingell-Johnson dollars. We need those dollars to exist.

We don't need them to rob Peter to pay Paul, or use them to switch one way or the other. We need those additional dollars.

We have an Indian fish hatchery that deals with roughly over 50 million walleye eggs annually, and millions of mussel eggs annually that are being taken from our hatcheries and used in our reservation waters.

We have a reservation that has approximately 158 named lakes and many small lakes, and yet we have no control. Ninety-five percent of those bodies of water are used by the non-Indian people without any type of control by tribal government.

But yet we continue to exist under these conditions. Fishing and hunting rights are essential to my people back home.

So I know we have many items that are far greater than the summary that I have before me, that's before you, to digest. And I hope this committee will take a hard look at how it's going to impact Indian people across this country.

We have been promised many things as Indian tribes, and yet gained little.

So I hope that we can continue to create a better dialogue, Mr. Chairman. So I'm going to leave it that way.

[Prepared statement of Mr. Maulson follows:]

TESTIMONY OF THE LAC DU FLAMBEAU BAND OF LAKE SUPERIOR
CHIPPEWA INDIANS

HOUSE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
FEBRUARY 18, 1993

Mr. Chairman and members of the Committee, I am Tom Maulson, Chairman of the Lac du Flambeau Band of Lake Superior Chippewa Indians in Wisconsin. I am pleased to have the opportunity to testify on behalf of the Band to express our support for the enactment of legislation recognizing the tribal right to manage and regulate fish and wildlife resources and the federal obligation, under the trust responsibility, to assist the tribes in fulfilling their objectives in this vital area. I also appreciate the opportunity to share with you several specific concerns which the Band would suggest be considered for inclusion in the legislation.

Let me begin by telling you something about our Reservation and our natural resources program.

The Lac du Flambeau Indian Reservation is located in north central Wisconsin -- described by many as the "Northwoods." The Reservation is approximately 98,000 acres, and includes 158 lakes, 34 miles of creeks, rivers and streams (a total of 20,000 surface acres of waters), 55,000 acres of forested land, and 15,000 acres of wetlands. As this description suggests, the Reservation ecosystem is very diverse and supports many upland and lowland species of animals and plants. Our waters, lands, woods and skies brim with walleye, muskellunge, smallmouth bass, white tail deer, black bear, eagles, waterfowl, grouse, songbirds, aspen, sugar maple, evergreens, and wild rice.

The role of these resources in our culture remains the same as it has been from time immemorial. Band members rely on the Reservation's natural resources for subsistence, cultural, religious, medicinal and economic purposes. It is safe to say that the Reservation natural resources are one of our greatest assets, second only to our children.

Non-Indians also use the Reservation's natural resources. Indeed, since the Lac du Flambeau Indian Reservation is a "checkerboard" reservation, there are many non-Indian people who own land within the exterior boundaries of the Reservation. These individuals - - as well as many non-Indians who live off the Reservation -- use our lands and waters to hunt, fish, boat, hike, and for other recreational purposes. Indeed, 95% of the fishing done on the Reservation is done by non-Indians.

The Band manages the Reservation's natural resources itself. This is done pursuant to the Band's Constitution, which provides that the tribal government has the constitutional responsibility to protect, conserve, and enhance the Reservation's natural resources for present and future generations. In fulfillment of this responsibility, the Lac du Flambeau Band has been operating the Tribal Natural Resources Department since 1936. Currently,

the Department operates 9 programs: (1) fish culture, (2) fisheries management, (3) wildlife management, (4) conservation law enforcement, (5) forestry, (6) water resources, (7) resource marketing, (8) parks and recreation, and (9) multi-media.

To better carry out the Band's constitutional responsibility for natural resources protection, we developed a ten year Integrated Resource Management Plan (IRMP) which establishes a coordinated approach to the management of our diverse resources. Unfortunately, the implementation of the IRMP has been impeded by a lack of funding. However, we remain committed to the IRMP, which is vital to our ability to develop a sustainable economy, in which our natural resources and the Reservation environment can thrive while co-existing with our economic development initiatives.

We see the enactment of fish and wildlife legislation as an important step towards the protection and enhancement of the Reservation's natural resources. In our view, the Committee should draft legislation that will define the federal government's commitment to and recognition of tribal natural resources departments, provide stable and continued funding for such departments, define the trust responsibility as it pertains to tribal natural resources, and recognize tribal jurisdiction over all natural resources and all persons within the exterior boundaries of the reservation.

In fulfillment of these objectives, we are pleased to suggest for the Committee's consideration several specific initiatives for inclusion in the legislation. We also have concerns which are of a more immediate nature -- that may affect the FY94 funding for natural resources. We describe both of these matters below.

A. Proposals for consideration as legislative initiatives

1. The legislation should set forth the federal trust responsibility for tribal natural resources. The legislation should clearly set forth the federal trust responsibility for the protection of tribal natural resources. In addition, it should strongly support the operation of tribal natural resource programs and seek to coordinate the existing federal programs which assist tribes in the operation of their natural resource programs.

The protection and enhancement of tribal natural resources goes to the core of the federal trust responsibility. These resources, protected and secured to the tribes by treaty, have a vital role in the culture, religion, and economy of Indian tribes. The guarantees of the treaty -- reserving these rights to the tribes -- are meaningless unless these resources receive the protection needed for them to thrive. This is exactly what the trust responsibility is intended to do -- protect the guarantees of the treaties. The legislation should confirm that the federal role in the protection of these resources is a function of the trust responsibility and should commit the government to providing the necessary protections in its role as trustee.

The legislation should also support, in accordance with the Self-Determination policy, the operation of tribal natural resource programs and should encourage the coordination of federal programs which impact on natural resource protection and enhancement. Presently, tribes deal with many federal agencies -- the Bureau of Indian Affairs, the Environmental Protection Agency, the United States Geological Survey, United States Fish and Wildlife Service, among others -- on natural resource matters. Each agency may have its own Indian Policy -- which may or may not be the same as others. This creates inconsistencies in the implementation of the Self-Determination policy and makes it far more difficult for the tribes to coordinate their natural resource programs. These inconsistencies should be rectified by the inclusion of a clear and concise statement of the federal trust responsibility in the legislation and by its consistent implementation in accordance with the terms of the legislation.

2. Integrated resource management plans should be supported. The protection and enhancement of on and off-reservation natural resources is vitally important to the tribal future. Our culture, our religion and our economy all rely on the availability of the plants and animals on which we have depended from time immemorial and which our treaties provide us with a right to harvest.

To protect these resources, our decisions in other areas -- economic development, environmental protection, and infrastructure development, for example -- must be made with an understanding of what impact these decisions will have on our resource base and what alternatives are available. Initially, this will require that the tribes undertake the substantial task of acquiring the baseline data about the reservation resources and environment which is needed to develop such a plan. Once this information is acquired, it must be organized and stored in an efficient and cost effective manner which makes it accessible for planning purposes. The use of systems such as the GIS system, which many governments are now using, should be encouraged to enhance the utility of natural resource information. Developing this data base and converting it to a useful form will take time and require funding. This funding should be viewed as an investment in the reservation's future and should be provided for in the legislation.

In sum, we believe it critical that the legislation support and provide funding for the development and implementation of integrated natural resource management plans, such as that which the Band has sought to develop. These plans are essential to the tribes' ability to make decisions which are in accordance with their religious, cultural, environmental, subsistence and economic objectives. The legislation should also recognize the tribes' inherent rights to make and implement decisions which are necessary to protect the reservation natural resources and environment.

3. The U.S. Supreme Court's decisions in *Brendale* and *Montana* should be legislatively modified. Many states, relying on the *Brendale* and *Montana* decisions, generate substantial revenues from the sale to non-Indians of licenses to hunt on fee lands and fish on navigable waters within reservation boundaries. This occurs on our Reservation, on

which over 95% of the people fishing are non-Indians. We generate no revenue from these users of our waters. Other tribes are in the same situation.

This situation is unfair. Indian tribes exercise inherent sovereign authority over the management of the reservation's natural resources. Furthermore, it is the tribes who actually manage the reservation's natural resources. Yet, when reservation fee land or navigable waters are involved, the *Montana* and *Brendale* decisions in many instances shut the tribes out of the economic benefit of non-Indian hunting and fishing activity.

Both the *Brendale* and *Montana* decisions should be modified legislatively to make it clear beyond question that Indian tribes may regulate non-Indians utilizing the tribe's natural resources on fee lands and navigable waters within their territories and to insure that Indian tribes have the opportunity to generate revenues from these activities.

4. Fish Hatchery Construction and Operations. We operate a very successful fish hatchery on our Reservation, which provides substantial benefit to the Indian and non-Indian community. Unfortunately, our facility -- which was built in 1936 -- is antiquated and in need of replacement. While we have made the best use of the facility that we could, the fact is that the wiring and plumbing in our facility is unsafe and hazardous. Moreover, as our program has grown we find that we have outgrown the hatchery -- we need a larger facility.

Unfortunately, we find that there is no federal program available to provide funding for hatchery construction. In view of the increasingly important role that fish hatcheries play in natural resource management, we think it is important that the legislation address these needs, and provide a mechanism for hatchery construction funding.

B. Problems potentially affecting FY94 appropriations

There are two actions which the Bush Administration had proposed for the FY94 BIA budget which, unless reversed would have a serious detrimental impact on tribal natural resources programs. They are as follows:

1. Proposed elimination of two BIA natural resources programs. The BIA proposes to zero out funding for tribal hatchery operations (\$2.99 million) and tribal management and development projects (\$6.65 million), and instead seek to fund these programs with Dingell-Johnson Pittman-Robertson (DJPR) Act monies. To accomplish this, we understand that the Bush budget proposed that changes be made in the Interior Appropriations Act to make tribes eligible for DJPR funding, which would then be used to fund these programs.

The Band operates a very successful fish hatchery, which makes a substantial contribution to the Reservation fishery, benefitting Indians and non-Indians alike. We know first hand how important tribal fish hatchery operations are to the economic well-being of

many tribes. In addition, tribal management and development funds have enabled the Band and many other tribes to improve their fish and game management, promote tourism, and otherwise enhance the conservation and development of tribal natural resources.

Elimination of a stable funding source for these important programs with no guarantee that ongoing projects will be continued -- as the Bush budget proposed -- would deal a severe blow to the stable development of tribal natural resource programs, putting at risk the years of progress which these programs have made.

The timing of this proposal is particularly bad because the tribes are now working to develop a legislative proposal to secure a share of DJPR funds for tribes. The Bush proposal would short circuit this work and pre-empt congressional efforts to address it as well. We urge the Committee to oppose any such proposal.

2. Proposal to disregard Congressional directive concerning appropriations increases. The second Bush Administration FY94 BIA budget proposal would also affect fish hatchery operations and tribal management and development funds as well as funding for the rights protection programs. (As the Committee is aware, the rights protection program encompasses a broad range of activities that enables tribes to implement their treaty hunting and fishing rights.) Over the last several years, Congress has added significant funds to all three of these accounts. The Bush Administration has consistently sought to eliminate these increases. While Congress has continued to restore them, the BIA does not distribute the restored funds until at least four months into the next fiscal year. This greatly disrupts the programs and makes long range planning impossible.

During the FY 1993 appropriations process, Congress instructed the BIA to place increases in these programs into the base budget and to include them in its proposed budget for FY 1994. The Bush budget proposed to disregard this directive and to eliminate all additions for BIA natural resource programs.

This manipulation of budget figures has real and disastrous consequences for the targeted programs, putting in serious jeopardy the ability of the affected tribes to protect reservation natural resources. We urge the Committee to oppose any such proposal.

In conclusion, let me restate that the Reservation's natural resources are one of the biggest assets the Band has to provide cultural, subsistence, economic, and social opportunities for the tribal membership. By drafting comprehensive fish and wildlife legislation, Congress can fulfill the trust responsibility to tribes and assist tribal governments in fulfilling their responsibility to protect, conserve and enhance tribal resources for present and future generations.

Thank you for the opportunity to testify. I would be happy to answer any questions you may have about our concerns.

Mr. FALCOMA. Thank you, Mr. Maulson.

I know that for some of you perhaps this may be your first experience in coming to Washington and testifying before a Congressional hearing. It may also be to you a disappointment to see that not very many members are here to listen and to hear the testimonies of those who appear before the committee.

But I want to give assurance to all of you that sometimes when you see this, don't be misled to think that the testimonies are not an important part of the whole hearings process.

This is the very reason that we have everything, and I will submit this for the record, that all of your testimonies will be incorporated and be made part of the record.

And before the committee can make a decision on given legislation, even for purposes of oversight, the fact is that we need to have a record.

And this is the very reason why we're having the hearing. And as the Chairman has stated earlier, sometimes we have conflicting appointments or commitments—sometimes we have five appointments in the same given time. And I don't think there's any way that any of us can adequately address some of the problems affecting the Administration and the procedures that we have here on the hill.

But I want to give assurance to our friends who are testify this morning that it is very important, and that we will take your statements in all seriousness, and that hopefully by building this record, we will be able to develop the kind of legislation that will be helpful to meet the needs of our Native American community.

So I just want to state that for the record.

Mr. Schlender.

STATEMENT OF JAMES H. SCHLENDER

Mr. SCHLENDER. Mr. Chairman, my name is James Schlender, and I'm the Executive Administrator of the Great Lakes Indian Fish and Wildlife Commission.

On behalf of the Commission's 13 member tribes, located in the States of Wisconsin, Michigan, and Minnesota, I'd like to thank you for the opportunity to appear here today regarding Indian fish and wildlife management and enhancement issues.

In this testimony, I would like to refer the Committee to our written testimony regarding the comprehensive natural resources management programs that the Commission undertakes on behalf of its member tribes on more than 16 million acres of off-reservation lands and waters.

In addition, I would like to take this opportunity to suggest some of the ways we feel federal legislation could help to preserve and strengthen these kinds of natural resource programs.

I will forego describing what we do and go right to the need for federal legislation.

The Commission's activities are necessary to the protection of the fish, wildlife, and plant resources which continue to be central to the cultural, religious and economic lives of the tribal members we serve.

Despite the importance of these activities, there is no overall federal statutory mandate for the protection of natural resources that tribes use.

This means that, for the most part, the protection and management of tribal fish and wildlife resources depends upon the initiative of tribes and tribal organizations, and the uncertainty of the federal appropriations process.

Tribal efforts to regulate their fish, wildlife and gathering rights should be supported and strengthened through federal legislation.

From the Commission's experience, we would suggest that the legislation should address the following topics, among others:

First, tribes have the sovereign authority to regulate tribal members in the exercise of their treaty rights, as well as the authority to manage the natural resources subject to tribal member harvest. Federal law should clearly acknowledge the primacy of tribal self-regulation of treaty protected natural resources both on and off the reservation.

Second, the federal responsibility must go beyond the recognition of the tribal right to self-regulate with respect to natural resources.

The United States must, in addition, provide tribes with the opportunity to participate fully with other governments on matters which have a substantial impact on tribal natural resources.

The United States must assure the tribes of full representation and voting status on a government to government basis on any board or agency which is involved in decisions which affect tribal rights to natural resources.

Third, when tribes entered treaties reserving their hunting, fishing, and gathering rights, those treaties were with the United States, and not with a single agency.

The federal trust responsibility arising out of those treaties applies to all federal dealings, and I underscore all. The responsibility is not limited just to the Bureau of Indian Affairs.

Yet, in dealing with issues affecting tribal treaty rights, the federal agencies differ greatly from one another.

Our experience has been that in addressing tribal natural resource issues, the BIA has typically recognized that its actions must be consistent with the trust responsibility. The BIA has generally supported the Commission's self-regulatory efforts.

But certain other agencies do not always deal with the Commission in the manner of a trustee. The result has been an uneven and inconsistent relationship between the tribes and the various federal agencies whose actions affect natural resources.

We would suggest that federal legislation should clarify that the federal trust responsibility applies across the board to all federal agencies in their dealings with tribal natural resource issues.

The legislation should also mandate that the government-to-government relationship be institutionalized by these agencies through the establishment of Indian desks and other means. Too often, Indian desks are desks with just three legs. And we need to go beyond that.

Fourth, while the Commission is proud of its natural resource management program and of its many accomplishments, there remain significant unmet needs. Additional member tribes of the Commission, particularly those in Michigan and Minnesota, are

now properly asserting and exercising their off-reservation treaty rights.

The Commission must be able to provide the same level of natural resource management services to all of its member tribes.

Right now, the Commission has sufficient funding to meet only one-third of the needs of its member tribes.

In addition, environmental protection is becoming increasingly important. Stresses on tribal natural resources come from many areas, including environmental degradation.

The Commission's member tribes require the means to assess the environmental impacts of pollution discharges into the air and water of the ceded territories, and to participate as equal partners in the development of state, federal, and international environmental protection regulatory initiatives.

Tribal and inter-tribal natural resources self-regulation meant to perpetuate and enhance natural resources is not very useful if pollution destroys the very resources upon which the rights depend.

Faced with these needs, tribes at the same time have faced threats to the continuation of funding for tribal natural resource programs.

For example, in its FY '93 budget proposal, the Administration proposed reducing the Commission's appropriation by about 39 percent. Such budget fights hurt tribal efforts to carry out a comprehensive natural resources management program.

Legislation supporting tribal self-regulation of natural resources would greatly enhance the position of tribes and tribal organizations seeking to assure the funding needed to move forward in the area of natural resources management.

Fifth, despite its best efforts, the Commission is not always able to find Indian candidates for its job openings. This is particularly true in the case of biologists. But a more comprehensive program, including federal scholarships and loans, is needed to help tribal members into the educational programs involving resource management.

Finally and in conclusion, we appreciate the Committee's sensitivity to tribal needs regarding plant, wildlife, and fish enhancement.

This is an area in which tribes and tribal organizations are exercising their self-governing authority to protect activities of long-standing and continuing importance to Indian people.

We look forward to working with the Committee to help shape legislation to protect tribal hunting, fishing, and gathering rights and the tribal management and enhancement of those rights.

Thank you.

[Prepared statement of Mr. Schlender follows:]

GREAT LAKES INDIAN FISH & WILDLIFE COMMISSION

P. O. Box 9 • Odanah, WI 54861 • 715/682-6619 • FAX 715/682-9294

• MEMBER TRIBES •

MICHIGAN

Bay Mills Community
Keweenaw Bay Community
Lac Vieux Desert Band

WISCONSIN

Bad River Band
Lac Courte Oreilles Band
Lac du Flambeau Band

Red Cliff Band
St. Croix Chippewa
Sokaogon Chippewa

MINNESOTA

Bois Forte Band
Fond du Lac Band
Grand Portage Band
Mille Lacs Band



**TESTIMONY OF JAMES H. SCHLENDER,
EXECUTIVE ADMINISTRATOR
of
THE GREAT LAKES INDIAN FISH & WILDLIFE COMMISSION**

Before the

**House Committee on Natural Resources
Subcommittee on Native American Affairs**

February 18, 1993

**Testimony of James H. Schlender, Executive Administrator
of the Great Lakes Indian Fish and Wildlife Commission**

Mr. Chairman and Members of the Committee. My name is James H. Schlender and I am the Executive Administrator of the Great Lakes Indian Fish and Wildlife Commission (GLIFWC). On behalf of GLIFWC's thirteen member tribes, I would like to thank you for the opportunity to appear before you today regarding Indian fish and wildlife management and enhancement issues.

The purpose of my testimony today is twofold: 1) to provide the Committee with information on the comprehensive natural resource management programs that GLIFWC undertakes on behalf of its member tribes; and 2) to suggest some of the ways federal legislation could help to preserve and strengthen these kinds of natural resource programs.

I. GLIFWC'S MEMBERSHIP AND PURPOSE

GLIFWC is comprised of 13 federally recognized tribes in Wisconsin, Minnesota and Michigan (a list of our member tribes is attached as Appendix A to this testimony). Each of our member tribes entered one or more treaties with the United States, under which the tribes reserved off-reservation hunting, fishing and gathering rights in lands ceded to the United States. These treaty rights have been recognized by the courts, including in the multifaceted Lac Courte Oreilles litigation ("LCO" case), which is sometimes known as the Voigt case.

GLIFWC was established by the tribes to protect and regulate the use of their off-reservation natural resources. Its purpose is to conserve and manage the fish, wildlife and other resources subject to tribal off-reservation treaty rights, to facilitate the development of institutions of tribal self-regulation and management of natural resources, and to protect the habitats and ecosystems that support those resources from environmental degradation.

The GLIFWC member tribes have delegated to GLIFWC a portion of their sovereign authority involving the regulation and management of treaty-reserved, off-reservation hunting, fishing and gathering rights. In carrying out this delegation of tribal authority, GLIFWC formulates and undertakes a comprehensive natural resource management program. This program is designed to ensure that these off-reservation rights are protected and preserved for the benefit of present and future tribal members.

GLIFWC is an intertribal organization which, in our view, provides to its member tribes a high level of biological, management and other expertise. While it is often suggested in other contexts that tribes are reluctant to work together, GLIFWC is proud to serve as an organization of tribes, working together in a coordinated manner for the common goal of protecting their off-reservation treaty rights.

As discussed in more detail below, GLIFWC's major activities include providing biological assessments of various species, monitoring the taking of fish, wildlife and plants, developing natural resource management plans and conservation codes, providing conservation officers to implement tribal law with respect to off reservation areas, preparing and presenting information to educate the public about the facts concerning off reservation treaty rights, assisting tribal courts in addressing violations of tribal game and fish management ordinances, working with state, federal and foreign governments on issues of mutual concern, and providing educational opportunities for tribal members in the natural resources area. All these activities are necessary to the protection of the fish, wildlife and gathering resources which continue to be central to the cultural, religious and economic lives of the tribal members we serve.

II. GLIFWC'S OFF-RESERVATION NATURAL RESOURCE MANAGEMENT PROGRAM

Biological Assessments and Resource Monitoring. GLIFWC conducts a variety of fish and wildlife assessments, monitors tribal fishing, assists in tribal permitting, and provides other management assistance. For example, GLIFWC performs the following:

- Sample, monitor and prepare an annual report on tribal commercial fish harvests in off-reservation areas of the 1842 ceded territory in Michigan.
- Provide technical assistance to member tribes regarding the management of the intertribal fishery of Lake Superior.
- Monitor catch of tribal fishers from inland waters in the Wisconsin and Michigan ceded territories, and assist tribe in managing harvest through permit systems or other means. This includes complete on-site monitoring of all open water spearing and netting.
- Provide technical assistance and advice to member tribes regarding inland fishery resources, including assistance in negotiation and litigation, and inter-agency cooperative management projects.
- Conduct fish population assessments and surveys of areas that have been or are likely to be fished under treaty rights. These include fall electrofishing surveys during late summer and fall and mark-recapture population estimates.
- Assist member tribes in managing wildlife and wild rice harvests in the ceded territories.

- Supervise tribal permit and registration stations for deer, bear, fisher, otter and bobcat.
- Conduct studies of wildlife populations to provide information needed to manage tribal harvest.

Fish and Wildlife Enforcement. GLIFWC also provides the staff and expertise to enforce tribal law with respect to the use of off-reservation natural resources. This includes:

- As authorized by member tribes, be responsible for patrol, protection and investigative services in the areas of Michigan, Minnesota and Wisconsin ceded by the 1836, 1837, 1842 and 1854 Treaties, including Lake Superior.
- Maintain scheduled conservation enforcement tours of duty providing response capability, regular patrols and prevention services seven days a week.
- Serve conservation related warrants, summonses and complaints as directed by tribal courts.
- Implement prevention, safety and education programs to prevent violations and accidents.

All GLIFWC wardens are fully-certified conservation officers who must complete basic police recruit or equivalent training within one year of being hired. Each year, GLIFWC wardens must attend forty hours of additional in-service training. To meet this requirement, GLIFWC wardens have attended crowd control training, hazardous materials training, hunting and firearm safety training, accident investigation training, and boating safety water rescue training, among others.

Public Information and Education Activities. GLIFWC engages in public information and education activities to increase public knowledge and understanding of tribal off-reservation resource management activities, and of tribal sovereignty and tradition. One of the primary goals of these activities is to raise public awareness and diminish conflict over off-reservation treaty rights.

Specific public information education activities include:

- Presentations by biologists and attorneys/policy analysts at schools, civic organizations, various public forums and professional conferences.

- Publication and dissemination of informational and educational materials, including newspaper, reports on tribal off-reservation harvests, booklets describing tribes and their treaty rights, and articles on GLIFWC's resource management activities.
- Production of informational and educational videos for use at presentations and for broadcasts such as television public service announcements.
- Training sessions on tribes and tribal traditions and cultural for state departments of natural resource staff.
- Information displays at fairs, including the Minnesota and Wisconsin state fairs, trade and sport shows, tribal pow-wows, and educational and professional conferences.

Judicial Services. GLIFWC assists member tribes in providing judicial services with regard to cases involving persons accused of violating applicable member tribe off-reservation ordinances for areas of Michigan, Wisconsin, and Minnesota ceded by the 1836, 1837, 1842 and 1854 Treaties.

III. GLIFWC'S CO-MANAGEMENT ACTIVITIES

Because the natural resources subject to tribal off-reservation treaty rights are in certain instances subject to the overlapping interests of many governments, GLIFWC undertakes a wide range of co-management resource management activities with state, federal and foreign governments. Some of these activities are the direct result of litigation and court orders, while others are pursued as part of the general government-to-government relationship between tribes and other governments.

For example, court orders in the LCO case provide for tribal participation in any Wisconsin Department of Natural Resource (WDNR) committee involving the natural resources within the portions of the 1837 and 1842 Treaty ceded territories located in Wisconsin. These orders generally require the WDNR to recognize tribal representatives as official members of species advisory committees and any other committees created to manage or impacting the species involved and their habitat. They also generally require all reasonable efforts to reach consensus in the committees. GLIFWC's member tribes have designated GLIFWC biologists to serve as tribal representatives on these committees.

Beyond the particular context of the LCO case, GLIFWC represents its member tribes in the following bodies or committees:

- Great Lakes Fishery Commission's (GLFC) Committee of the Whole, Operations Subcommittee, Lake Superior Technical Committee, Lake Superior Committee, Law Enforcement Committee, and Ruffe Task Force -- GLFC was established by the Convention on Great Lakes Fisheries between Canada and the United States, which was ratified in 1955. See 16 USC § 931, et seq. GLFC coordinates programs of research in the Great Lakes and makes recommendations which will permit the maximum sustained productivity of fish stocks. It also carries out sea lamprey control programs. The various GLFC committees on which GLIFWC sits are comprised of governmental representatives from the Canadian and provincial governments and from the United States federal, state and tribal governments. Their purpose is to advise GLFC's Canadian and United States Commissioners on technical and policy matters.
- Technical Committees of the United States Fish and Wildlife Service (USFWS) Mississippi Flyway Council -- The Technical Committees, comprised of federal, state and tribal biologists, advise the Flyway Council on the status of waterfowl populations and their habitat. The Flyway Council, comprised of representatives of state natural resource management agencies, makes recommendations to USFWS on migratory bird hunting season frameworks.
- Great Lakes Panel of the USFWS Aquatic Nuisance Species Task Force -- The Task Force, created by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, P.L. 101-646, 104 Stat. 4761, consists of representatives of federal, state and tribal resource management agencies. Its purpose is to assist governments in preventing and controlling nonindigenous aquatic nuisance species, including the zebra mussel and ruffe in the Great Lakes.

GLIFWC has also undertaken a number of specific co-management projects. These include:

- Environmental Health Laboratory, Lake Superior Research Institute, University of Wisconsin-Superior -- In 1990, GLIFWC and UW-Superior entered into a cooperative agreement for the establishment of an Environmental Health Laboratory. This laboratory has undertaken a number of studies regarding the health effects of contaminated fish on Indian people.
- Ceded Territory Cooperative Wetlands Enhancement Project -- Funded by GLIFWC and in cooperation with Wisconsin Department of Natural

Resources (WDNR) and United States Forest Service resource managers, this project was designed to create, restore and enhance wetlands at various sites in Northern Wisconsin to increase habitats for breeding and migrating waterfowl.

- Fish Population Assessment Activities -- GLIFWC works with the WDNR, the Michigan DNR, USFWS and member tribes in its ongoing fish population assessment programs in Lake Superior and in inland lakes of the ceded territory.

A joint fishery assessment of the Wisconsin ceded territory -- undertaken by USFWS, Bureau of Indian Affairs, WDNR, GLIFWC, and the six Wisconsin Chippewa Tribes -- led to publication of a report -- Casting Light Upon the Waters: A Joint Fishery Assessment of the Wisconsin Ceded Territory (United States Department of the Interior, 1991). This publication contained a series of recommendations on management of these resources.

- Sea Lamprey Control Projects -- GLIFWC works with GLFC, USFWS and state governments in lamprey control projects in and around Lake Superior.
- Cooperative Law Enforcement Activities -- Cooperative law enforcement is an important aspect of GLIFWC's co-management activities. To ensure effective enforcement of tribal conservation laws, member tribes generally authorize state conservation wardens to enforce tribal off-reservation conservation codes, citing violators into tribal court. Similarly, to ensure effective enforcement of state conservation laws, the Minnesota and Wisconsin Departments of Natural Resources authorize tribal and GLIFWC wardens to enforce state law against non-Indians.

IV. GLIFWC'S EDUCATIONAL OPPORTUNITIES FOR TRIBAL MEMBERS

GLIFWC and its member tribes are committed to the education and training of tribal members for the purposes of career opportunities in the natural resource management field. Each year, GLIFWC enters into student internship agreements with various schools and universities. One of the goals of the internships is to provide field experience to students of biology and natural resource management. Another goal is to train students so that they can engage in public information/education activities for their respective tribes.

V. THE NEED FOR FEDERAL LEGISLATION

As the above discussion reflects, GLIFWC's activities bring together some of the central themes of federal Indian policy - the preservation of historically and culturally significant activities of Indian people, the fulfillment of federal promises made to the tribes by treaty, the protection of significant Indian economic activity, the enhancement of self-government by tribes, the encouragement of tribes working on a government to government basis with states and the United States, and the promotion of educational opportunities for Indian people. Despite the significance of these themes in the natural resources area, there is no overall federal statutory mandate for the protection of tribal natural resources. This means that, for the most part, the protection and management of tribal fish and wildlife resources depends on the initiative of tribes and tribal organizations, and the vagaries of the federal appropriations process. Tribal efforts to regulate their fish, wildlife and gathering rights must be supported and strengthened through federal legislation. From GLIFWC's experience, we would suggest that such legislation should address the following topics, among others:

1. Express federal recognition of tribal natural resource management authority.

A point often not understood by the public is that tribal use of natural resources is only part of the overall framework of tribal involvement with those natural resources. Tribes also have the sovereign authority to regulate tribal members in the exercise of their treaty rights, as well as the authority to manage the natural resources subject to tribal member harvest. Federal law should clearly acknowledge the primacy of tribal self-regulation of treaty protected natural resources, both on and off the reservation.

The tribal right to self regulation has been longstanding. For example, the Chippewa wild rice Chief had a traditional role of determining when the wild rice is ready for harvest and where tribal members may harvest it. The wild rice Chief's role has been preserved and is part of modern-day tribal off-reservation conservation codes. In essence, tribes have always been self-regulating in the context of natural resources. But today their ability to preserve this role depends to a considerable degree on the willingness of the United States to recognize and seek to further tribal efforts in this area.

2. Full tribal participation in decisions affecting tribal natural resources.

The federal responsibility must go beyond the recognition of the tribal right to self regulate with respect to natural resources. The United States must in addition provide tribes with the opportunity to participate fully with other governments on matters which have a substantial impact on tribal natural resources. The United States must assure the Tribes of full representation and voting status on a government-to-government basis on any board or agency which is involved in decisions which affect tribal rights to natural resources.

GLIFWC's co-management activities illustrate the types of bodies and committees in which tribes must participate as full partners. These include processes under international agreements such as the Convention on Great Lakes Fisheries Between Canada and the United States, see 16 USC § 93, et seq., federal legislative initiatives addressing issues of common concern, such as the Aquatic Nuisances Species Control Act, P.L. 101-646, 104 Stat. 4761, as well as agencies of the federal government, such as United States Forest Service in its management of national forests, the Environmental Protection Agency in its implementation of the Clean Water Act and Clean Air Act, and the United States Fish and Wildlife Service in its implementation of the Great Lakes Fish and Wildlife Restoration Act.

3. Recognition of trust responsibility by all federal agencies.

When tribes entered treaties reserving their hunting, fishing and gathering rights, those treaties were with the United States, not with a single agency. The federal trust responsibility arising out of those treaties applies to all federal dealings with the tribes, and is not limited to the Bureau of Indian Affairs. Yet, in dealing with issues affecting tribal treaty rights, the federal agencies differ markedly from one another.

GLIFWC's experience has been that -- in addressing tribal natural resource issues -- the BIA has typically recognized that its actions must comport with the trust responsibility, and has supported GLIFWC's self-regulatory efforts. But certain other agencies have, in some respects, not dealt with GLIFWC in the manner of a trustee. The result has been an uneven and inconsistent relationship between the tribes and the various federal agencies whose actions affect natural resources.

We would suggest that federal legislation should clarify that the federal trust responsibility applies across the board to all federal agencies in their dealings with tribal natural resource issues. The legislation should also mandate that the government-to-government relationship be institutionalized by these agencies, through establishing Indian desks and other means.

4. Adequate and stable funding to support tribal self-regulation.

As GLIFWC's natural resource management program illustrates, the tribal right to self-regulation requires certain elements of infrastructure if it is to be effectively exercised. These elements -- many of which are mandated by court order -- include a natural resource management program involving conservation codes, biologists, conservation law enforcement officers, tribal courts and judges, natural resource enhancement activities, public information and education activities, and co-management activities with other governments.

GLIFWC is proud of its natural resource management program and of its many accomplishments. In particular, GLIFWC's role in the LCO case and the resulting management system in Wisconsin is noteworthy. But there remain significant unmet needs.

Additional member tribes of GLIFWC -- particularly those in Michigan and Minnesota -- are now properly asserting and exercising their off-reservation treaty rights. GLIFWC must be able to provide the same level of natural resource management services to all its member tribes. Right now, GLIFWC has sufficient funding to meet only one-third of the needs of its member tribes.

Moreover, for all the tribes involved with natural resource management, environmental protection is becoming increasingly important. Historically, GLIFWC's efforts have been focused on the affirmation of the existence of treaty rights and, once affirmed, on the implementation of those rights. However, management of tribal member harvest is only part of the job. Stresses on tribal natural resources come from many areas, most notably from environmental degradation. GLIFWC's member tribes require the resources and technical expertise to enable them to assess the environmental impacts of pollution discharges into the air and water of the ceded territories; to analyze and participate in permitting processes for new industrial development, such as paper mills, copper smelters and mining activities; and to participate as equal partners in the development of state, federal and international environmental protection regulatory initiatives. Tribal and intertribal natural resources self-regulation is of limited utility if pollution destroys the resources.

Faced with these challenges, tribes have simultaneously encountered ongoing threats to the continuation of funding for tribal natural resource programs. For example, in its FY 93 budget proposal, the Administration proposed reducing GLIFWC's appropriation by approximately 39%. A similar proposal was made in FY 92. Congress routinely has rejected the Administration's proposed cutbacks. Ultimately, in the FY 93 Appropriations Conference Committee Report specifically directed:

Unless specifically indicated otherwise, add-ons in the resources management program (or recurring programs) are to be added to the base of the tribe or tribal organization, and to be included in future budget requests, beginning in fiscal year 1994.

These budget fights -- which are typical of those faced by tribes in the natural resources area -- impede GLIFWC's efforts to carry out a comprehensive natural resources management program. Substantive legislation supporting tribal self-regulation of natural resources would greatly enhance the position of tribes seeking to assure the funding needed to move forward in the area of natural resources management.

5. Tribal member career opportunities in natural resource management programs must be enhanced.

Despite its best efforts, GLIFWC is not always able to find Indian candidates for its job openings. This is particularly true in the case of biologists. As GLIFWC's experience

with its student internship program illustrates, opportunities are available to Indian students interested in natural resource management careers. But a more comprehensive program -- including federal scholarships and loans -- is needed to encourage interest by and recruitment of tribal members into the educational programs associated with resource management.

CONCLUSION

We appreciate the Committee's sensitivity to tribal needs regarding plant, wildlife and fish enhancement. This area -- in which tribes and tribal organizations are exercising their self-governing authority to protect activities of longstanding and continuing importance to Indian people -- has been underserved by federal law. We look forward to working with the Committee to help shape legislation to protect tribal hunting, fishing and gathering rights, and the tribal management and enhancement of those rights.

Thank you.

GLIFWC'S MEMBER TRIBESWisconsin

Bad River Band of the Lake Superior Tribe of Chippewa Indians

Lac du Flambeau Band of Lake Superior Chippewa Indians

Lac Courte Oreilles Band of Lake Superior Chippewa Indians

St. Croix Chippewa Indians of Wisconsin

Sokaogon Chippewa Community of the Mole Lake Band

Red Cliff Band of Lake Superior Chippewa Indians

Minnesota

Fond du Lac Band of Chippewa Indians

Grand Portage Chippewa Tribe

Mille Lacs Band of Chippewa Indians

Bois Forte Chippewa Tribe

Michigan

Bay Mills Indian Community

Keweenaw Bay Indian Community

Lac Vieux Desert Band of Lake Superior Chippewa Indians

Mr. FALCOMAEGA. Thank you, Mr. Schlender.
Mr. Poynter.

STATEMENT OF KEN POYNTER

Mr. POYNTER. Good morning.

My name is Ken Poynter, and I'm an enrolled member of the Passamaquoddy Tribe of Maine, and Executive Director of the Native American Fish & Wildlife Society.

The Society is a national tribal organization established to support the development of Indian tribal fish and wildlife management capabilities within a professional framework, and to promote information about Indian rights regarding their use of natural resources.

The Society has evolved over the past 11 years into an organization of 1,000 professional biologists, managers and technicians, representing all aspects of tribal fish and wildlife management and conservation enforcement.

The Society has obtained formal memberships from 70 tribal governments and 8 tribal organizational memberships.

Our board of directors is comprised of 14 Native American people who represent all geographic regions of the United States.

The federally recognized Indian tribes within the United States have jurisdiction over a reservation land base of over 52 million acres, or 81,250 square miles.

Tribes also exercise jurisdictional authority over natural resources outside of reservations due to federal court decisions and voluntary cooperative agreements that mandate a co-management status between tribes and states in the Northwest and Great Lakes areas.

Tribal lands coupled with the Ceded and Usual and Accustomed areas (over 38 million acres for which tribes maintain co-management jurisdiction for fisheries and wildlife management and utilization) total a natural resource base of over 140,625 square miles, containing more than a million acres of lakes and impoundments, and thousands of miles of streams and rivers.

Combined reservation lands would constitute the fifth largest state in the United States. Adding the off-reservation areas would constitute a land mass comparable to the State of Montana.

The State of Alaska alone has 45 million acres of land which supports native subsistence hunting, fishing, and gathering. The management of this subsistence resource, the source of life for the indigenous people of Alaska, is in complete disarray, with these people precluded in the management of the very resources which sustain them.

It is essential that the magnitude of the resource base under tribal jurisdiction be fully understood in order to underscore the necessity for support of tribal resource management activities.

Tribal land bases now contribute significantly toward meeting the demand for fisheries and wildlife recreational opportunities.

Unfortunately, fisheries and wildlife funding options open to tribes have not kept pace with the expanding responsibilities for management, authority, or the demand for recreational opportunities by the tribal and non-tribal user.

Tribes are now being recognized as prominent fisheries and wildlife management entities and are expecting full participation as partners in national fisheries and wildlife initiatives.

Tribes must be accorded full participation in these initiatives by virtue of the extent of reservation land bases, but also, and more important, because tribes are sovereign governments and must be dealt with as such. Sovereignty is a very important aspect of tribal governmental operations and must not be ignored or minimized.

Indian tribes have been reasserting their treaty rights concerning the management of fish and wildlife resources. As the demand for fisheries and wildlife recreation in this country has increased, pressure has increased on the fisheries and wildlife resources on Indian reservations and other areas where tribes have jurisdiction and/or co-management authority.

Tribes across the country now contribute significantly toward meeting the demand for fisheries and wildlife recreational opportunities. Unfortunately, recreational fisheries and wildlife funding options open to tribes have not kept pace with the expanding responsibilities for management, authority, or the demand for recreational opportunities by the tribal and non-tribal user.

Over the years, the Society has requested proposals from tribes for fish and wildlife programs. I have brought along, as a visual aid, a number of proposals the Society has collected in the last three years of specific programs that have not been funded, and to demonstrate the need for increased funding for fish and wildlife management.

Mr. FALEOMAVAEGA. Mr. Poynter, did you mean to provide that as part of your testimony?

Mr. POYNTER. I did submit it with my 75 copies. You have it for the record.

Mr. FALEOMAVAEGA. Thank you.

Mr. POYNTER. As an example of the disparity in staffing levels, currently, the U.S. Forest Service manages 190 million acres of land for multiple use. They employ 1,320 fisheries and wildlife biologists and ecologists.

In contrast, the combined tribal and BIA staffs equal about 300 for over 95 million acres, most of whom are employed in positions of multiple duties, such as biologists/administrators.

The Society feels that we're echoing some of the concerns here this morning of tribes, specifically the Navajo, that tribes need to participate fully in the various federal aid programs. Specifically, Dingell-Johnson and Pittman-Robertson and Wallop-Breaux.

We are also advocating the development of a Native American Fish and Wildlife Enhancement Act, that would create an additional funding source for fish and wildlife enhancement in Indian country.

I will not read further from my testimony, since you have that.

But I would just like to conclude by saying that, in the future, I would urge better coordination of these hearings, due to the limited funding that tribes have to operate with. It gets very expensive for them to send people here to Washington to participate in these important forums.

For example, next week, many different Indian organizations and tribes will be in town for various meetings. It would be to every-

one's benefit if hearings of this type were scheduled during those weeks that tribes plan to be in Washington in order to increase tribal participation and to help reduce travel costs to them.

Since this meeting was first announced, my office has been bombarded with calls from many tribes across the country, inquiring about the intent of this particular hearing, and their interest in participating.

I would like to kindly suggest that due to the importance of natural resource program funding to tribes, that the Committee consider conducting regional meetings to get full participation from as many different tribes as possible, and to better understand the different concerns specific to those regions.

Thank you for your attention and interest.

[EDITOR'S NOTE.—Documents submitted by Mr. Poynter for the record may be found in their entirety in the hearing files.]

[Prepared statement of Mr. Poynter with selected exhibits follows:]

NATIVE AMERICAN FISH & WILDLIFE SOCIETY

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Comments on Indian Fish and Wildlife Management and Enhancement to the U. S. House of Representatives, Subcommittee on Native American Affairs by:
Ken Poynter, Executive Director, Native American Fish & Wildlife Society

Good Morning, My name is Ken Poynter. I am an enrolled member of the Passamaquoddy Tribe of Maine and Acting Executive Director of the Native American Fish & Wildlife Society (Society). The Society is a national tribal organization established to support the development of Indian tribal government fish and wildlife management capabilities within a professional framework, and to promote information about Indian rights regarding their use of natural resources. The Society has evolved over the past 11 years into an organization of 1,000 professional biologists, managers and technicians, representing all aspects of tribal fish and wildlife management and conservation enforcement. The Society has obtained formal memberships from 70 Tribal Governments and eight tribal organizational memberships including the 1854 Authority, Great Lakes Indian Fish & Wildlife Commission, Northwest Indian Fisheries Commission, Columbia River Inter-Tribal Fish Commission, the Six Nations Council of Canada, the United South and Eastern Tribes, the Ojibway 1850 Treaty Council, and the Chippewa-Ottawa Treaty Fishery Management Authority, as well as the National Center for American Indian Enterprise Development and various State and University Fish and Wildlife Departments. Our Directorate is comprised of 14 Native American people, who represent all geographic regions of the United States.

The Society is appreciative of the recognition by Congress of our efforts in promoting the professional development of tribal fish and wildlife management by taking up the concept of the Native American Fish and Wildlife Enhancement Act. The Society initiated this effort over two years ago as a means to highlight the glaring discrepancies in the support of the U.S. government for tribal fish and wildlife resource management. We sincerely hope that the result of this effort will be legislation which provides the tools needed by tribes for self-directed fish and wildlife management for the benefit of Indian people and their resources.

The federally-recognized Indian tribes within the United States have jurisdiction over a reservation land base of over 52 million acres, or 81,250 square miles. Tribes also exercise jurisdictional authority over natural resources outside of reservations due to federal court decisions and voluntary cooperative agreements that mandate a co-management status between tribes and states in the Northwest and Great Lakes areas. Tribal lands, coupled with the Ceded and Usual and Accustomed areas (over 38 million acres for which tribes maintain co-management jurisdiction for fisheries and wildlife management and utilization), total a natural resource base of over 140,625 square miles, containing more than a million acres of lakes and impoundments (exclusive of the 21,596,800 surface acres of the Great Lakes Ceded Area) and thousands of miles of streams and rivers. Combined reservation lands would constitute the fifth largest state in the United States. Adding the off-reservation areas would constitute a land mass comparable to the State of Montana. The State of Alaska alone has 45,000,000 acres of land which supports native subsistence hunting, fishing, and gathering. The management of this subsistence resource - the source of life for the indigenous people of Alaska - is in complete disarray, with these people precluded in the management of the very resources which sustain them.

It is essential that the magnitude of the resource base under tribal jurisdiction be fully understood in order to underscore the necessity for support of tribal resource management activities.

At least 9 officially recognized endangered avian species, 7 threatened or endangered mammalian species, 11 threatened or endangered fish species, 12 threatened or endangered plant species, and 1 threatened reptile species occurs on reservation lands. Tribal fish hatcheries produce millions of salmon, steelhead trout, walleye and other species which support large and diverse fisheries. Wetlands occurring on reservations throughout the country support considerable waterfowl production and offer great enhancement opportunity. Tribal wildlife programs manage and enhance extensive wildlife habitat for innumerable animal and plant species. Tribes across the country have begun the process of involvement in the North American Waterfowl Management Plan and have developed regulations for Tribal members and non-Indians for harvest of waterfowl. Tribal land bases now contribute significantly toward meeting the demand for fisheries and wildlife recreational opportunities. Unfortunately, fisheries and wildlife

funding options open to Tribes have not kept pace with the expanding responsibilities for management, authority, or the demand for recreational opportunities by the tribal and non-tribal user. Tribes are now being recognized as prominent fisheries and wildlife management entities and are expecting full participation as partners in national fisheries and wildlife initiatives.

Tribes must be accorded full participation in these initiatives by virtue of the extent of reservation land bases but also, and more importantly, because tribes are sovereign governments, and must be dealt with as such. Sovereignty is a very important aspect of tribal governmental operations, and must not be ignored or minimized.

The Bureau of Indian Affairs (BIA) Natural Resource Inventory System (NRIS) report, representing the only information available at this time, states that over 15 million user-days of public use were recorded on Tribal lands in 1986. Seventy-two Tribes were managing public fishing programs. The Confederated Salish & Kootenai Tribes, Montana; Fort Apache, Arizona; Leech Lake Chippewa Tribe, Minnesota; Pyramid Lake, Nevada; and Lower Colorado River, Arizona, each provided more than 250,000 days of public recreational use, most associated with fishing. The Eastern Band of Cherokees of North Carolina, alone, has provided over 430,310 of angler use days from 1987-1991. Sixty-one tribes managed public hunting programs, and at least 40 Tribes managed trapping programs on reservations which were open to non-Indian participation. Also 88 Tribes opened parts of their Reservations to public camping in developed, primitive, or wilderness camping areas. Indian reservations contribute significantly toward meeting the national demand for fishing and hunting opportunities.

Indian tribes have been re-asserting their treaty-rights concerning the management of fish and wildlife resources. As the demand for fisheries and wildlife recreation in this country has increased, pressure has increased on the fisheries and wildlife resources on Indian reservations and other areas where tribes have jurisdiction and/or co-management authority. Tribes across the country now contribute significantly toward meeting the demand for fisheries and wildlife recreational opportunities. Unfortunately, recreational fisheries and wildlife funding options open to tribes have not kept pace with the expanding responsibilities for management, authority, or the demand for recreational opportunities by the tribal and non-tribal user.

As an example of the disparity in staffing levels, the U.S. Forest Service manages 190 million acres of lands for multiple use. They

employ 1,320 fisheries and wildlife biologists and ecologists. In contrast, the combined tribal and BIA staffs equal about 300 for over 100 million acres, most of whom are employed in positions of multiple duties, such as biologist/administrator.

The Society developed, in 1991, a needs statement and conceptual framework for legislation to assist tribal fisheries and wildlife management efforts, titled the "Native American Fish and Wildlife Enhancement Act". This was developed in response to the stated needs and desires of tribes for assistance and support. I submit this concept paper and draft bill to the Sub-committee as an expression of what is truly needed in supportive legislation.

Federal Aids Programs

The Federal Aid in Sport Fish and Wildlife Restoration Programs are funding avenues used by the states and territories for fisheries and wildlife enhancement. These programs (Dingell-Johnson, Pittman-Robertson, and Wallop-Breaux) are Acts of Congress that tax fishing and hunting gear and motor boat fuel to support the recreational fisheries and wildlife enhancement programs of all the states and territories of the United States of America. These funding programs were instituted to provide a stable on-going funding base for fisheries and wildlife enhancement projects throughout the country. Presently, States and territories are sharing in the approximately \$400 million per year derived from this program for the enhancement of their fish and wildlife resources. For example, in 1990 the State of Montana received \$3 million for wildlife, \$4.2 million for sport fish restoration, and over \$200,000 for hunter education. The Montana Indian reservations, which constitute 5 percent of the state, received none of this money.

At present, Tribes are precluded from participation in these programs for several reasons, among them specific provisions of the Acts. The first is found in the Code of Federal Regulations 50 CFR part 80 (the regulatory foundation for implementing the Acts) in § 80.20 which states, in part " The State must control lands or waters on which capital improvements are made with Federal Aid funds." This provision would require Tribes to give up jurisdiction for projects to be funded on reservations. Another issue precluding tribal participation is that of civil liability. States and tribes both are unwilling to assume liability on projects over which they may not have complete control. Under the present regulations, tribes are theoretically able to request funding through the state(s) in which the tribe is located. In reality in many cases, though, tribes and

associated states do not share priorities and strategies in their fish and wildlife management present, and to apply for these funds, the tribe would have submit projects for the approval of the state. Tribes are highly sensitive to issues of sovereignty, and will not abrogate their own treaty rights in order to participate in these programs.

To correct this situation, tribes must be legislatively included as full participants in the Federal Aids programs.

Endangered Species

The Northern Spotted Owl, Florida panther, Black-footed ferret, Bald eagle, Mexican Spotted-owl, Colorado sucker, Zuni sucker, and over 200 races of pacific salmon are a few examples of species listed or considered for listing under the Endangered Species Act. These species occur on tribal lands, impact tribal resource management activities, and are utilized and managed by tribes. Currently, there is no means for formal consultation between tribes and federal endangered species managers due to a lack of recognition of tribes as governmental authorities within the Endangered Species Act. Also, tribes are prohibited from receiving funding for managing endangered species on their lands under the Endangered Species Act, for the same reason. Tribes can contribute greatly to the protection and enhancement of endangered species if allowed. This legislation should contain provision for tribes to formally participate in the Endangered Species Act, if they choose to do so.

Jurisdiction

There should be a legislative remedy to the jurisdictional ambiguities which plague tribes in their attempts to manage their resources. This should uphold the sovereign integrity of the reservation boundary by affirming that tribes have jurisdictional authority over the management of all fisheries and wildlife within the exterior boundaries of the reservation. This authority should apply regardless of ownership or status of land, including allotted land, any land taken by any government agency for any reason, or any land set aside in right-of-way.

Native American Fish and Wildlife Foundation

There should be established a Native American Fish and Wildlife Foundation patterned after the National Fish and Wildlife Foundation to fund tribal fish and wildlife projects.

Tribes are drastically underfunded for the enormous task of managing their fish and wildlife resources. This proposed legislation presents an outstanding opportunity for the enhancement of natural resources over which tribes have management or co-management jurisdiction.

NATIVE AMERICAN FISH & WILDLIFE SOCIETY

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NATIVE AMERICAN FISH & WILDLIFE SOCIETY CONCEPT PAPER

NATIVE AMERICAN FISH & WILDLIFE ENHANCEMENT ACT

The Native American Fish & Wildlife Society (NAFWS) has evaluated the existing federal Fish, Wildlife, and Recreation acts to determine the degree of authorization that tribal governments and their programs have under their provisions. We have found that, historically, the tribes have been overlooked in the passage of these acts and, to this day, have been unable to include tribal provisions to support the management of fish, wildlife, and recreation resources that are of benefit to both Indian and non-Indian users.

The Society's original effort to involve tribes in federal legislative provisions occurred through evaluation of the Wildlife & Fisheries Enhancement Acts of 1937 and 1950, respectively (commonly referred to as the Dingell-Johnson/Pittman-Robertson Act). These Acts provide funding to states and territories but not to tribes and produce funding in excess of \$4 hundred million annually. Similarly, the latest Wetlands and Conservation Act (Dec. 1989) has very limited tribal language and again demonstrates that tribes will not be able to compete with the state and private interests. Other legislation such as the ENDANGERED SPECIES ACT & WILDLIFE COORDINATION ACT have no specific provisions for support of tribal fish, wildlife, and recreation management efforts at this time.

The real issue that confronts the tribes is not only the lack of funding that occurs for these management purposes, but the lack of legislative protection that is missing in these acts for tribal sovereign jurisdiction. Tribal governments should define their roles in each aspect of fish, wildlife, and recreation management, determine their funding requirements, establish a means for moving funds to their fish, wildlife, and recreation management programs, and secure legislative protection to insure that they can maintain their programs forever.

In this effort, the Society is developing the NATIVE AMERICAN FISH AND WILDLIFE ENHANCEMENT ACT. This Act is designed to provide the authority for tribes to participate in the existing federal fish, wildlife, and recreation acts analogous to the state

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and US territory governments and will define a source of funding to meet tribal needs. The participation in the provisions of this Act should be voluntary on the tribal governments' part, but with such authorization, it is doubtful that the resource rich tribes would not find it to their advantage to become involved.

The Society has developed a Tribal Technical Involvement Plan to demonstrate how tribes could become involved in FISH AND WILDLIFE ENHANCEMENT MANAGEMENT, even sharing in the funding. We are ready to work with tribes to develop similar comprehensive plans for natural resource economic development, endangered species, wetlands, etc., but feel that this planning process must lead to a permanent piece of legislation to protect those tribal interests that are being developed. The Society cannot secure such legislation in and of itself because tribal governments retain such authority as sovereign nations. We can technically support the process as the tribes request..

We are, therefore, asking tribal governments to become involved in a process of oversight hearings and legislation development. The Senate Select Subcommittee on Indian Affairs has tentatively agreed to assist in the hearings and in developing the Native American Fish and Wildlife Enhancement Act. A resolution of support of this effort by your organization will assist in beginning this process but, eventually, testimony by tribal leaders will be required to pass such legislation.

PROVISIONS OF THE NATIVE AMERICAN FISH & WILDLIFE ENHANCEMENT ACT

The purpose of this Act is to guarantee tribal governments full participation in the management of fisheries, wildlife, and recreational resources on Tribal lands and within ceded territories as defined by court action under Tribal treaty rights cases. And to further provide

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the funding and the means to fund Tribal professional management programs within the context of existing and future federal fish, wildlife and recreation management initiatives, acts and programs to insure a government-to-government relationship between Tribes and the federal government, into perpetuity.

The following Titles are to be enacted to provide the authorization for Tribal Government fish, wildlife and recreation management programs to participate in the professional management of their Tribal resources.

Wetlands Protection and Waterfowl Management:

This Title will provide for direct involvement of Tribes in the protection and preservation of Tribal wetlands by their specific inclusion in all current or planned federal wetlands or waterfowl programs.

Subsistence and Recreational Fisheries:

This Title will provide for direct involvement by Tribes in all current or planned federal fisheries management programs. The Tribes will be authorized to participate on an equal basis in national and international anadromous fisheries management, inland sport and subsistence fisheries management decision making process and in the development of Tribal Aquaculture Economic Development opportunities.

Endangered Species:

This Title will provide for Tribal professional management of endangered species of plants and animals occurring on or around Tribal reservation lands, ceded territories and/or usual and accustomed areas of Tribal interest by opening the Endangered Species Act to Tribal participation.

Wildlife Coordination:

This Title will provide for the consultation and coordination of state, federal, and private sector with Tribal Governments in management of resources on or near Tribal reservations, ceded territories, and within usual and accustomed Tribal areas by opening the Fish and Wildlife Coordination Act to Tribal participation. This provision will form the basis for comprehensive land use planning by Tribal Governments and will require that management entities consult directly with Tribes when their management activities will potentially affect Tribal sovereignty, jurisdiction, and/or resource management plans

Self-Determination Management of Fish and Wildlife Resources:

Under provisions of this Title, Tribes will be authorized to select the management mechanisms best suited for their individual fish, wildlife and recreation management requirements. Current use of BIA as the primary agency to deliver funds to Tribal fish, wildlife and recreation management programs overlooks P.L. 93-638 Indian Self-Determination requirements. Alternative avenues for provision of assistance to Tribes through entities such as the US Fish & Wildlife Service (USFWS) would be opened.

Distribution of Wildlife Parts:

Provisions under this section will enhance and clarify the degree and level of participation by Tribal Governments in the procurement of wildlife parts for religious, cultural, and medicinal purposes.

Integrated Resource Management:

Through this Title, the Tribes will require a formalization of integrated resource management planning for the management of Tribal natural resources.

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Indian Education and Training:

Under provisions of this Title, Tribal Governments will be authorized to participate in national education and training programs for fish, wildlife, recreation and environmental protection programs under the USFWS and the US Department of Education.

Natural Resource Employment:

Provisions in this Title will authorize Tribes to participate in employment generating national programs, specifically to enhance resource management development within the tribal government structure and for tribal resource benefits.

Funding of Native American Programs:

This Section will authorize the funding necessary to implement the management programs of Tribal fish, wildlife and recreation resources. There will be authorized to be appropriated \$100,000,000 annually for the maintenance of a permanent professional Tribal fish, wildlife and recreation management program from sources outside of the current BIA budget. Federal taxations on minerals and outdoor recreation equipment could be targeted for such revenue.

1 **NATIVE AMERICAN FISH & WILDLIFE**
2 **ENHANCEMENT ACT**

3
4
5
6 **A BILL**

7
8
9 To guarantee Tribal Governments full participation in the
10 management of fisheries, wildlife, and recreational resources on
11 Tribal lands and within ceded territories as defined by court action
12 under Tribal treaty rights cases. And to further provide the funding
13 and the means to fund Tribal professional management programs
14 within the context of existing and future federal fish, wildlife and
15 recreation management initiatives, acts and programs to insure a
16 government-to-government relationship between Tribes and the
17 federal government, into perpetuity.

18
19
20 **SHORT TITLE**

21
22 SECTION 1. This Act may be cited as the "Native American
23 Fish & Wildlife Enhancement Act of 1991."

24 SECTION 2. The following Titles are to be enacted to
25 provide the authorization for Tribal Government fish, wildlife and
26 recreation management programs to participate in the professional
27 management of their Tribal resources.

1

Title I

2 Wetlands Protection and Waterfowl Management: This Title will
3 provide for direct involvement of Tribal professional management
4 programs in the protection and preservation of Tribal wetlands and
5 the provision of the Wetlands Conservation Act of 1989; and
6 specifically calls for the expansion of the Wetlands Conservation
7 Council to a ten-member board of which one representative will be
8 a Tribal delegate appointed by the Secretary of the Interior in
9 consultation with Tribal Governments. This Title further provides
10 for direct Tribal professional management involvement in the North
11 American Waterfowl Management Planning process and
12 implementation programs for waterfowl management such as the
13 Migratory Bird Treaty Act of 1973 (16 U.S.C. 703-711).

14

15

Title II

16 Subsistence and Recreational Fisheries: This Title will provide for
17 direct involvement by Tribal professional management personnel in
18 the planning and implementation of professional programs to
19 manage Tribal Government fisheries interests for Tribal member
20 subsistence, religious, cultural, commercial and Indian and no-Indian
21 recreational purposes. The Tribes will be authorized to participate
22 on an equal basis in the implementation of the National Recreational
23 Fisheries Policy; will maintain direct involvement in national and
24 international anadromous fisheries management, inland sport and

1 subsistence fisheries management decision making process as
2 represented by the Great Lakes Fisheries Commission, et al); to
3 participate in the development of Tribal Aquaculture Economic
4 Development opportunities through the national planning process
5 being initiated by the U.S. Fish & Wildlife Service (USFWS), private
6 sector and other state and federal agencies; and will be entitled to
7 participate in current federal programs to enhance the public
8 awareness of fisheries management requirements and responsible
9 utilization of fisheries resources for recreational purposes.

10

11

Title III

12 Endangered Species: This Title will provide for Tribal professional
13 management of endangered species of plants and animals occurring
14 on or around Tribal reservation lands, ceded territories and/or
15 usual and accustomed areas of Tribal interest. The Tribal
16 Governments, under this Title, will be encouraged in the
17 development of endangered species inventories, maintenance and
18 rehabilitation plans, protective codes and ordinances, and regulatory
19 systems to further the interests of national Endangered Species
20 legislation. Tribes under this Title will be authorized to participate
21 in the provisions of the Endangered Species Act of 1973 (16 USC
22 1539), Bald Eagle Protection Act (16 USC 663a), Marine Mammal
23 Protection Act of 1972 (16 USC 1371-1383), et al, as an equal partner
24 with the USFWS and state governments in management of those

1 endangered plants and animals of common interest to all parties.
2 This Act will allow Tribal participation in all federal statutes and
3 acts pertaining to fish and wildlife management to foster
4 coordination and cooperation between Tribes and other
5 management entities.

6

7

Title IV

8 Wildlife Coordination: This Title will provide for the consultation
9 and coordination of state, federal, and private sector with Tribal
10 Governments in management of resources on or near Tribal
11 reservations, ceded territories, and within usual and accustomed
12 Tribal areas. This provision will form the basis for comprehensive
13 land use planning by Tribal Governments and professional
14 management staff and will require that management entities consult
15 directly with Tribes when their management activities will
16 potentially affect Tribal sovereignty, jurisdiction, and/or resource
17 management plans. Entities such as the Army Corp of Engineers,
18 Bureau of Land Management (BLM), Bureau of Indian Affairs (BIA),
19 USFWS, Department of Agriculture, Department of Commerce,
20 Bureau of Reclamation, etc., will be mandated to consult with Tribal
21 Governments prior to conducting their activities in the proximity of
22 Tribal lands and amendment of the Fish and Wildlife Coordination
23 Act (16 USC §661) may be considered by this provision. This
24 provision will mandate full implementation of U.S. National Park

1 Service and USFWS policy, as well as other agencies, for dealing
2 with Tribes on a government-to-government basis. By this
3 provision, Tribes will be able to develop comprehensive land use
4 plans and zoning codes and ordinances to protect the integrity of
5 Tribal resources while taking into consideration private, state, and
6 federal interests within their area of jurisdiction.

7

8

Title V

Self-Determination Management of Fish and Wildlife Resources:

10 Under provisions of this Title, Tribes will be authorized to select
11 the management mechanisms best suited for their individual fish,
12 wildlife and recreation management requirements. Options for
13 management are based upon a universal Trust responsibility that all
14 federal departments and agencies have to Tribal Governments.
15 Current use of BIA as the primary agency to deliver funds to Tribal
16 fish, wildlife and recreation management programs overlooks P.L.
17 93-638 Indian Self-Determination requirements as amended in 1988.
18 Alternatives to the current system could be through the USFWS
19 "Indian Fish and Wildlife Assistance Program," the "Federal Fish and
20 Wildlife Enhancement Aides Program," administration by the
21 USFWS, direct P.L. 93-638 funding through the USFWS, block grant
22 programs through agencies such as the Administration for Native
23 Americans, direct funding through the Native American Fish &
24 Wildlife Society (NAFWS), wetlands initiatives through the

1 Department of Agriculture, etc., or a combination of the above
2 systems to ensure Tribal selection of the appropriate management
3 support mechanism.

4

5

Title VI

6 Distribution of Wildlife Parts: Provisions under this section will
7 define the degree and level of participation by Tribal Governments
8 in the procurement of wildlife parts for religious, cultural, and
9 medicinal purposes. In respect to the Religious Freedom Act of 1982,
10 Bald Eagle Protection Act (16 USC 663a), Marine Mammal Protection
11 Act of 1972 (16 USC 1371-1383), Endangered Species Act of 1972 (16
12 USC 1539), etc., Tribal members retain the right to possess wildlife
13 parts and in certain situations, endangered species parts. This
14 provision will require that a substantial portion of the animals
15 currently being stored in the Federal Repository at Ashland,
16 Oregon, be turned over to the Tribal Governments who will be
17 responsible for the distribution of the appropriate parts to its
18 membership in association with the NAFWS, et al. Under this
19 provision, a concise means of delivery of these parts to the Tribes
20 will be required of the USFWS to facilitate use by Tribal members.

21

22

23

24

Title VII

1
2 Integrated Resource Management: Through this Title, the Tribes
3 will require a formalization of integrated resource management
4 planning through development of an annual summit meeting, et al,
5 between federal departments, agencies with the Department of
6 Interior, and Tribal technical and political leadership. Federal policy
7 issues, long term planning, and fish, wildlife and recreation priorities
8 will be developed to facilitate long-term permanent Tribal
9 management of fish, wildlife and recreation resources. Issues of
10 importance to Tribes such as relationships between wildlife,
11 forestry, minerals, waters, mining, environmental protection, and
12 resources education and training will be considered through this
13 provision. Under Integrated Resource Management Planning
14 (IRMP), all entities concerned with Tribal natural resource
15 utilization would sit as equal partners at the resource management
16 table. Resource allocation would be decided by the Tribe in the
17 public planning process, and implemented by the natural resource
18 management entity under Tribal supervision. Formal adoption of
19 IRMP by the Tribes will facilitate the establishment of formal
20 relationships between Tribal national fish, wildlife, recreation and
21 environmental protection organizations such as the Native American
22 Fish & Wildlife Society, National Indian Education Association
23 (NIEA), Inter-Tribal Timber Council (ITC), Inter-Tribal Agriculture
24 Council (ITAC), Council of Energy Resource Tribes (CERT), Native

1 American Rights Fund (NARF), Americans for Indian Opportunity
2 (AIO), American Indian Science and Engineering Society (AISES),
3 Inter-Tribal Environmental Protection Organization, American
4 Indian Resources Institute (AIRI), and the Federal Government.

5

6

Title VIII

7 Indian Education and Training: Under provisions of this Title,
8 Tribal Governments will be authorized to participate in national
9 education and training programs for fish, wildlife, recreation and
10 environmental protection programs under the USFWS, such as the
11 National Fisheries Academy and the national Environmental
12 Education and Training Center as well as on-site wildlife training
13 will focus on developing Indian people into professional managers,
14 technicians, and program administrators. Agencies and departments
15 responsible for environmental management such as the
16 Environmental Protection Agency (EPA), Department of Energy,
17 Corp of Engineers, Department of Interior, USFWS, National Park
18 Service (NPS), BLM, Bureau of Reclamation, etc., will participate in
19 education and training of Tribal members for careers in fish, wildlife,
20 recreation, and environmental protection. The Department of
21 Education will develop support programs to fund fish, wildlife,
22 recreation and environmental protection education to encourage
23 formal education of Tribal members in the technical and academic
24 community. Incentives under this provision must be developed to

1 encourage Indian graduates from education and training to return to
2 Tribes to work with Tribal Governments in management of Tribal
3 resources. Special incentives to Tribal Governments must be
4 developed to prioritize their educational needs to support fish,
5 wildlife, recreation and environmental protection education/training
6 for their membership. Incentives must also be developed to allow
7 Tribal Governments to successfully compete for placement of Tribal
8 members educated and trained under these provisions. Current
9 thinking by federal agencies that Tribal members are "minorities"
10 and that employment of these qualified individuals away from Tribal
11 Governments perpetuates the lack of qualified people that Tribes
12 currently experience.

13

14

Title IX

15 Natural Resource Employment: Provisions in this Title will
16 authorize Tribes to participate in employment generating national
17 programs, specifically to enhance resource management develop-
18 ment. Programs like the Job Training Partnership Act (JTPA), the
19 Youth Conservation Corps, American Conservation Corp, et al, must
20 all have provisions to authorize Tribal Governments to participate
21 in putting their people to work in fish, wildlife, recreation, and
22 environmental protection programs. On-the-job training, work
23 experience projects, and professional intern programs must be
24 developed to accelerate the rate of employment of all ages of Indian

1 people in socially acceptable activities heretofore unavailable within
2 Tribal management structures. Permanent positions in professional
3 management programs will have to be developed to achieve Tribal
4 self-sufficiency in providing jobs for a variety of membership groups
5 as well as to defend the integrity of the Tribal resource base.

6

7

AUTHORIZATION OF APPROPRIATIONS

8

9 SECTION 3. Funding of Native American Programs: This
10 Section will authorize the funding necessary to implement the
11 management programs of Tribal fish, wildlife and recreation
12 resources. Current funding levels are totally inadequate to meet the
13 needs of resource management that Tribes are facing. The process
14 for obtaining funding through direct government appropriations
15 fails to provide long term stability to the management process.
16 Under the provisions of this Act, a system to fund Tribal programs
17 will be defined that will provide revenues to fund these activities
18 through elements currently available to Tribal Governments and
19 those that have historically been unavailable. Tribal Governments
20 have the ability to tax in certain instances (e.g., liquor, minerals,
21 trespass fees, etc.), to require permits for resource utilization (e.g.,
22 hunting licenses, recreational fishing permits, camping fees, etc.) and
23 to impose severance taxes on mineral and forest resources. They
24 also have vested interests in federal funds such as Dingell-

1 Johnson/Pittman-Robertson/Wallop-Breaux in that they are not
2 exempt from paying federal taxes on sporting equipment, gasoline,
3 boats, motors, and trailers, etc., and they do provide significant
4 opportunities for recreation to the general public. These taxes have
5 traditionally been reserved for use by states and territories, but
6 constitute a model from which a similar mechanism can be developed
7 to support the Tribal funding necessary to drive this Act. Of
8 paramount importance to the funding programs is the ability to keep
9 fish, wildlife and recreation funds in the fish, wildlife and recreation
10 Tribal programs in competition with all other Tribal needs. The
11 existing Federal Aides Program can again serve as a model upon
12 which Tribal funding can be based. The use of federal funds to
13 match Tribal contributions can provide political stability to the fish,
14 wildlife and recreation management programs. Loss of Native
15 American Fish & Wildlife Enhancement Act (NAFWE Act) funding if
16 Tribes reprioritize their existing fish, wildlife and recreation federal
17 monies or earned revenues from license sales, etc., could be a
18 powerful tool to assist Tribal Governments in the decision making
19 process.

20 Non-Tribal funding of the NAFWE Act is justifiable as a
21 result of key contributions that Tribal Government resources are
22 making to the nation as a whole. Fish, wildlife and recreation
23 resources are providing many opportunities for the general public
24 to recreate and earn a living through guiding and tourism related

1 activities on or around Tribal lands. Endangered and Threatened
2 plant and animal species such as the Florida Panther, Grizzly Bear,
3 Black Footed Ferret, Bald Eagle, Peregrine Falcon, Mexican Spotted
4 Owl, and Apache Trout, are frequently found within Tribal
5 jurisdictions and are Tribal resources. Mineral deposits such as coal,
6 gas, oil, uranium and others are being removed from Tribal trust
7 lands with no reinvestment of revenues for environmental
8 rehabilitation nor financial reinvestment in fish, wildlife and
9 recreation management programs for permanent renewable economic
10 development opportunities to Tribal governments.

11 Provisions under this section will devise a funding
12 mechanism to incorporate permanent long term financial resources to
13 consistently fund Tribal management initiatives.

14 There will be authorized to be appropriated \$100,000,000
15 annually for the maintenance of a permanent professional Tribal
16 fish, wildlife and recreation management program. The Secretary of
17 the Interior is hereby directed to develop a mechanism for direct
18 funding of Tribal Governments for the purposes of carrying out the
19 provisions of this Act.

Mr. FALCOMAVAEGA. Thank you, Mr. Poynter.
Mr. DuBray?

STATEMENT OF FRED DuBRAY

Mr. DUBRAY. Good morning.

My name is Fred DuBray. I'm the Director of the Cheyenne River Sioux Tribe's Bison Enhancement Project, and President of the Inter-Tribal Bison Cooperative.

I'm grateful for the opportunity to present testimony before this subcommittee on behalf of the Cheyenne River Sioux Tribe membership and the Inter-Tribal Bison Cooperative.

We appreciate your concern regarding the management and preservation of our precious fish and wildlife resources, and strongly support the drafting and passage of legislation that will enhance our management capability and ensure protection of our sovereign jurisdiction.

Throughout the past several decades, management of our trust lands has been primarily focused on livestock production in the Plains area.

The tribe has been influenced by heavily subsidized agricultural programs that tend to ignore provisions for fish, wildlife and recreational management, consequently putting these resources in serious jeopardy.

More important, the lack of legislative protection of these fish and wildlife resources threatens our sovereign jurisdiction, as illustrated by the current litigation with the State of South Dakota in *South Dakota vs. Bourland and Rousseau*.

This case arises from the state of South Dakota's assertion that the tribe lacks the capability to adequately manage the taken area lands along the Missouri River within the boundaries of the reservation.

This dispute has directly evolved from the lack of legislative recognition and funding of the tribe as a full participant in fish, wildlife, and recreational management.

And as typically in most state-tribal disputes, the prescribed solution by the state is to assume jurisdiction, thus undermining our sovereign jurisdiction.

And that's one of the things that it leads to is not providing this legislative recognition and full support of funding.

And in 1991, the Cheyenne River Sioux Tribe prioritized buffalo as an essential wildlife resource, and implemented restoration efforts based on traditional values, integrated with modern management principles.

This recognition of buffalo as a critical species within the prairie ecosystem not only has major implications for the restoration of the prairie, but also for the socioeconomic, cultural, and spiritual well-being of our tribe.

Because of the intrinsic relationship between the Plains Indian culture and the buffalo culture, the near decimation of the buffalo was mutually devastating to the Plains tribes. Our effort to restore these buffalo to our tribal lands provides us with a culturally sound focal point and spearheads our overall ecosystem approach.

The restoration of buffalo has renewed hope in many tribal members and has inspired the Tribe to develop an overall prairie management plan.

This prairie management plan was developed by an interdisciplinary team of tribal, federal, and environmental representatives, and presents a dramatic departure from control of prairie dogs by poisoning.

It also covers 2.8 million acres of prairie encompassed by reservation boundaries.

The primary goal of this prairie management plan is to allow prairie dogs, buffalo, black-footed ferrets, eagles, and many other wildlife species to coexist with livestock production and incorporate management techniques that are directed at multiple use.

This alternative plan to poisoning prairie dogs will restore, enhance, and maintain the prairie ecosystem for the benefit of our future generations.

However, in order to implement these plans, adequate funding is absolutely essential, but currently unavailable. Although we have enjoyed widespread support from the BIA, U.S. Fish & Wildlife Service, and several environmental groups, as well as the House Appropriations Committee, and responded to the congressional directive to develop an alternative plan to poisoning, we have yet to receive funding.

Because the BIA lacks funding, and the tribe is ineligible for the funding granted to states by the Endangered Species Act, or the Federal Aid in Fish and Wildlife Restoration Acts, this project can only be conducted with the support of Congress through special appropriations or other legislative action.

Our current management enhancement efforts illustrate the fact that all federal fish, wildlife, and recreational legislation and aid that exists today has systematically excluded tribal governments from the funding mechanisms that would allow implementation of these culturally sensitive and environmentally sound management objectives.

Our attempts to receive funding through the Endangered Species Act and the Federal Aid Programs to states have been strongly opposed by the states, who believe that making these funds available to tribes would diminish the availability of their funds, and thus threaten their management capability and control.

We therefore need a funding mechanism that allows funds to be distributed directly to tribal governments, rather than expanding the federal agencies to carry out these management functions, which tends to perpetuate tribal dependence on our federal government.

As the Cheyenne River Sioux Tribes Bison Enhancement Project illustrates, buffalo can and are being successfully utilized by tribes as a culturally sound focal point in the restoration and enhancement of reservation ecologies.

A cooperative plan for restoring buffalo on tribal lands is being coordinated by the Inter-Tribal Bison Cooperative, which is an organization consisting of 24 member tribes.

This cooperative effort to restore bison on Indian reservations is aimed at restoring the reservation ecologies in a manner that is both acceptable and appreciated by respective tribal members.

Most important, the restoration of buffalo to Indian people renews hope, and is perhaps the last viable effort that can protect tribal lands from the ravages of mismanagement, and quite possibly offers the last opportunity for grassroots tribal members to recapture the spiritual and cultural essence of their being and reaffirm the traditional values that are so important to the preservation of their culture.

Because buffalo were the economic base of many tribes in the past, restoration of buffalo to the Indian community also offers a tremendous opportunity for economic development within a cultural framework.

Although Congress responded to the InterTribal Cooperative's request for funding and appropriated \$400,000 in 1992, \$450,000 in 1993, that falls considerably short of the \$2 million that the 24 tribes requested and needed in order to keep this thing going.

Therefore, increased and continued funding is absolutely essential to ensure the success of this important restoration effort.

In closing, I would like to remind the Committee of the critical role that fish and wildlife resources play in the daily lives of Indian people. For too long, Indian people have been denied the opportunity to develop and manage their own resources.

The projects we have presented in this testimony are based on our traditional world view, which has become a driving rationale for natural resource management espoused by environmental experts across the world.

We firmly believe that legislative action which recognizes tribes as full participants in fish, wildlife, and recreational management, will enable us to assume our rightful role in land stewardship and resource management.

We respectfully request your recommendations to the Appropriations Committee for funding these most important projects.

Thank you.

[Prepared statement of Mr. DuBray and Prairie Management Plan follow:]

TESTIMONY
TO THE HOUSE NATURAL RESOURCES SUB-COMMITTEE
ON NATIVE AMERICAN AFFAIRS
BY
FRED DUBRAY
MEMBER, CHEYENNE RIVER SIOUX TRIBE
PRESIDENT, INTERTRIBAL BISON COOPERATIVE

The Cheyenne River Sioux Tribe is grateful for the opportunity to present testimony before your sub-committee on behalf of the Tribe's membership and as a member Tribe of the InterTribal Bison Cooperative. We applaud the formation of this much needed sub-committee and appreciate your concern regarding the management and preservation of our precious fish and wildlife resources. We strongly support the drafting and passage of legislation that will enhance our management capability and ensure protection of tribal jurisdiction over our fish and wildlife resources.

Throughout the past several decades the management of our trust lands has been focused on livestock production, which is quite common on most reservations throughout the Plains region. Being located in an area where agriculture is the primary economic activity, the Tribe has been influenced by the heavily subsidized agricultural programs that tend to ignore provisions for fish, wildlife and recreational management, consequently putting these resources in serious jeopardy. This lack of support for our fish and wildlife resources has curtailed our efforts and stunted the development of our management capabilities.

More importantly, the lack of legislative protection for our fish and wildlife resources threatens our sovereign jurisdiction over these resources as illustrated by current litigation with the state in South Dakota vs Bourland and Rousseau. This case arises from the state of South Dakota's assertion that the tribe lacks the capability to adequately manage the "taken area" lands along the Missouri River within the boundaries of the reservation. This dispute has directly evolved from the lack of legislative acknowledgment of the tribe as a full participant in fish, wildlife, and recreation management, and the lack of necessary funding. As typical in most disputes between tribes and states, the state's prescribed solution is to assume jurisdiction and management control of the resources in question and consequently diminish Tribal authority and undermine the Tribe's sovereign status. In order to insure our government to government

relationship with the Federal government, it is essential that legislative action guarantees the Tribal government's full participation in the management of fisheries, wildlife, and recreational resources on Tribal lands and within ceded territories as defined by Treaty rights and associated court action regarding Tribal Treaty rights cases, as well as applicable Executive Orders and Congressional Acts.

In 1991 the Cheyenne River Sioux Tribe prioritized buffalo as an essential wildlife resource and implemented restoration efforts based on the Lakota world view, which recognizes that the inter-relationship and intrinsic value of all native species is necessary for the health and harmony of the environment. The recognition of buffalo as a critical species within the prairie ecosystem not only has major implications for the restoration of the prairie, but also for the socio-economic, cultural, and spiritual well being of the tribe. Because of the intrinsic relationship between the Plains Indian culture and the buffalo culture, the near decimation of the buffalo was mutually devastating to the Plains tribes. Because buffalo are a central element to the prairie, as well as to the Lakota culture, our efforts to restore buffalo to our Tribal land provides us with a culturally sound focal point and spearheads our overall ecosystem approach. The Cheyenne River Sioux Tribe's Bison Enhancement Project successfully integrates the importance of buffalo to the Lakota culture, religion, socio-economic well-being, and environmental health, which are all necessary components to sustainable natural resource development. The restoration of buffalo has renewed hope to many tribal members and has inspired the Tribe to develop a long-range restoration plan which includes the entire ecosystem within the reservation boundaries.

As a direct result of our buffalo restoration plan and in response to a congressional directive for the BIA to work with Tribes and in consultation with the USFWS to develop alternative plans for prairie dog control, the Tribe developed the Cheyenne River Sioux Tribe's "Prairie Management Plan." This comprehensive plan, developed by an interdisciplinary team of tribal, federal, and environmental representatives, presents a dramatic departure from control of prairie dogs by poisoning and covers 2.8 million acres of prairie encompassed by the reservation boundaries. The primary goal of the Prairie Management Plan is to allow prairie dogs, buffalo, black footed ferrets, eagles and many other wildlife species to coexist with livestock production and incorporate management techniques that are directed at multiple use. This alternative plan to poisoning prairie dogs will

restore, enhance, and maintain the prairie ecosystem for the benefit of our future generations.

In conjunction with the Prairie Management Plan the Tribe supports the re-introduction of black-footed ferrets onto the reservation as part of the alternative plan to poisoning prairie dogs. Because black-footed ferrets are a natural predator of prairie dogs, they too are a necessary component of the prairie ecosystem. Because black-footed ferrets are an endangered species Federal law requires that Tribes maintain compliance with the regulatory portion of the Endangered Species Act. The Tribe has cooperated with Federal regulations which require the BIA to conduct an Environmental Impact Statement regarding prairie dog control.

However, in order to implement these plans adequate funding is absolutely essential, but is currently unavailable. Although we have enjoyed widespread support from the BIA, USFWS, and several environmental groups, as well as the House Appropriations Committee, we have yet to receive funding. Because the BIA lacks funding and the Tribe is ineligible for the funding granted to states by the Endangered Species Act or the Federal Aid in Fish and Wildlife Restoration Acts, this project can only be conducted with the support of Congress through special appropriations or other legislative action.

We offer these examples of our current management enhancement efforts to illustrate the fact that all Federal fish, wildlife and recreational legislation and aid that exists has systematically excluded Tribal governments from the funding mechanisms that would allow implementation of these culturally sensitive and environmentally sound management objectives. Our attempts to receive funding through the Endangered Species Act and the Federal Aid Programs to states have been strongly opposed by the states who believe that making these funds available to tribe's would diminish the availability of their funds, and thus threaten their management capability and control. Therefore, we firmly believe that legislation which recognizes Tribes as full participants in fish, wildlife, and recreational management is necessary and long overdue. We also need a funding mechanism that allows funds to be distributed directly to Tribal governments. Expanding the Federal Agencies to carry out these management functions will only perpetuate Tribal dependence on the Federal Government and add needless layers to governmental bureaucracy.

As the case of the Cheyenne River Sioux Tribe indicates, buffalo can and are being utilized by tribes as a focal point in the restoration and enhancement of reservation ecologies. This effort is being coordinated by

the InterTribal Bison Cooperative (ITBC), an organization consisting of 24 member tribes interested in utilizing buffalo for ecological restoration on Tribal lands. Each member tribe of the ITBC has joined and expressed support of the organization through formal tribal council resolutions. Although each tribe has their own unique set of spiritual and cultural values attached to the bison, all recognize the need for re-establishing their intrinsic relationship with the buffalo. The cooperative effort to restore bison on Indian reservations is aimed at restoring the reservation ecologies in a manner that is acceptable and appreciated by the respective Tribal members.

Most importantly, the restoration of buffalo to Indian people renews hope and is perhaps the last viable effort that can protect tribal lands from the ravages of mismanagement, and quite possibly offers the last opportunity for "grass roots" Tribal members to recapture the spritual and cultural essence of their being and re-affirm the traditional values that are so important to the preservation of their culture. Because buffalo were the economic base of many Tribes in the past, restoration of buffalo to the Indian community also offers a tremendous opportunity for economic development within a cultural framework.

Although many private producers are rightfully raising bison as a profitable enterprise, there is an associated move to domesticate bison, strictly for commercial benefits. There is a tremendous amount of scientific evidence, as well as traditional Tribal knowledge, which indicates that bison must be protected as a wildlife resource in order for them to contribute to the preservation of the ecosystem. Just as Indian people themselves must be allowed to develop within their own cultural framework in order to successfully interact with their environment, the membership of the ITBC recognizes that buffalo have the same need, and have cooperatively agreed to facilitate that effort on their behalf. Just as salmon are recognized as an issue of subsistence and cultural survival to the tribes in the Pacific Northwest, the restoration of buffalo to Tribal lands is essential to the member Tribes of the ITBC.

Although Congress responded to our request for funding and appropriated \$400,000 toward our efforts in 1992 and \$450,000 in 1993 it falls considerably short of the \$2,000,000 necessary to fund all 24 of the Tribal projects submitted through the ITBC. We are grateful for the funding received, but only 10 Tribes have been able to secure funding with the \$850,000 appropriated so far, which places the remaining projects on hold until future funds become available. If all 24 of the Tribal projects could secure initial start-up funding, the current appropriation level of \$450,000 to

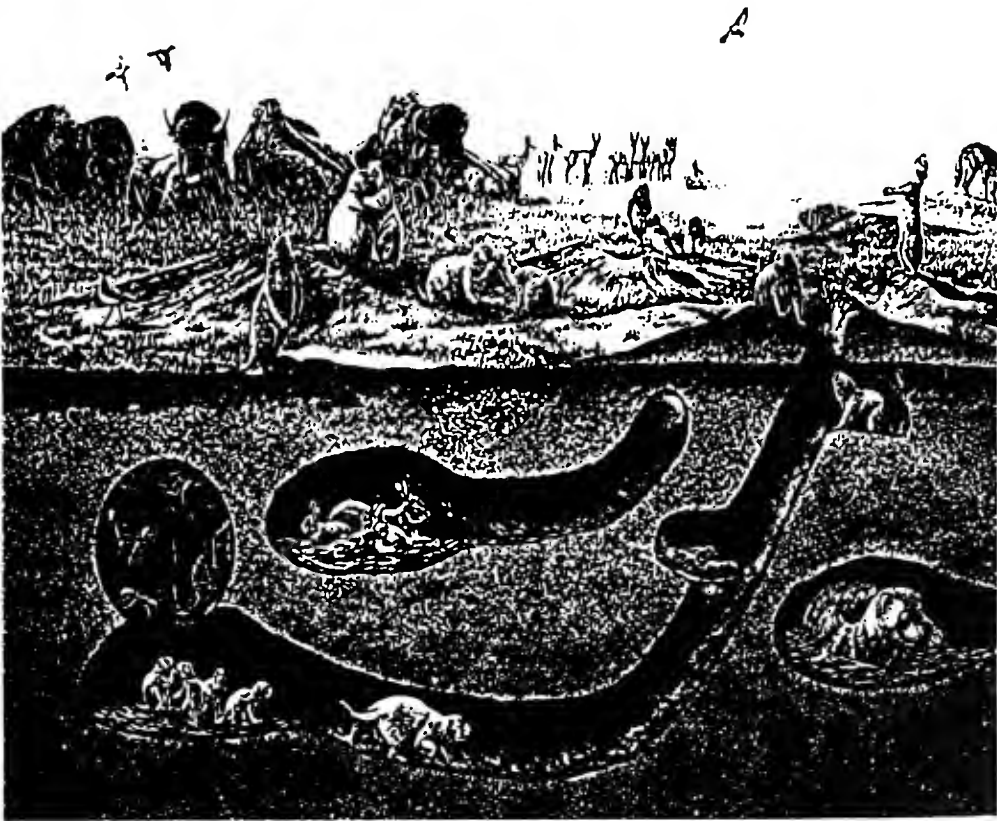
\$500,000 could adequately supplement those projects in need and insure the success of this important restoration effort.

In closing, I would like to remind the committee of the critical role that fish and wildlife resources play in the daily lives of Indian people. For too long, Indian people have been denied the opportunity to develop and manage their own resources. The projects we have presented in this testimony are based on our traditional world view, which has become a driving rationale for natural resource management espoused by environmental experts across the world. We firmly believe that legislative action, which recognizes Tribes as full participants in fish, wildlife and recreational management, will enable us to assume our rightful place in land stewardship.

PRAIRIE MANAGEMENT PLAN

for the

CHEYENNE RIVER SIOUX RESERVATION



MAY 1992

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The Cheyenne River Sioux Tribe acknowledges and thanks the University of Nebraska and Dr. Scott Hygnstrom for permission to reproduce an original work of art by Mark E. Marcuson.

**PRAIRIE MANAGEMENT PLAN
FOR THE CHEYENNE RIVER SIOUX RESERVATION**

EXECUTIVE SUMMARY

In response to urgent circumstances regarding the Federal Government's trust responsibility to manage reservation lands and the need to maintain compliance with existing legislation regarding endangered species and environmental policy, the Cheyenne River Sioux Tribe proposes to implement a pilot range improvement project entitled "Prairie Management Plan".

The proposed project presents a dramatic departure from traditional control of black-tailed prairie dogs (*Cynomys ludovicianus*) by poisoning on the Cheyenne River Reservation. For years, prairie dogs have been viewed as "pests"; however, the near extinction of black-footed ferrets (*Mustela nigripes*), which rely totally on prairie dog towns as habitat and prairie dogs for food, has fostered a recognition of the delicate environmental relationships and biodiversity necessary for a healthy prairie ecosystem. The U.S. Fish and Wildlife Service has issued a formal opinion: poisoning prairie dogs on the Cheyenne River Sioux Reservation will jeopardize the survival and/or recovery of black-footed ferrets. Additionally, Defenders of Wildlife and the Sierra Club have threatened litigation if prairie dogs are poisoned without consideration to existing legislation. Thus, poisoning alone is no longer an acceptable management tool for prairie dog control.

Studies have shown that prairie dogs alone are not responsible for range deterioration. The primary cause of prairie ecosystem degradation, and the associated loss of species diversity, has been a lack of funding to change outmoded range management practices. Outdated methods encourage overgrazing and conditions that give rise to prairie dog colonization. Notwithstanding this fact, livestock production is currently the leading industry on many Indian reservations, and will be for the foreseeable future. Thus, the challenge is to incorporate management techniques that are directed at multiple use.

The Cheyenne River Sioux Tribe's goal is to restore, enhance, and maintain the prairie ecosystem on 2.8 million acres encompassed by the reservation boundaries. This proposal is based on Lakota tradition, which recognizes the intrinsic value of all life forms in a healthy and harmonious environment. Developed by an Interdisciplinary Team of tribal, federal and environmental representatives to reflect traditional Lakota views and improved range management techniques, this approach allows prairie dogs and

many other wildlife species to coexist with livestock production.

Benefits of the "Prairie Management Plan" will include the following: reduce the need for poisoning prairie dogs every three to five years; allow for the coexistence of prairie dogs with livestock; provide for the potential reintroduction of the black-footed ferret by compensating landowners for retaining prairie dog towns; maintain and enhance wildlife diversity, including those species associated with prairie dog towns; aid the recovery of threatened and endangered species; enhance populations of candidate species to prevent listing; and, increase the overall productivity of the range resource.

The management techniques proposed in the pilot project have been successfully demonstrated by private landowners, but the Tribe and individual Indian cattle operators are unable to implement these strategies due to a lack of funding. If funded, this project will encourage the application of these management techniques on all lands within the reservation boundary, and on other reservations with similar management challenges. Thus, in addition to the compelling Endangered Species Act requirements for the project, there is considerable potential to demonstrate that improved management of prairie ecosystems is not only environmentally desirable, but also economically beneficial.

Funding of \$10,390,960 is required for a period of five years to achieve range restoration. This proposal, which not only includes range improvements (dams, wells, and fencing), but also management of endangered species and public education, costs only \$7.00/acre for 1.4 million acres over a five-year period; poisoning is about \$12.00/acre in reoccurring costs. Specific objectives for the first year cost \$1.45/acre, or a total of \$2,220,192. After the prairie ecosystem is restored, the annual management costs will be minimal.

Because the Bureau of Indian Affairs (BIA) lacks funding, and the Tribe is ineligible for the funding granted to states by the Endangered Species Act or the Federal Aid in Fish and Wildlife Restoration Act, the project can only be conducted with the support of Congress through special appropriations. The Tribe suggests that funds be added to and "earmarked" from the BIA's Range Management and Fish, Wildlife and Parks programs. The project responds to the Congressional appropriation directive to the Department of Interior that the BIA reorganize its management efforts whenever possible to suspend poisoning and develop other alternatives for prairie dog management. More important, however, it assures compliance with the Endangered Species Act and the federal government's trust responsibility to Indian Tribes.

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PRAIRIE MANAGEMENT PLAN ON THE CHEYENNE RIVER SIOUX RESERVATION

INTRODUCTION

"Prairie Management Plan" is a proposed project based on Lakota cultural traditions and improved range management techniques which will result in restoration of the prairie ecosystem and the coexistence of prairie dogs and other wildlife species with livestock production on the Cheyenne River Sioux Reservation. Although the catalyst has been the matter of black-tailed prairie dogs (*Cynomys ludovicianus*) and black-footed ferrets (*Mustela nigripes*), the project is directed at correcting a much broader problem -- outmoded range management practices geared towards the single purpose of cattle production.

For most of this century, prairie dogs have been systematically and successfully targeted for elimination through poisoning by livestock producers and state and federal agencies. Success has been measured by the 98% reduction in acres of prairie dog towns throughout the west: the Utah prairie dog (*Cynomys parvidens*) is listed as a threatened species. A tragic result of the loss of prairie dog habitat has been the near extinction of the black-footed ferret which relies exclusively on prairie dog towns for food and habitat. In 1967, the black-footed ferret was listed as endangered pursuant to the Endangered Species Act. In addition, several other endangered, threatened or candidate species on the Cheyenne River Sioux Reservation are linked to prairie dogs or their habitat.

"Prairie Management Plan" is a unique response to federal mandates to facilitate black-footed ferret recovery. The pilot project will accomplish the goal of enhancing the prospects for recovery of the black-footed ferret in compliance with the Endangered Species Act. It will also facilitate restoration of the prairie ecosystem, an improved range resource for livestock production, and enhanced populations of many other wildlife species. Further, it will increase the capability for the government to fully exercise its trust responsibility to effectively manage reservation trust lands for the benefit of the Tribe and individual Indians.

LAKOTA WORLD VIEW

The Lakota world view and cultural beliefs are holistic -- based on a recognition of the interrelationship

and intrinsic value of all species, which is necessary for the health and harmony of the environment (i.e. biodiversity). This traditional world view has become a driving rationale for natural resource management espoused by environmental experts across the world. The Cheyenne River Sioux Tribe believes that they have an opportunity and an obligation to exercise leadership in land stewardship. The pilot project is an example of integrating Native American values with scientific techniques to promote restoration of prairie ecosystems.

PRAIRIE DOG POISONING/OVERGRAZING

For years, the federal government has promoted agriculture (principally cattle production) on western reservations as a means of economic development and utilizing the prairie grasslands. This policy has been successful in that grasslands are the most significant natural resource, and ranching is the leading industry on the Cheyenne River Reservation. It has been a historical assumption of the ranching community that concentrations of prairie dog colonies pose a problem by competing with cattle for forage and detracting from grazing and cropland productivity.

In the past the BIA, states and individual cattle operators have subscribed to poisoning efforts because of a lack of understanding of ecosystem dynamics, as well as lack of funding to implement long-term and capital intensive range improvements. Until recently, for example, Congress has appropriated approximately \$400,000 per year to the Bureau of Indian Affairs (BIA) for prairie dog poisoning.

Studies indicate that poisoning of prairie dogs and the type of poisons used has directly contributed to the decline of the black-footed ferret. Black-footed ferrets require a certain threshold size and occupancy of prairie dog towns to survive. The extensive use of poisoning to reduce prairie dogs, together with cultivation and urbanization, have caused a lack of suitable habitat for ferrets.

Historically, prairie dog colonization (and associated prairie ecosystem diversity) was dependent on the buffalo or bison (*Bison bison*). Buffalo, following their circular migratory paths, enhanced habitat for prairie dogs by grazing grasses to suitable heights and creating dust wallows. The survival of prairie dog towns depended on buffalo or other grazers keeping grasses short.

Over the years grazing practices (actually overgrazing of certain areas) have degraded rangelands by reducing the diversity and density of plants, the natural vegetative

barriers and soil conditions which in turn encourages prairie dog colonization. Further, cattle selectively forage on desirable grasses, leading to a reduction in the mix of species. Agricultural lands may be devalued \$3-7 per acre by lending institutions depending on the density of prairie dog colonies.

Poisoning has averaged \$12.00 per acre in reoccurring costs because applications of rodenticide are only temporary measures. It has been consistently shown that prairie dogs will increase to pre-poisoning levels within three to five years without the implementation of a range improvement program. The most dramatic example has been on the Pine Ridge Indian Reservation where massive poisoning was conducted in the mid-1980's only to see a current resurgence in prairie dog numbers.

Range degradation is primarily related to a lack of funding for improvements, such as fencing, adequate water development and planned grazing management necessary to rotate or limit livestock to prevent overgrazing in certain areas. Degradation is exacerbated when cattle congregate near wetlands and riparian zones (particularly during drought), which also provide important habitat for many wildlife and fish species.

In summary, the current prairie dog "problem" on western lands is not a simple matter. Several combined factors contribute to the problem:

- * the historic attitude of agricultural producers that prairie dogs are an undesirable part of the ecosystem
- * the heretofore accepted practice of poisoning prairie dogs as a control mechanism has not taken into account the related effects on the prairie ecosystem, particularly on the black-footed ferret and other species which are associated with prairie dogs
- * a reduction of the natural mixed-grass forage and overall health of the prairie ecosystem is due in large part to the lack of adequate water, drought conditions and outdated grazing practices
- * overgrazing of the range creates "bare" spots which enhance prairie dog colonization

Within recent years, the BIA has been promoting Integrated Natural Resource Management planning on Indian reservations which encourages multiple use management directed at both wildlife and agriculture. However, lack of tribal and BIA funding has impeded progress on this initiative. Only a few reservations have completed planning necessary for this management strategy and fewer have actually implemented the plan. Cheyenne River Reservation

does not have this system in place. More significantly, with the exception of some limited funding for work on the northern spotted owl (*Strix occidentalis*), the BIA and Tribes have not received funding to comply with the Endangered Species Act on trust lands.

ENVIRONMENTAL ASSESSMENT ISSUES

The project proposes a solution to a dilemma faced by the Bureau of Indian Affairs over the management of trust range resources. On one hand, the BIA has a trust responsibility to the Tribe to effectively manage trust lands which currently have unacceptable concentrations of prairie dog colonies for agricultural production. On the other hand, the BIA has a responsibility to comply with the Endangered Species Act as it pertains to the recovery of endangered and threatened species, such as the black-footed ferret.

In 1991, the BIA proposed to conduct limited poisoning of prairie dogs on the Cheyenne River and Rosebud Sioux Reservations and completed an Environmental Assessment (EA) pursuant to the National Environmental Policy Act (NEPA) and the Endangered Species Act. The BIA lacks sufficient funding, personnel and time to meet the U.S. Fish and Wildlife Service (USFWS) and NEPA requirements for analysis of prairie dog/ferret complexes, the potential reintroduction of ferrets and evaluation of other endangered, threatened or candidate species associated with prairie dog towns. As a result, the BIA completed only an initial investigation for the Environmental Assessment required for prairie dog poisoning on the Reservation. The BIA's Environmental Assessment was published in September, 1991.

Due to budget constraints and lack of funding for overall range improvement, poisoning of prairie dogs has traditionally been the primary management alternative used by the BIA on reservation trust lands. However, under contemporary conditions continued poisoning of prairie dogs in relationship to endangered and threatened species is no longer feasible. Specifically, the USFWS has issued a biological opinion that the proposed poisoning of prairie dogs on the Cheyenne River Reservation would jeopardize the survival and recovery of the black-footed ferret.

The proposed control measure through limited poisoning on both reservations has also been hindered by threatened litigation from the Defenders of Wildlife and the Sierra Club because it could jeopardize potential recovery of the black-footed ferret and is therefore in violation of the Endangered Species Act. Additionally, these organizations disagreed with the conclusions reached under the NEPA procedures that proposed poisoning would not be a major impact on the environment.

In order to fully comply with NEPA and the Endangered Species Act, additional field work and evaluation of prairie dog complexes for suitability of reintroduction must be conducted on the Cheyenne River Reservation. Agreement between the Tribe, USFWS and BIA must be developed for management of other endangered or threatened species. A socio-economic analysis of the effects which prairie dog management alternatives have on reservation economics is also necessary. The BIA has advised that approximately \$200,000 is available to the Tribes under a P.L. 93-638 contract to complete these requirements. The Cheyenne River Sioux Tribe plans to comply with these requirements in conjunction with the project.

As a result of these factors, the BIA has determined not to conduct poisoning control of prairie dogs on the reservation, but has acknowledged that a lack of management could lead to a further deterioration of the range resource and a loss of economic benefits to the Tribe and individual Indian cattle operators. The failure of the BIA to address this problem could force the Tribe to litigate for breach of trust responsibility because lack of management could lead to a further degradation of the range resource. The 1980 lawsuit by the American Farm Bureau against the U.S. Department of the Interior and BIA for failure to control prairie dogs on the Pine Ridge Reservation and other federal land holdings, for example, led to the provision of a multi-million dollar appropriation in the mid-1980's.

It is the intent of the Cheyenne River Sioux Tribe to resolve this "catch 22" situation through the "Prairie Management Plan", which will at once permit compliance with the Endangered Species Act and allow the federal government to exercise its trust responsibility for management of reservation lands.

CHRONOLOGY OF EVENTS

The following series of events has precipitated the current situation and development of the Cheyenne River Sioux Tribal "Prairie Management Plan":

- | | |
|---------|--|
| 1964-79 | Black-footed ferret populations discovered in South Dakota, near Rosebud reservation, populations captured but die in captivity. Sightings recorded on Cheyenne River Reservation |
| 1967 | USFWS lists the black-footed ferret as endangered |
| 1980 | American Farm Bureau Federation files suit in Federal court against federal agencies, including BIA, for failure to control prairie dogs on Pine Ridge Reservation, Badlands National Park and National Grasslands |

- 1981-5 Black-footed ferret population discovered in Wyoming, population is captured, bred in captivity and preparations for reintroduction are made
- 1985-6 Congress appropriates funding (approximately \$10 million) for Pine Ridge prairie dog control program through poisoning
- 1988 USFWS approves the Black-Footed Ferret Recovery Plan that evaluates reintroduction on 10 suitable sites including three on Cheyenne River Reservation
- 1989 USFWS publishes the Black-Footed Ferret Survey Guidelines for compliance with Endangered Species Act
- 1990 Pine Ridge reports an increase in prairie dog populations
- 1990 Cheyenne River enacts a Tribal Resolution requesting funding for prairie dog poisoning
- Sep 1990 USFWS recommends conservation measures on Cheyenne River requiring evaluations prior to any poisoning of prairie dogs
- Oct 1990 Congress provides prairie dog control funds for Cheyenne River but directs BIA to work with the Tribe and USFWS to find alternatives to poisoning and to develop management to allow coexistence with prairie dog populations
- 1991 Cheyenne River Sioux Council adopts resolution to investigate feasibility of setting aside lands for black-footed ferret reintroduction
- Apr 1991 USFWS notes that all prairie dog towns of 1,000 or more acres affected by federal actions or funding must be considered as possible ferret habitat
- Jun 1991 BIA and USFWS initiate formal consultation pursuant to Endangered Species Act for Cheyenne River Reservation targeting 33,000 acres of potential black-footed ferret habitat
- Sep 1991 USFWS Biological Opinion holds that the proposed action to poison prairie dogs on Cheyenne River Reservation will jeopardize possible existence and/or recovery of black-footed ferret
- Sep 1991 The Sierra Club and Defenders of Wildlife notify the Secretary of Interior, Director of USFWS, and Assistant Secretary of BIA of potential litigation for illegal poisoning of prairie dogs
- Sep 1991 BIA issues Environmental Assessment concluding that prairie dog control on Cheyenne River and Rosebud Reservations will be suspended, but acknowledges that prairie dog populations could expand and that environmental degradation of the range resource and economic loss to Tribe and individual tribal members could occur

- Dec 1991 Cheyenne River and Rosebud Sioux Tribes initiate Interdisciplinary Team to develop management alternatives for prairie dogs
- 1992 South Dakota Legislature enacts legislation clarifying and limiting participation of state agencies in black-footed ferret reintroduction, expresses concern over loss of income to private land owners as result of reintroduction efforts.
- Mar 1992 Defenders of Wildlife and Sierra Club advise Cheyenne River Sioux Tribe of their interest and support for proposed pilot project

"PRAIRIE MANAGEMENT PLAN" APPROACH

The proposed project is based on a simple but compelling assumption -- prairie dogs are a valuable and essential component of the prairie ecosystem. Therefore, natural resource management on the Cheyenne River Sioux Reservation should be conducted so that all wildlife species can maintain their rightful place in the environment in conjunction with livestock production. This approach emphasizes Lakota cultural traditions, biodiversity and integrated land management for multiple use.

While studies have indicated that excluding or decreasing cattle grazing increases the cool- or warm-season grass density and reduces prairie dog colony size, this method of prairie dog control has historically been opposed or rejected by the livestock community. Effective management strategies require a significant capital investment in range improvement which is currently beyond the financial means of the Tribe or individual operators. The proposed management objectives are also long-term as opposed to the relatively "quick fix" of poisoning, however, the Tribe is confident that with adequate funding and support, individual operators will subscribe to the proposed management techniques, thus overcoming historical support for poisoning.

The BIA acknowledges that substantial changes in grazing systems, resulting in more and taller vegetation would actually reduce the density of prairie dog towns. However, the Tribe and BIA lack sufficient resources to effectively develop and implement such grazing management plans. It would require approximately five years to change the dominant vegetation from buffalograss (*Buchloe dactyloides*) and blue gramma (*Bouteloua gracilis*) associations to western wheatgrass (*Agropyron smithii*) and associated grasses which characterize a healthy ecosystem. Rangelands which are dominated by western wheatgrass are considered to be in "good to high-good" condition.

Although the issues are complex, the solution is simple -- restoration of rangelands to a health mixed-grass ecosystem. When prairie lands are in a healthy vegetative state, prairie dog expansion is stabilized or occurs at acceptable levels, thereby allowing for the delicate balance and interrelationships of species necessary for biodiversity. Under appropriate management strategies, healthy prairie ecosystems can also sustain cattle production in harmony with wildlife species. Rehabilitation of the range will also result in many other benefits, such as the enhancement of other important wildlife populations.

ENVIRONMENTAL IMPACT STATEMENT

The Environmental Assessment addressing poisoning of prairie dogs on the Cheyenne River and Rosebud Sioux Reservations will be further developed into an Environmental Impact Statement (EIS) pursuant to the NEPA process. "Prairie Management Plan" incorporates objectives required by the EIS: determine the density of prairie dog burrows on the remaining 10,000 acres of trust land (23,000 acres were surveyed for the EA), determine population status and habitat use for federally endangered, threatened, or candidate species, and conduct an analysis of the socio-economic impacts of prairie dog management. Improved range management techniques proposed by the pilot project will be applied to the entire 1.3 million acres of trust land on the Cheyenne River Reservation.

Based on acceptance of the Preferred Management Alternative resulting from the EIS, limited use of poisoning on some areas (such as near croplands and cemeteries) may be initiated; provided, however, that these areas are unsuitable for the reintroduction of black-footed ferrets. Similarly, the reintroduction of black-footed ferrets will be evaluated during the EIS process.

"PRAIRIE MANAGEMENT PLAN" STRATEGIES

The proposed pilot project challenges historical and deeply ingrained western assumptions about prairie dogs and other wildlife: prairie dogs are not pests, rather they are a valuable and essential part of the delicate balance in the prairie ecosystem. Accordingly, the Cheyenne River Tribe does not contemplate eradication of prairie dogs in our "Prairie Management Plan". Rather, we propose a holistic philosophy based on improved range usage to restore the prairie ecosystem to a more natural state where prairie dog populations are maintained at acceptable levels through environmentally acceptable mechanisms which allow wildlife species to coexist along with livestock production.

The link between prairie dog expansion and livestock grazing is well documented as well as a variety of recommended management alternatives which are incorporated into the project including:

1. DEVELOPMENT OF ADEQUATE WATER ON RANGELANDS

Prairie dog expansion is directly related to the lack of adequate water on western rangelands because cattle tend to congregate and graze in areas which are near water. Due to the sparsity of wells and water on reservation range units, areas in close proximity to water have become overgrazed while other areas within the range units are

undergrazed. Prairie dog colonies expand in the areas of overgrazing because of shorter grass heights and bare ground which provides suitable habitat.

The solution for maximum distribution and movement of cattle through range units is to develop water through drilling wells or constructing stock dams. During the five-year project period the Tribe will develop 903 new water sources, which will result in more dispersal of cattle throughout the range units, diminish overgrazing near limited "water holes" and decrease the degraded habitats in which prairie dog colonies flourish and expand. As a result of more dispersed cattle, the vegetation can recover and inhibit prairie dog colonization.

The U.S. Department of Agriculture promotes rangeland development through the ASCS and SCS cost-sharing programs which will reimburse land owners for a portion of development costs. However, these programs are inadequately funded to meet the development needs on the Cheyenne River Reservation.

2. RANGE UNIT FENCING TO ACCOMMODATE GRAZING ROTATION

The Cheyenne River Reservation has many large range units, but it is currently difficult to rotate animals due to a lack of fencing. The Tribe will construct 682.5 miles of cross fencing on the range units to enable managers to rotate cattle on a regular basis. This will limit the overgrazing of certain areas and achieve a balanced use of grass. Fencing, of course, is related to water development on the range units.

This technique will require education of individual operators because it requires a change in traditional grazing practices and it requires a more labor intensive approach to livestock management. It will also be necessary to adapt BIA policies and range compliance procedures to ensure that the rotation is conducted by individual cattle operators who lease Tribal and allotted lands. The implementation of regular and consistent cattle rotation will result in healthier vegetation which will restrict prairie dog expansion as well as increase carrying capacity (numbers of livestock) on the range.

3. WILDLIFE AND FISH HABITAT

"Prairie Management Plan" provides for a habitat set-aside fund, which will compensate land owners for retaining prairie dog colonies to maintain biodiversity and to enhance populations of black-footed ferrets if reintroduction is selected as a Preferred Alternative of the EIS. A total of 142 different vertebrate and invertebrate species associated with black-tailed prairie dog colonies in South Dakota

(listed in the EA). The Cheyenne River Sioux Tribe identify many of these species as culturally important, including bald eagles (*Haliaeetus leucocephalus*), golden eagles (*Aquila chrysaetos*), other raptors, deer (*Odocoileus hemionus* and *O. virginianus*), pronghorn antelope (*Antilocapra americana*), sharp-tailed grouse (*Pedioecetes phasianellus*), burrowing owls (*Athene cunicularia*), coyote (*Canis latrans*), badger (*Taxidea taxus*), fox (*Vulpes sp.*), and rabbits (Leporidae).

Construction of cross fencing and stock dams to disperse livestock throughout a range unit will also be beneficial to wildlife and fish. Restored grasslands provide food and cover for upland species. New stock dams create more areas for wetland nesters, such as waterfowl (Anatidae) or northern harriers (*Cyanus circus*), and may also provide additional suitable habitat for upland species that are only limited by water. Partial fencing of some new or existing dams to control access by livestock will enhance fish and wildlife habitat by restoring riparian vegetation, decreasing compaction around the dam, increasing the life of the dam, reducing non-point sources of pollution (feces or siltation) in the dam or downstream drainage, stabilizing stream banks, and preventing trampling or grazing of trees and shrubs. Trees and shrubs provide a vertical dimension to the otherwise homogeneous grasslands, resulting in a manifold increase in species diversity.

Controlling access to dams and reservoirs is an accepted and encouraged practice for wildlife habitat enhancement. Tribes are not eligible for funding by the Federal Aid in Fish and Wildlife Restoration Act (Dingell-Johnson and Pittman-Robertson), nor does USFWS have a legal means of directing funds to Tribes. However, funding for construction of some stock dams and cross fencing is available through the USFWS's North American Wetlands Conservation Project, the 1991 Farm Bill, the Agricultural Stabilization and Conservation Service, and the Soil Conservation Service. The Cheyenne River Sioux Tribe is actively seeking other sources of funding and submitting proposals, but it is unlikely that the range improvements needed could be met through these grants alone.

4. ENDANGERED, THREATENED OR CANDIDATE SPECIES

As previously noted, the BIA has not received general funding for endangered species work on reservation trust lands. Furthermore, only states (not Tribes) are eligible for funding allocated by Section 6 of the Endangered Species Act for population or habitat management. Until this is corrected, the Tribes must request special appropriations to manage endangered or threatened species on Reservations.

"Prairie Management Plan" incorporates USFWS's Conservation Recommendations presented with the formal Section 7 (Endangered Species Act) Consultation in regard to poisoning prairie dogs. Population status and habitat use for endangered or threatened species associated with prairie dog complexes will be surveyed and monitored, and species-specific management plans will be written. Federally listed species probably occurring on the Cheyenne River Reservation include bald eagle, black-footed ferret (past sightings only), interior least terns (*Sterna aantillarum*), peregrine falcons (*Falco peregrinus*), piping plovers, (*Charadrius melodus*), whooping crane (*Grus americanus*) and the American burying beetle (*Nicrophorus americanus*, status unknown).

The Cheyenne River Sioux Tribe proposes to adopt additional conservation measures for candidate species (species being considered for federal listing as endangered or threatened) associated with prairie dog complexes. Surveys to determine status and habitat use, monitoring, and written management plans will be developed for the Swainson's hawk (*Buteo swainsoni*), ferruginous hawk (*B. regalis*), mountain plover (*Charadrius montanus*), long-billed curlew (*Numenius americanus*), loggerhead shrike (*Lanius ludovicianus*), and the northern swift fox (*Vulpes velox*). Population enhancement for these species now may prevent listing, and save millions of dollars in future reintroduction expenses.

5. PUBLIC EDUCATION

The underlying challenge of the project is to change the deeply ingrained western attitude that prairie dogs are "pests", to promote an understanding and appreciation for prairie biodiversity, and to secure the voluntary participation of livestock operators in the project. Specifically, it will be the responsibility of individual permittees, and tribal and BIA land managers to implement the range management techniques on leased trust lands. Although the Tribe has received an initial favorable response from cattle operators about the project, it will be essential to provide education to these operators on the benefits and the actual use of the proposed management techniques.

The cooperation of the BIA and Tribal range managers is also critical to ensure compliance. For example, the BIA requires individual operators to annually submit operation plans which include lease stipulations on how the range units will be used. These plans will be modified from current modes to include the proposed management strategies. The Tribes and BIA must have adequate range and wildlife personnel and equipment to conduct monitoring, provide technical support to individual operators and to ensure compliance with the new management strategies. The success

of the project hinges to a large degree upon the individual and Tribal cattle managers supporting and implementing the proposed range management techniques.

Other goals are to increase public understanding of issues associated with the Endangered Species Act, particularly the black-footed ferret and other endangered, threatened or candidate species and of the general concepts of biodiversity and multiple-use land management.

6. INTERDISCIPLINARY TEAM

The project has been designed by an Interdisciplinary Team comprised of tribal, federal, state and environmental representatives (see appendix for list of members). This team will serve as an active working and advisory arm to the Tribal land managers responsible for implementing the project. The Team will also conduct annual evaluations and be responsible for the preparation of annual reports on the project.

7. BISON ENHANCEMENT PROJECT

In accordance with cultural values and community economic development planning, the Cheyenne River Sioux Tribe recently initiated a tribal bison herd project which compliments and will be integrated with the "Prairie Management Plan". The goal is to use 100,000 acres of tribal land for bison production within five years. This Bison Enhancement Project, and associated Wildlife Enhancement Project, is supported by the Tribe, congressional set-aside funds for the Inter-Tribal Bison Cooperative, and grants from the Administration for Native Americans and BIA. In the future, it is possible that bison production may be a viable component of the "Prairie Management Plan".

RESULTS AND BENEFITS

The project will result in a multitude of direct and indirect benefits. Following is a list of the more significant results which are anticipated:

ENVIRONMENTAL

* Increased or enhanced wildlife and fish habitats with resultant healthier populations

* Maintenance and recovery of endangered wildlife species; enhanced populations of candidate species to prevent listing and reduced future needs for funding for recovery and reintroduction

* Reduction in soil erosion and stabilization of stream banks and channels

* Reduction of non-point sources of pollution, especially at dams and riparian areas

TRIBAL

* Maintain range conditions at or above present levels of productivity

* Increased self sufficiency through cattle production

* Increased revenues from hunting and fishing

* Increased capacity for subsistence hunting

* Increased public awareness and skills in range management to promote biodiversity and enhance wildlife

* Increased coordination and cooperation with federal, state and private environmental interests

FEDERAL

* A reduction in the need for annual appropriations in prairie dog poisoning control funds over a five-year period

* Averting the threat of litigation against the BIA by environmental organizations for violation of the Endangered Species Act and NEPA, as well as tribal litigation for violation of trust responsibility

* Compliance with the Endangered Species Act and National Environmental Policy Act and related policy and regulation

NATIONAL

* Possible establishment of sites for reintroduction of black-footed ferret

* The development and testing of model range management techniques which enhance biodiversity

BUDGET REQUIREMENTS

In order to be implemented, federal funds are necessary for a period of approximately five years. However, the funds required for the proposed "Prairie Management Plan" -- less than \$2.00 per acre for the first year -- are actually less per acre than what would be required for traditional management through poisoning. Once the management objectives are completed, range conditions should be in a condition to sustain both cattle grazing and prairie dogs at acceptable levels with only minimum management efforts and funding.

YEAR 1

The first year budget requirement is \$2,220,000 to conduct management activities on the 1.3 million acres of trust lands, which have been determined possible habitat for black-footed ferret reintroduction, but will eventually include all 2.8 million acres of reservation land. A complete budget breakdown of these costs is included in the Appendix. The activities which will be completed in year one include the following:

1. Complete an Environmental Impact Statement for the Cheyenne River Sioux Reservation in accordance with NEPA (\$0).
2. Conduct public and landowner education regarding Endangered Species issues and project objectives to facilitate support and voluntary cooperation in project (\$4,000).
3. Conduct surveys of federally endangered, threatened or candidate species to determine status and develop management plans (\$366,000).
4. Identify prairie dog towns as suitable or unsuitable habitat and coordinate activities with landowners and the Tribe to establish habitat set-aside areas including payment to landowners (\$585,000).
5. Construct 137 miles of cross fencing on range units (\$273,000).
6. Construct 195 water developments on range units (\$1,166,000).
7. Build fences to control livestock access to dams to enhance wildlife habitat (\$270,000)
8. Interagency coordination with federal, state and tribal agencies and Interdisciplinary Team (\$5,000).

9. Design research protocol and techniques, conduct first year evaluation/report (\$2,500)
10. Investigate and pursue alternative funding sources (\$0)

YEARS 2-5

Depending on the results achieved in Year 1, the Cheyenne River Sioux Tribe will submit detailed budget requests for future years of the project (see Appendix 3). The infrastructure developments are phased over a five-year period and the Tribe will also require continued support throughout the project to maintain technical and professional staff to conduct management activities. However, during the first year, the Tribe will actively investigate and pursue other sources of funding to help support and continue the project which could reduce the need for annual appropriations. The need for specific appropriations could be greatly reduced if Congress were to authorize Tribes to receive funds under the Endangered Species Act and other programs which could provide funding for project activities.

APPENDICES

- 1 INTERDISCIPLINARY TEAM MEMBERS
- 2 CHEYENNE RIVER SIOUX TRIBAL
RESOLUTION
- 3 BUDGET SUMMARIES
- 4 POSITION DESCRIPTIONS

APPENDIX 1: INTERDISCIPLINARY TEAM MEMBERS

TEAM LEADER

Parr, Kenneth Area Wildlife Biologist, Aberdeen
Area Office, Bureau of Indian
Affairs

TEAM MEMBERS

Carson, James M. Supervisory Range Conservationist,
Rosebud Agency, Bureau of Indian
Affairs

Hawk Chasing, Elton Land Operations Officer, Rosebud
Agency, Bureau of Indian Affairs

Croxen, Michael Supervisory* Range Conservationist,
Cheyenne River Agency, Bureau of
Indian Affairs

DuBray, Fred Coordinator, Administration for
Native Americans, Cheyenne River
Sioux Tribe

Eklund, Daniel* Wildlife Biologist, U. S. Fish and
Wildlife Service, Pierre, SD

Eisner, Sherry Wildlife Biologist, Administration
for Native Americans, Cheyenne
River Sioux Tribe

Heckert, Mark Wildlife Biologist, Native American
Fish & Wildlife Society

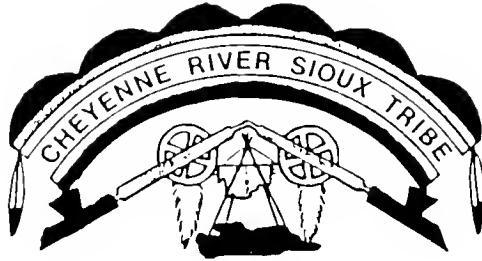
Hudson, Jim Tribal Land Office
Rosebud Sioux Tribe

Lilly, Wayland G. Area Range Conservationist, Aberdeen
Area Office, Bureau of Indian
Affairs

Rousseau, Narcisse Director, Game, Fish and Parks
Cheyenne River Sioux Tribe

* Corrections made 15 June 1992

APPENDIX 2 - CHEYENNE RIVER TRIBAL RESOLUTION



TRIBAL MEMORANDUM

TO: SUPERINTENDENT, Cheyenne River Agency *AT* DATE: 05/06/92
 FROM: Arlene Thompson, Tribal Secretary
 SUBJECT: RESOLUTION NO. 145-92-CR: Submitting an application for the "Prairie Management Plan and that this funding be appropriated by Congress as a pilot project to help maintain our land and other natural resources.

 Transmitted herewith is one (1) original copy and five (5) copies of Resolution No. 145-92-CR, which was duly adopted by the Cheyenne River Sioux Tribal Council, during its regular session held on May 6, 1992.

cc: Chairman
 Treasurer
 Central Records
 Councilmembers
 Planning Department
 File/2

RESOLUTION NO. 145-92-CR

WHEREAS, the Cheyenne River Sioux Tribe of South Dakota is an unincorporated Tribe of Indians, having accepted the provision of the Act of June 18, 1934 (48 Stat. 984); and

WHEREAS, the Tribe, in order to establish its tribal organization; to conserve its tribal property; to develop its common resources; and to promote the general welfare of its people, has ordained and established a Constitution and By-laws; and

WHEREAS, the Cheyenne River Sioux Tribe supports the management of reservation lands in a manner that is culturally and environmentally sound; and

WHEREAS, the Cheyenne River Sioux Tribe needs range improvements, such as cross fencing and water development, to better manage livestock grazing, and enhance the prairie ecosystem; and

WHEREAS, the Cheyenne River Sioux Tribe recognizes that prairie dogs require management to determine acceptable population levels so that livestock production and species diversity are maximized; and

WHEREAS, the Cheyenne River Sioux Tribe values species diversity, including federally threatened, endangered, and species, such as the black-footed ferret and bald eagle (of which some species are of cultural/spiritual importance), but requires compensation to landowners for maintenance of critical habitats; and

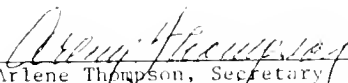
WHEREAS, the Tribal Planning staff has worked in conjunction with the Bureau of Indian Affairs and the U.S. Fish and Wildlife Service to develop an integrated management plan, entitled "Prairie Management Plan"; now

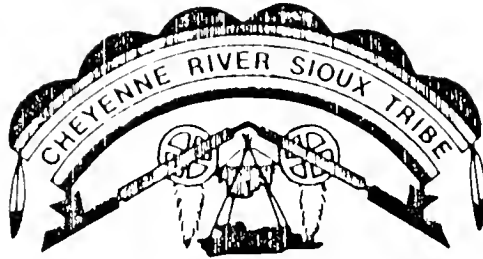
THEREFORE BE IT RESOLVED, that the Cheyenne River Sioux Tribe submits the enclosed application for the "Prairie Management Plan"; and

BE IT FURTHER RESOLVED, that the Cheyenne River Sioux Tribe requests this funding be appropriated by Congress as a pilot project to help maintain our land and other natural resources.

CERTIFICATION

I, the undersigned, as Secretary of the Cheyenne River Sioux Tribe, certify that the Tribal Council is composed of fifteen (15) members, of whom 11, constituting a quorum, were present at a meeting, duly and regularly called, noticed, convened and held this 6th day of May, 1992, Regular Session; and that the foregoing resolution was duly adopted at such meeting by an affirmative vote of 9 for, 1 against, 1 not voting (Vice-chairman) and 4 absent.


 Arlene Thompson, Secretary
 Cheyenne River Sioux Tribe



TRIBAL MEMORANDUM

TO: SUPERINTENDENT, Cheyenne River Agency DATE: 1/09/92
 FROM: Arlene Thompson, Tribal Secretary *AT*
 SUBJECT: RESOLUTION NO. 22-92-CR: The Cheyenne River Sioux Tribe is requesting funding to develop a Prairie Dog Control Plan, which includes the reintroduction of the Black-Footed Ferret, in conjunction with water development and pasture development for rotational grazing patterns, that funding for this plan will include reimbursement to land owners for maintaining endangered species habitat through Section Six of the Endangered Species Act, and that the tribal planning staff will work in conjunction with the Bureau of Indian Affairs Land Operations Office and the U.S. Fish and Wildlife Service to develop the Long Range Management Plan.

 Transmitted herewith is one (1) original copy and five (5) copies of Resolution No. 22-92-CR, which was duly adopted by the Cheyenne River Sioux Tribal Council, during its Regular January Session held on January 9, 1992.

cc: Chairman
 Treasurer
 Councilmembers (15)
 District Officers (12)
 Land and Natural Resources
 Fred Dubray, ANA Director
 Orville Mestes, Planning Director
 FJle/2

RESOLUTION NO. 22-92-CR

WHEREAS, the Cheyenne River Sioux Tribe of South Dakota is an unincorporated Tribe of Indians having accepted the provisions of the Act of June 18, 1934 (48 Stat. 984); and

WHEREAS, the Tribe in order to establish its tribal organization, to conserve its tribal property, to develop its common resources, and to promote the general welfare of its people has ordained and established a Constitution and By-laws; and

WHEREAS, the Cheyenne River Sioux Tribe supports the management of reservation lands in a manner that is environmentally sound; and

WHEREAS, the Cheyenne River Sioux Tribe recognizes the Black Tailed Prairie Dog as a major food source for hawks, eagles, coyotes, and other predators that currently migrate and exist on reservation lands; and

WHEREAS, the Black-Footed Ferret is an endangered species protected by the Federal Government under the provisions of the Endangered Species Act and requires the Prairie Dog as it's major food source; and

WHEREAS, the Cheyenne River Sioux Tribe has one of the few Prairie Dog Complexes that are suitable for the survival and recovery of the Black-Footed Ferret in a natural habitat; and

WHEREAS, the Cheyenne River Sioux Tribe desires a management plan to control and retard the growth of the Prairie Dog populations on the reservation; now


THEREFORE BE IT RESOLVED, that the Cheyenne River Sioux Tribe is requesting funding to develop a Prairie Dog Control Plan, which includes the reintroduction of the Black-Footed Ferret, in conjunction with water development and pasture development for rotational grazing patterns; and

BE IT FURTHER RESOLVED, that funding for this plan will include reimbursement to land owners for maintaining endangered species habitat through Section Six of the Endangered Species Act; and

BE IT FURTHER RESOLVED, that the tribal planning staff will work in conjunction with the Bureau of Indian Affairs Land Operations Office and the U.S. Fish and Wildlife Service to develop the Long Range Management Plan.

CERTIFICATION

I, the undersigned, as Secretary of the Cheyenne River Sioux Tribe, certify that the Tribal Council is composed of fifteen (15) members, of whom 14, constituting a quorum, were present at a meeting, duly and regularly called, noticed, convened and held this 9th day of January, 1992, Regular Session; and that the foregoing resolution was duly adopted at such meeting by an affirmative vote of 14 for, 0 against, 0 not voting and 1 absent.


 Arlene Thompson, Secretary
 Cheyenne River Sioux Tribe

APPENDIX 3: PRAIRIE MANAGEMENT PLAN BUDGET

OBJECTIVE 1: Implement and monitor planned range and wildlife enhancement projects involving construction of cross-fencing and water sources to disperse cattle away from impact areas, and construction of fences around dams to increase wildlife habitat. Based on EIS, control prairie dogs in some areas.

	YEAR 1	YEAR 2-5 PER YEAR	TOTAL
IMPROVEMENTS			
Cross-Fencing (683 miles)	\$273,000	\$273,000	\$1,365,000
Fencing for Dams	270,000	270,000	1,350,000
Dams (903)	903,000	903,000	4,515,000
Wells (75)	<u>105,000</u>	<u>105,000</u>	<u>525,000</u>
	1,551,000	1,551,000	7,755,000
PERSONNEL			
Range Technicians (2)	32,016	32,016	160,080
Right-of-Way Specialist (1)	26,797	26,797	133,985
Engineer/Survey Tech (1)	24,500	24,500	122,500
Archaeologist (1)	32,418	32,418	162,090
Fringe (26%)	<u>30,090</u>	<u>30,090</u>	<u>150,450</u>
	145,821	145,821	729,105
EQUIPMENT			
Vehicles (4)	60,000		60,000
Vehicle Fuel/Maintenance	10,800	10,800	54,000
Office/General	<u>7,000</u>	<u>3,000</u>	<u>19,000</u>
	77,800	13,800	133,000

OBJECTIVE 2: For federally endangered, threatened, or candidate species conduct surveys, determine/monitor status, write management plans, and provide compensation to maintain prairie dog towns as critical habitat. Based on EIS, consider reintroducing black-footed ferrets.

PERSONNEL			
Wildlife Biologist (2)	53,594	53,594	267,970
Wildlife Technicians (4)	64,032	64,032	320,160
Fringe (26%)	<u>34,745</u>	<u>34,745</u>	<u>173,725</u>
	152,371	152,371	761,855
EQUIPMENT			
Vehicles (6)	90,000		90,000
Vehicle Fuel/Maintenance	16,200	16,200	81,000
Office/General	<u>23,000</u>	<u>2,000</u>	<u>31,000</u>
	129,200	18,200	202,000
HABITAT SET-ASIDE FUND	160,000	160,000	800,000

OBJECTIVE 3: Prepare and present workshops, seminars, or other educational materials on prairie ecosystems, biodiversity, grazing management, and endangered species to local groups and communities.

PUBLIC EDUCATION	4,000	1,500	10,000
	<hr/>	<hr/>	<hr/>
	\$2,220,192	\$2,042,692	\$10,390,960

APPENDIX 4: PRAIRIE MANAGEMENT PLAN - POSITION DESCRIPTIONS

ENVIRONMENTAL PROTECTION SPECIALIST
GS-11

I. SCOPE OF WORK

This position involves conducting and coordinating an environmental impact analysis in conjunction with a range and wildlife enhancement project on the Cheyenne River Reservation.

II. MAJOR DUTIES

A. Prepare, process and issue an environmental impact statement in compliance with federal trust responsibility on Indian lands and other laws and regulations, such as NEPA, NHPA, ARPA, FWCA, EDS, etc.

B. Conduct scoping meetings, public hearings, environmental review, consultations and other methods of public involvement with Indian and non-Indian people.

C. Involve the Indian people in decision-making in the EIS process.

D. Prepare regular progress and annual reports.

III. RANKING FACTORS

A. Demonstrated ability to prepare an EIS.

B. Knowledge of the requirements and procedures required under the various federal laws (NEPA, NHPA, Fish & Wildlife Coordination Act, the Endangered Species Act), regulations and Executive Orders (No. 11593) pertaining to environmental and cultural resource management.

C. Ability to communicate and translate technical terms clearly, both orally and in writing.

D. Knowledge of retained rights established by Treaty and/or recognized in law, especially numerous environmental laws in relation to trust responsibilities.

E. Knowledge to interpret and understand Indian goals, philosophy and policy relating to the use, development and enhancement of trust natural resources.

APPENDIX 4: PRAIRIE MANAGEMENT PLAN - POSITION DESCRIPTIONS**RANGE CONSERVATIONIST
GS-8****I. SCOPE OF WORK**

This position is designated for Indian Preference in Hiring and involves professional duties in conjunction with a range and wildlife enhancement project on the Cheyenne River Reservation.

II. MAJOR DUTIES

A. Conducts range condition and utilization inventories, and recommends proper stocking rates and management practices.

B. Conducts field investigation to determine compliance with terms of grazing permits.

C. Assists with developing, implementing, and monitoring a major range improvement project.

D. Makes contact with range unit permittees, Indian and non-Indian, concerning various range-related issues.

E. Supervises Technicians, Aides, and Clerks.

F. Assists with A.D.P. supervision and problem-solving.

III. RANKING FACTORS

A. Must have a professional knowledge, educational background and competence in Range Management.

B. Must understand theories, practices and techniques of Range Conservation.

C. Must have ability to discuss and advise on specific and complex range management and conservation practices.

D. Must be knowledgeable in regulations pertaining to grazing permit and farm lease administration.

E. Must have ability to prepare correspondence and reports in connection with resource management.

APPENDIX 4: PRAIRIE MANAGEMENT PLAN - POSITION DESCRIPTIONS

RANGE TECHNICIAN
GS-4

I. SCOPE OF WORK

This position is designated for Indian Preference in Hiring and involves range-related duties in conjunction with a range and wildlife enhancement project on the Cheyenne River Reservation.

II. MAJOR DUTIES

A. Assists Range Conservationist in implementing federal and tribal grazing regulations and codes.

B. Collects, compiles, and records field data regarding rangeland utilization surveys and permit compliance.

C. Makes regular compliance checks, reports violations, and investigates complaints and problems.

D. Delineates on maps, plats and/or aerial photographs, land-ownership and range unit boundaries.

E. Observes and records general rangeland conditions.

F. Assists Range Conservationist with ADP data compilation, modification and application.

III. RANKING FACTORS

A. General knowledge of BIA and Tribal grazing codes.

B. Knowledge of aerial photos and interpretation, topographic maps, legal descriptions, plat books and permit contracts.

C. Basic knowledge of proper range use.

D. Knowledge of land descriptions and land status legends.

E. Ability to read livestock brands.

F. Basic knowledge of ADP system.

APPENDIX 4: PRAIRIE MANAGEMENT PLAN - POSITION DESCRIPTIONS

WILDLIFE BIOLOGIST
GS-9

I. SCOPE OF WORK

This position is designated for Indian Preference in Hiring and involves professional duties in conjunction with Endangered, Threatened, and Candidate Species and Range Management on the Cheyenne River Reservation.

II. MAJOR DUTIES

A. Review Section 4 and 7 documents (e.g., listing packages, recovery plans, biological assessments, formal and informal consultation) for Threatened and Endangered wildlife and plant species.

B. Conduct field evaluations for population and habitat status of candidate and listed species, and their response to a range and wildlife enhancement project.

C. Prepare and implement management plans for listed or candidate species.

D. Participates with other Federal and Tribal resource personnel on an Interdisciplinary Team to prepare an EIS.

E. Supervises 2-4 Wildlife Technicians.

III. RANKING FACTORS

A. Knowledge of wildlife biology, especially threatened, endangered, and candidate species of wildlife and plants.

B. Demonstrated knowledge of the Endangered Species Act, NEPA, and other environmental statutes.

C. Demonstrated skill in data analysis, field techniques, literature search methods, impact assessment, and scientific methodology.

D. Ability to evaluate complex biological issues and prepare appropriate recommendations and management plans with minimal supervision.

E. Demonstrated ability to communicate orally and in writing (both technical and layman styles) with Indian and non-Indian individuals or groups.

APPENDIX 4: PRAIRIE MANAGEMENT PLAN - POSITION DESCRIPTIONS

WILDLIFE TECHNICIAN OR TRAINEE
GS-4

I. SCOPE OF WORK

This position is designated for Indian Preference in Hiring and involves developing professional skills in conjunction with Endangered, Threatened, and Candidate Species and Range Management on the Cheyenne River Reservation.

II. MAJOR DUTIES

A. Works with Wildlife Biologist and other professionals performing technical and basic duties, especially with endangered, threatened, and candidate species.

B. Participates in project planning and implementation.

C. Participates in collecting and compiling basic data on species, population, or habitat data.

D. Prepares field data for computer processing, performs error checks, and assists with data summarization, analysis, and reporting.

III. RANKING FACTORS

A. Knowledge of wildlife biology and associated sciences gained through academic or field experience.

B. Knowledge of biological research programs, including field equipment and techniques.

C. Ability to work long hours, during nights, and in rugged field conditions.

D. Ability to identify wildlife species of the northern Great Plains, and a knowledge of their habits and habitats.

E. Ability to communicate effectively orally or in writing.

F. Ability to work cooperatively with individuals having diverse or conflicting interests.

G. Knowledge of computer operation.

APPENDIX 4: PRAIRIE MANAGEMENT PLAN - POSITION DESCRIPTIONS

ARCHAEOLOGIST
GS-11

I. SCOPE OF WORK

This position is designated for Indian Preference in Hiring and involves professional duties in conjunction with the construction of range and wildlife improvements on the Cheyenne River Reservation.

II. MAJOR DUTIES

A. Performs cultural resource inventories in compliance with tribal and federal regulations.

B. Assists and directs onsite monitoring of surface disturbing activities on historical or archaeologically sensitive areas.

C. Examines and evaluates the significance of cultural resources discovered prior to or during construction and recommends the appropriate mitigation measures to minimize the impacts to the resource.

D. Prepares case study reports for effect determinations on project in accordance with Advisory Council Guidelines.

III. RANKING FACTORS

A. Professional knowledge of theories and field techniques gained through completion of a B.A. Degree in Anthropology, specializing in Archaeology.

B. Knowledge of the environmental and cultural resources of the Northern Plains.

C. Knowledge of the various tribes' policies, ordinances, and cultural attitudes toward their land and environment.

D. Knowledge of federal cultural and environmental laws and regulations in relation to trust responsibilities, such as NEPA, NHPA, etc.

E. Ability to write clearly and concisely for work plans, management reports, and an Environmental Impact Statement.

APPENDIX 4: PRAIRIE MANAGEMENT PLAN - POSITION DESCRIPTIONS

ENGINEERING/SURVEYING TECHNICIAN
GS-8

I. SCOPE OF WORK

This position is designated for Indian Preference in Hiring and involves professional work in the construction of dams and fences in conjunction with a range and wildlife enhancement project on the Cheyenne River Reservation.

II. MAJOR DUTIES

A. Responsible for the feasibility of and surveys for sound conservation structures, including dams, dugouts, wells, and fences.

B. Initiates design specifications, plans and on-site inspection of work progress and completion.

C. Assures that the best equipment and measuring methods are used, corrections applied, and computations made so that accurate data are obtained.

D. Makes personal contacts with property owners/lessees in gaining entrance to lands and in securing their cooperation in conducting surveys on their lands.

E. Works effectively with Indian or non-Indian contractors, government agencies, and Tribal programs.

III. RANKING FACTORS

A. Knowledge of surveying principles including technical skills in the preparation of final surveying reports and maps.

B. Knowledge of the concepts and techniques for proper land surveying.

C. Knowledge of land descriptions, land status legends, and techniques of aerial photo interpretation.

D. Skill in utilizing electronic programmable calculators, computers, and electronic field surveying equipment.

Mr. FALEOMAVAEGA. I want to thank you gentlemen for the testimony that has been brought before the Committee.

I think we seem to have a consistent theme across the board in terms of all those who have testified—and has been alluded earlier by the Chairman's statement—about the lack of cooperation, or even for that matter, assistance that we've received from the Bureau of Indian Affairs.

Maybe I'm being repetitious for raising this question, but to all of you gentlemen, and I think I can ask the members of the panel, in your opinion, how much assistance has the Bureau of Indian Affairs given to your respective organizations in the past in handling this issue of fisheries and wildlife interests from our Native American communities throughout the country.

And I just wanted to ask that in general form.

Mr. Poynter, your comments are well taken in terms of what this Committee needs to do. Certainly better coordination is needed to maximize the participation of our Native American communities, especially because of the long distances that some of you have had to travel to visit us here in Washington.

I'm sure it's also the intent of the Chairman, Mr. Richardson, that rather than you having to come to Washington, maybe there needs to be a reversal of the process. Maybe Washington needs to go to you and to hear directly from the tribal organizations. The members of the Committee would see and experience the realities of what the Native American tribes have had to face, not only for their economic, but certainly for their social needs at present.

Now I think I want to assure Mr. Poynter that the Chairman will definitely take that into consideration, and it will certainly be my personal recommendation that we consider this.

I just wanted to ask that first question to all of you. In your opinion, on a scale of one to ten, what is your opinion of the Bureau of Indian Affairs giving assistance or lack of assistance to your respective organizations?

I'd like to ask Mr. Maulson first.

Mr. MAULSON. Mr. Chairman, like I say, it's a great distance that we've traveled, and it's always good to bring your staff along. As you know, yourself, a chair person and a very busy person, that I like to have my technical director of our Natural Resource Department answer that on behalf of Lac Du Flambeau.

Larry Wawronowicz, please, if you would.

Mr. FALEOMAVAEGA. Please do so.

Mr. WAWRONOWICZ. Thank you, Mr. Chairman.

I appreciate this opportunity.

I guess in terms of the Bureau of Indian Affairs, or any federal agency which the tribe deals with in terms of trying to manage the resources within the reservation boundaries or on off-reservation, there always seems to be an inconsistency on how these departments deal with Indian tribes.

And in our testimony, we specifically state that there has to be somewhat of a consistency in which these organizations or federal agencies deal with Indian tribes by possibly coming up with a clearly defined statement of trust responsibility through legislation.

The Bureau of Indian Affairs, it seems in the past that we always have to come back to Congress during the Appropriations pe-

ried to try to reenact dollars that were added by Congress to the programs, like Tribal Management Development Funds, fish hatchery operations, cyclical maintenance rehabilitation.

Basically what happens here is that the tribes will come to Congress during appropriation period and ask for these appropriations. And what will happen the next go around is that the Administration will take them out, and the tribes will have to be here again to ask for the same dollars.

So basically, we always take two steps forward and one step back word every appropriations period.

Last year, for example, Congress specifically said within their appropriations language, that Fiscal Year 1993 add-ons would be or should be, and directing the Bureau of Indian Affairs to put it on the base.

You know, through the transition, the Bush Administration basically went ahead and wiped it all out. So we don't really know where we stand right now. But hopefully, we're not going to have to do that with the Clinton Administration.

It's the inconsistent funding that really gives us the problems in terms of planning. We have 25 people that work for our Natural Resource Department that are doing very good jobs in trying to protect, conserve and enhance the resource, but as program managers, it's very difficult to plan for future development and for resource protection because of the inconsistent funding problem.

It's a major concern.

So I guess, in summary, I believe that, if Congress decides to put legislation forward, we do need a consistent and concise definition of how the trust responsibility pertains to natural resources in order for all the federal agencies the tribes deal with to have an idea how to deal with Indian tribes.

I firmly believe that inconsistent funding is very much of a problem for planning purposes.

Mr. FALEOMAVAEGA. I just want to ask the question again, and please forgive me if I'm going to terrorize your name, as usually the members have terrorized my name.

Mr. Wawronowicz, can you give me, by a scale of ten, one to ten, the one being the best and ten being the worst, your experience with the BIA. In your honest opinion, how do you rate the BIA in its working activities with your organization in the past, as you've started.

Can you give me just a sense of your best opinion?

Mr. WAWRONOWICZ. One being best and ten being worst?

Mr. FALEOMAVAEGA. One being the best and ten the worst.

Mr. WAWRONOWICZ. Six.

Mr. FALEOMAVAEGA. Six. All right.

Mr. Maulson?

Mr. MAULSON. Yes. That was a technical question to my director.

But as a tribal chairman, I think regarding the obligation and the responsibility of the federal government to the Indian people across this country that we've just scratched the surface on these issues. So to ask me, as a tribal chairman, from one to ten, I probably couldn't give you that number because it's so high.

So I would say we need a lot of work on that, Mr. Chairman.

Mr. FALCOMAVAEGA. I'm not intending to make the BIA the whipping boy of our hearing this morning, but consistently it seems that this has always been the constant theme in the years that I've served on hearings dealing with Native American issues.

I understand that they've made, the past four years, a very diligent effort to reorganize the BIA. I don't know where we are with that.

And adding more complications to the process is the fact that we have a new Administration, and we have new players. Let's keep our fingers crossed that hopefully, with the new Administration, we will get a better set of policies at least more consistently as compared, perhaps, to what we've had to deal with in the past.

Mr. Schlender?

Mr. SCHLENDER. Yes. I'd like to point out to yourself and to the Committee that I don't blame the Bureau of Indian Affairs for some of the concerns that have been raised here.

The fact that our funding comes in at 39 percent less than what we put it in for, I put the blame for that on the President and on the Office of Management and Budget.

It's been our experience that the Bureau of Indian Affairs is the one that has the best understanding of what the trust responsibility is, particularly in comparison to the many other agencies that we have to deal with in the federal government.

For example, we deal with hydro relicensing projects in the states of Michigan, Minnesota and Wisconsin. And the Federal Energy Regulatory Commission has consistently obviated the tribe's ability to put conditions on the relicensing projects that are going forward.

And so they have no understanding of what the trust responsibility is to Indian tribes.

The National Park Service has taken it upon itself to give its own interpretation as to what treaty rights is.

In the area of Isle Royal, we have endeavored to try to have a dialogue with them regarding fishing around Isle Royal, commercial fishing, something that tribal members do in Lake Superior. And the National Park Service has said that they don't recognize the treaty rights.

The tribes in our state have chosen not to sue the Federal Government, but instead have chosen to sue the states. But if the National Park Service is going to reflect the opinion of the Federal Government, then certainly a suit like that would have to go forward.

The Bureau of Indian Affairs has been very good in terms of providing litigation support to tribes in the midwest. We have risen up to the top of their list in terms of getting litigation support. And that's been very helpful to the tribes in its fight against the states that do not recognize the treaty rights of the tribes.

The Department of Labor has sued our organization, and it clearly is against the weight of case law and opinion that says that interference with the infrastructure, the intramural rights of tribes to be self-governing strictly in the area of treaty rights, the Department of Labor has chosen to ignore that.

It's cost us more than \$40,000 to get a win in the trial court level, and we're facing an appeal with the Department of Labor

right now. And so they have no understanding of the federal trust responsibility.

The U.S. Forest Service has an uneven and inconsistent way of dealing with us.

In one National Forest, the local forest manager there has taken it upon himself to enter into agreements with individual tribes for the gathering rights.

The Ottawa National Forest manager has taken a different view on it and has said that for the neighboring tribe that's closest, he recognizes no rights for gathering in there.

The U.S. Forest Service has taken it upon itself to say in the boundary waters canoe area that treaty rights don't apply. And it's our reading of that legislation that the treaty rights were not abrogated by the boundary waters canoe area legislation.

We have a pretty good relationship with the U.S. Fish and Wildlife Service, and they seem to have a better understanding of what the trust responsibility is. But when we do fishing in the spring, where we go out and count fish to make sure there are viable fish populations that the tribes can spear, we have to pay the U.S. Fish and Wildlife Service for their activities.

Admittedly, we don't pay them the full value of what they give to us, but it seems to me rather inconsistent that our trustee has to secure and exact payment from the people that it owes a trust responsibility to.

In the area of environmental protection, the EPA has come up with an Indian policy, but it's been very ineffective in the way that it deals with Indian tribes.

Finally, and I don't like to sound as though I'm defending the Bureau of Indian Affairs, the Bureau of Indian Affairs has too been inconsistent and uneven in the way that it deals with Indian tribes, particularly with organizations like ours that are inter-tribal organizations.

In the past, it has taken the opportunity to say that it owes a collective trust responsibility to the tribes, and we've been very successful in going forward and being very effective and very successful in self-management, self-regulatory capabilities under the aegis of a collective trust doctrine.

That collective trust doctrine has been overturned or put on its head with the idea of self-governance. Where the Bureau sees that its trust responsibility is to individual tribes. And so we've had tribes that have taken money out of the Commission, taken their 1/13th share and gone home with it.

Luckily, those tribes have turned around and subcontracted back to us, because we do have an economy of scale there.

And so we need to really solidify what kind of trust responsibility that the Bureau owes to organizations like ours that are inter-tribal organizations.

Mr. FALEOMAVAEGA. Well, you still didn't give me a number one to ten opinion of this issue that I've raised earlier.

Mr. SCHLENDER. I wouldn't want to give them a grade, because I'm sure I would see that some place in testimony in the future, saying how good they were.

But of the organizations that I mentioned, the other federal organizations, the Bureau of Indian Affairs has the best understanding

of what its trust responsibility is, compared to these other organizations that either ignore or just blatantly deny that there's any trust responsibility at all.

Mr. FALEOMAVEGA. Well, you've certainly added a new perspective, also. I shouldn't say new, but that has been a constant theme that you've got the problems of the rights of the tribes, and you have the problem of the rights of the states. And then a whole host of rights of the different federal agencies fighting among themselves as to who's got the right theme or the right policy affecting the needs of Native Americans.

I'm hopeful that, perhaps with the new Administration, there will be a sense of consistency by way of policy affecting the needs of Native Americans throughout the various agencies dealing with environmental issues, dealing with the rights, the hunting and the fishing and the wildlife, just as we've discussed this morning.

So I appreciate your comment on that.

Mr. Poynter?

Mr. POYNTER. Five.

In all fairness to the Bureau, I feel the Bureau is trying to do the best they can.

I think maybe they could advocate for more funding for fish and wildlife management on behalf of tribes.

I echo what Mr. Schlender says about they have probably the best understanding of trust responsibility.

And, like Mr. Schlender, I feel that the other federal agencies need to come up to speed with the Bureau's understanding of trust responsibilities.

There's inconsistencies in all the federal agencies. Talking to tribal wildlife managers and planners across the country, tribal members are looking forward to the potential of working with the U.S. Fish and Wildlife Service in the near future, since they're in the process of developing their Native American policy.

The people I've talked to feel that the Service are the experts in fish and wildlife management, and probably the time is right to begin working with them directly in co-management areas.

I would personally like to see the different federal agencies work more cooperatively and collectively together.

You go to one agency, and although they have an Indian policy, they have no money behind it; specifically, the EPA, you know.

And there's a lot of areas where they could be working together, you know, if they could all chip in here and there, they could get things done, whereas just putting it on a shelf and saying, well, we don't have adequate funding at this time, maybe in the future.

But I feel that the time is right. Things have changed in the last year. I don't know what happened, but all of a sudden fish and wildlife issues are a high priority here in Washington with tribes, or at least Congress is looking at it that way.

In my book, they've always been a priority, but because of the IPS (Indian Priority System) that was in place at one time, those concerns for fish and wildlife management weren't considered priorities, because when the tribal chairman had to choose between a health center for his people and a fish hatchery, there was no comparison.

But now tribes are able to show that natural resources, specifically fish and wildlife, are high priorities in Indian country, and hopefully the funding will follow.

Mr. FALEOMAVAEGA. Thank you, Mr. Poynter.

Mr. DuBray.

Mr. DUBRAY. Yes. As far as a rating from one to ten, that's very difficult to put a number on there, especially in light of the difficulty that the federal agencies, as well as the Congress, have in defining just what trust responsibility is and who is responsible for it.

So I guess to answer your question though, right now, because of our situation, I would have to give them a ten. Because here we are on our way to the Supreme Court against the State of South Dakota threatening to undermine our very sovereign jurisdiction.

And so in light of what these gentlemen say, I agree that it maybe is not necessarily the BIA's fault, but it is a federal trust responsibility that has been neglected.

And so I know the Bureau tries as hard as they can to do the best they can with the limited funding they have, but some of the responsibility has to be shared by the whole Federal Government.

And I think that all of the federal agencies need to recognize tribes as visible and full participants in the fish and wildlife resource management.

The BIA, on the other hand, can't make that decision. They can't say that tribes can receive equal funding or equal status to a state, for instance. That has to come from here, from the Congress.

And so I can't say that I put all the blame on the Bureau, and that's why I give them that kind of rating. But those are the kinds of things that need to happen.

And from a Cheyenne River Sioux Tribal perspective, we feel that legislation is absolutely necessary that recognizes tribes as full participants and equal managers, as states are.

Without that kind of legislation, when everybody comes to the table to participate and receive a piece of the funding, tribes are neglected.

One of the federal agencies goes, they get the money, they build up their capability to manage our resources.

What we're suggesting is that we need that money directly out to our tribe and out to our reservations so we can build up our capability, not the Bureau's capability, not the Fish and Wildlife Service, not any other federal agency. We need to build our capability.

Because our projects, we live on the land, these resources are very important to us, and we know them best how to manage them. And that has to be recognized by everyone involved.

Thank you.

Mr. FALEOMAVAEGA. I'm reminded of a statement made by Mr. John Wesley about the missionaries who are here to convert the Indians, and then he said, but who will convert me.

And I want to raise again a measuring stick. Please don't feel that maybe I'm being simplistic, but I'm not specifically asking for a scientific method to say exactly where we are, as it was alluded to earlier by our friend from the Navajo Nation, because every tribe

has a different setting, a different history, and a different relationship with the federal government, as well as with the states.

So understanding that diversity problems existing even among the tribes themselves, I think we also need to have you gentlemen express an opinion about the Congress.

So using the same measuring stick, Mr. Maulson, one to ten, how do you think Congress has been behaving in dealing with Indian issues?

Just the numbers.

Mr. MAULSON. Very bad, number ten.

Mr. FALEOMAVAEGA. Ten.

Mr. Schlender?

Mr. SCHLENDER. I think that the Congress—

Mr. FALEOMAVAEGA. Please, no explanation. Just give me the number.

Mr. SCHLENDER. One is good and ten is bad?

Mr. FALEOMAVAEGA. Ten is the worst.

Mr. SCHLENDER. Ten is the worst.

Three.

Mr. FALEOMAVAEGA. Three. You're being very generous.

Mr. Poynter?

Mr. POYNTER. Eight.

Mr. FALEOMAVAEGA. Eight.

Mr. DuBray?

Mr. DUBRAY. I'm going to have to go ten again.

Mr. FALEOMAVAEGA. Gentlemen, thank you very much.

This message will certainly be conveyed to the Chairman.

Thank you very much for your testimony.

For our next panel, we have the Honorable Nelson Wallulatum, the Chief of the Wasco Tribe and the Tribal Council Member of the Confederated Tribes of Warm Springs, Oregon.

Also Mr. Billy Frank, Chairman of the Northwest Indian Fisheries Commission, Olympia, Washington, accompanied by Mr. James Anderson, the Director.

And also Mr. Jim Harp, the Fisheries Manager of the Quinault Nation, in Taholah, Washington.

Mr. FALEOMAVAEGA. I want to apologize to Mr. Wallulatum if I mispronounced his name, but don't feel bad. It's just as bad for trying to pronounce Faleomavaega, so welcome to the club.

But we would like to give you this opportunity now to please present your statement before the Committee.

Thank you.

PANEL CONSISTING OF HON. NELSON WALLULATUM, CHIEF, WASCO TRIBE, AND MEMBER, TRIBAL COUNCIL, THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION, OR, ACCOMPANIED BY HOWARD ARNETT, ESQ., TRIBAL ATTORNEY; BILLY FRANK, CHAIRMAN, NORTHWEST INDIAN FISHERIES COMMISSION, OLYMPIA, WA, ACCOMPANIED BY JAMES R. ANDERSON, DIRECTOR; AND JIM HARP, FISHERIES MANAGER AND ELECTED REPRESENTATIVE, QUINAULT INDIAN NATION, TAHOLAH, WA

STATEMENT OF HON. NELSON WALLULATUM

Mr. WALLULATUM. Good morning, Mr. Chairman and the members of the Committee.

My name is Nelson Wallulatum, and I am Chief of the Wasco Tribe and a lifetime member of the Tribal Council of The Confederated Tribes of the Warm Springs Reservation of Oregon.

Accompanying me is our tribal attorney, Mr. Howard Arnett.

I am here today to testify on behalf of the Warm Springs Tribal Council concerning the proposal to enact national Indian fish and wildlife legislation.

In our views, there are several things that national Indian fish and wildlife legislation should do, and several things it should not do.

Let me first tell you what the legislation should not do.

The legislation should not try to define or interpret treaty-reserved fishing and hunting rights. The circumstances of each tribe and each treaty are unique.

Few legal principles can be applied across the board to all tribes and all Indian treaties.

Broad legislative characterizations about the nature of all Indian treaty rights are very likely to misconstrue some treaty rights.

The danger of misinterpretation is especially great for tribes such as Warm Springs whose treaty fishing and hunting rights have been carefully defined by numerous federal court decisions over the years.

In our view, it would be a mistake to try to codify these court rulings in national Indian fish and wildlife legislation.

Now let me discuss what the legislation should do.

First and foremost, the legislation should assist the tribes in exercising their fish and wildlife management authority.

Current federal assistance to tribal governments to carry out this most important function of their sovereign authority is inadequate. This inadequacy is so great that it brings into question whether the United States Government is fulfilling its solemn trust responsibility to protect Indian rights and resources.

The circumstances of the Warm Springs Confederated Tribes illustrates the problem.

Our tribe faces a huge and complex task in trying to protect our off-reservation treaty rights, as well as manage our on-reservation fish and wildlife resources.

The 640,000 acres of the Warm Springs Reservation is almost entirely tribal trust land and contains priceless habitat for deer, elk, eagles, salmon, and numerous other fish and wildlife species.

Managing just the fish and wildlife resources located on our reservation is an overwhelming task. However, in addition to our on-reservation resources, our forefathers reserved off-reservation fishing, hunting, and food-gathering rights in our 1855 treaty with the United States that gives us a legally-protected interest in fish and wildlife resources located many miles from the reservation.

Because of our tribe's treaty fishing rights on the Columbia River, we have become involved in numerous proceedings concerning the Columbia River basin's salmon runs.

These proceedings range from the International Pacific Salmon Commission negotiations to limit the Canadian catch of Columbia River salmon, to efforts under the Endangered Species Act to protect certain upper Columbia River salmon stocks, to self-regulation of tribal fisheries under the United States versus Oregon Columbia River Fish Management Plan.

Furthermore, our tribe works very hard to protect our off-reservation hunting, fishing and food gathering rights in the ten million acres of north central Oregon that represent our tribe's treaty ceded area. Much of the ceded area is federal land managed by the United States Forest Service and the Bureau of Land Management.

We constantly monitor the activities of these agencies to ensure protection of the habitat that supports our treaty hunting, fishing and food gathering rights in the ceded area.

All of these efforts, both on-reservation and off-reservation, have taxed our staff and policy capabilities beyond our present means. In short, our legal management authority in the area of on-reservation and off-reservation fish and wildlife resources exceeds our ability to actually exercise that authority.

We do not need more funding for Bureau of Indian Affairs staff. Instead, we need direct federal assistance to the tribe, to help us carry out our fish and wildlife management responsibilities.

The federal government's trust duty to protect and preserve the fish and wildlife resources on which Indian treaty rights and sovereign authority depend is not fulfilled until this assistance is provided.

The trust responsibility also requires more than financial assistance to tribal governments. The trust responsibility is a binding legal obligation of those federal agencies, such as the Forest Service, the Bureau of Land Management, the National Marine Fisheries Service, the Fish and Wildlife Service, and those who manage the fish and wildlife resources on which the tribe's treaty-reserved rights and sovereign authority depend.

This legislation should lay out in clear terms the obligations these agencies have to protect, manage, and enhance the fish and wildlife resources that are subject to legally protected Indian rights.

Finally, the legislation should establish the fundamental nature of the government-to-government relationship between the tribes, on the one hand, and the federal and state governments on the other.

A commitment to support tribal participation in all fish and wildlife management activities where tribal legally protected interests are involved would help establish the status of the tribes as co-

managers of the fish and wildlife resources along with the federal and state agencies.

In conclusion, the Warm Springs Tribal Council hopes that you will consider these general observations in drafting national Indian fish and wildlife legislation.

We welcome the opportunity to work with you and your staff in developing this legislation. Thank you.

[Prepared statements of Mr. Wallulatum follow:]

TESTIMONY
OF
THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON
CONCERNING
NATIONAL INDIAN FISH AND WILDLIFE LEGISLATION
United States House of Representatives Committee on Natural Resources,
Subcommittee on Native American Affairs
Washington, D. C.

February 18, 1993

Good morning, Congressman Richardson and members of the Committee. My name is Nelson Wallulatum, and I am Chief of the Wasco Tribe and a lifetime member of the Tribal Council of The Confederated Tribes of the Warm Springs Reservation of Oregon. I am here today to testify on behalf of the Warm Springs Tribal Council concerning the proposal to enact national Indian fish and wildlife legislation. In our view, there are several things that national Indian fish and wildlife legislation should do, and several things it should not do. First, let me tell you what the legislation should not do.

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The danger of misinterpretation is especially great for a tribe such as Warm Springs whose treaty fishing and hunting rights have been carefully defined by numerous federal court decisions over the years. In our view, it would be a mistake to try to codify these court rulings in national Indian fish and wildlife legislation.

Now, let me discuss what the legislation should do. First and foremost, the legislation should assist the tribes in exercising their fish and wildlife management authority. Current federal assistance to tribal governments to carry out this most important function of their sovereign authority is inadequate. This inadequacy is so great that it brings into question whether the United States Government is fulfilling its solemn trust responsibility to protect Indian rights and resources.

The circumstances of the Warm Springs Confederated Tribes illustrate the problem. Our tribe faces a huge and complex task in trying to protect our off-reservation treaty rights as well as manage our on-reservation fish and wildlife resources. The 640,000 acres of the Warm Springs Reservation is almost entirely tribal trust land and contains priceless habitat for deer, elk, eagles, salmon, and numerous other fish and wildlife species. Managing just the fish and wildlife resources located on our reservation is an overwhelming task. However, in addition to our on-reservation resources, our forefathers reserved off-reservation fishing, hunting and food gathering rights in our 1855 treaty with the

United States that give us a legally-protected interest in fish and wildlife resources located many miles from the reservation.

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We do not need more funding for Bureau of Indian Affairs staff. Instead, we need direct federal assistance to the tribe to help us carry out our fish and wildlife management responsibilities. The federal government's trust duty to protect and preserve the fish and wildlife resources on which Indian treaty rights and sovereign authority depend is not fulfilled until this assistance is provided.

The trust responsibility also requires more than financial assistance to tribal governments. The trust responsibility is a binding legal obligation on those federal agencies, such as the Forest Service, the Bureau of Land Management, the National Marine Fisheries Service, the Fish and Wildlife Service, and others, who manage the fish and wildlife resources on which the tribe's treaty-reserved rights and sovereign authority depend. This legislation should lay out in clear terms the obligations these agencies have to protect, manage and enhance the fish and wildlife resources that are subject to legally protected Indian rights.

Finally, the legislation should establish the fundamental nature of the government-to-government relationship between the tribes, on the one hand, and the federal and state governments on the other. A commitment to support tribal participation in all fish and wildlife management activities where tribal legally protected interests are involved would help establish the status of tribes

as co-managers of the fish and wildlife resources along with the federal and state agencies.

In conclusion, the Warm Springs Tribal Council hopes that you will consider these general observations in drafting national Indian fish and wildlife legislation. We welcome the opportunity to work with you and your staff in developing this legislation.

Thank you.

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**SUPPLEMENTARY TESTIMONY OF THE
CONFEDERATED TRIBES OF THE
WARM SPRINGS RESERVATION OF OREGON
CONCERNING NATIONAL INDIAN FISH AND WILDLIFE LEGISLATION**

**UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS**

This statement supplements the testimony of the Confederated Tribes of the Warm Springs Reservation of Oregon concerning Indian fish and wildlife management and enhancement legislation delivered at the Committee's February 18, 1993 oversight hearing.

Our supplementary testimony is in response to statements made by several witnesses at the February 18 oversight hearing concerning the need to amend Section 6 of the Endangered Species Act to permit tribal governments to receive direct federal funding for fish and wildlife management activities. According to these tribal witnesses, only states can now receive federal funds to conduct inventories and develop management plans for endangered species under Section 6 of the Endangered Species Act. The Warm Springs Confederated Tribes believes that amendment of any provisions of the Endangered Species Act to include Indian tribes is unnecessary and could potentially undermine tribal treaty rights.

Amendment of the Endangered Species Act is not necessary to address what is essentially a funding problem. This issue can be dealt with by other means. If tribes have inadequate funding to conduct resource management work they feel is necessary under the Endangered Species Act, the Bureau of Indian Affairs should provide these tribes with additional discretionary funding that could be used for a variety of purposes, including work on Endangered Species Act issues. The money would not necessarily be earmarked for Endangered Species Act purposes, but could be used for any appropriate fish and wildlife management activities. The Endangered Species Act does not need to be amended to get this funding to tribal governments.

Of far greater concern to us is the possibility that any amendment to the Endangered Species Act that mentions tribal governments may have the effect of applying the Act to tribes in a way that abrogates or restricts their treaty rights. Presently, the Endangered Species Act and its legislative history are silent with respect to the Act's application to tribes and its impact on Indian treaty rights. Under United States v. Dion, 476 U.S. 734, (1986), Congress cannot abrogate or restrict Indian treaty rights in a statute of general application such as the Endangered Species Act without clearly indicating in the language of the statute or in its

legislative history that "Congress actually considered the conflict between its intended action on the one hand and Indian treaty rights on the other, and chose to resolve that conflict by abrogating the treaty." *Id.* at 740. Presently, no such language exists in either the statute or the legislative history of the Endangered Species Act. By amending Section 6 of the Act to include tribes as governments eligible for funding under the Act, a court may be misled that this represents a statement of Congressional intent that the Act should be applied to tribes even if the effect is to abrogate or restrict treaty rights. This should not be allowed to happen.

Accordingly, we urge the Committee to draft Indian fish and wildlife legislation that provides adequate financial assistance to all tribes for fish and wildlife management, and provides those tribes that feel the need to undertake certain activities because of the Endangered Species Act with adequate resources for that purpose. However, legislation should not mention the Endangered Species Act nor attempt to amend the Endangered Species Act to include tribes within its coverage. Such an amendment must be avoided because it could very well work to abrogate the treaty-reserved rights of Warm Springs and many other tribes.

Mr. FALEOMAVAEGA. Thank you very much.
Mr. Frank?

STATEMENT OF BILLY FRANK

Mr. FRANK. Thank you, Mr. Chairman.

I'm Billy Frank, Chairman of the Northwest Indian Fish Commission.

I belong to the Nisqually [phonetic] Tribe. And this is my friend, Nelson, plus the other panels here.

And a second everyone of the panels, what they've said, natural resource people, tribal people.

And with me today I have Jim Anderson, our Executive Director of Northwest Indian Fish Commission, along with Jim Harp, a Quinault Tribal Nation member and the manager of their fishery in the northwest and along the Pacific Coast, and one of our commissioners of the Northwest Indian Fish Commission.

We manage the Pacific salmon, the fish in northwest, as I think you know about. And because as from that great Samoa country, you have a lot of, we have a lot of ties together.

Mr. FALEOMAVAEGA. Yes. I have many members of my tribe in the State of Washington. I hope you look for them.

Mr. FRANK. Right. And we have a lot of relatives.

Mr. FALEOMAVAEGA. It'll get a little cold up there, but—I appreciate it. [Laughter.]

Mr. FRANK. But I enjoy a lot of your questions about how important this Committee and the chairmanship of this Committee is and how it's getting better and better.

Your question about Congress, about one to ten. We're educating now. You're seeing us in the halls of Congress. You see Steve right there. You see our other tribal people and other people of color in our Congress.

That's great, because we've been left out of the plan, the Indian tribes throughout this nation.

And when it comes to the Bureau of Indian Affairs and that question, you know, I asked the tribes, can they afford that bureaucracy any more and your management.

What they ought to be doing is getting the money to us. We want the money to manage in our homeland and in our own backyard because we are the managers. And we're good managers, positive managers, working with the states, working with the counties, working with the cities and the communities to bring our resources together to balance it out there for everybody, not just the Indian tribes.

So we're dealing in long-range management in the Northwest. And I have some fish here I want to give to you right now.

Mr. FALEOMAVAEGA. I will accept it gratefully. Is it raw?

Well, I'll be sure the Chairman gets some of it.

Mr. FRANK. We'll have a big ceremony one of these days, right Tom?

Mr. FALEOMAVAEGA. Well, I'll be sure to bring my tribe also, and we'll have a big pow wow. You're going to have to furnish us some blankets, though, because it gets a little cold up there.

Mr. FRANK. We have them too.

Mr. FALEOMAVAEGA. I want to also extend an invitation to all of you to come to our humble islands in the South Pacific. Now the only problem is that I can't pay for your tickets, but you have an open invitation to come and visit us down there too.

We might share a few things in common.

Mr. FRANK. Okay.

We have villages in the northwest that are over 10,000 years old, and we've been managing the resource for many many thousands of years, like your people.

And our treaties of 1854 and 1855, have been signed, ratified, and been interpreted by the United States Supreme Court in 1979, on our fishing rights, and a lot of principles come out of that as co-managers, along with the State of Washington.

And very, very important principles were laid out in that decision.

And we have to come to Congress to get our money. We don't come with the Bureau of Indian Affairs and sit here and ask for our money. We come and ask for money.

We also try to get money over there. But it does not fit our needs of funding.

We need money to manage. We need infrastructure. We need capability of sitting down with the State of Washington.

They get federal money. How come we don't get federal money? Money for to meet our needs in our homelands to manage our resource. And make sure that that resource is going to be there for everybody from now on, the quality of life that we enjoy on our reservations and off of our reservations.

We have a lot of problems from the society now that has moved here, and dumped garbage, poisons, poison in our water, poison in our animals, poison in our salmon.

We have to start the healing in this country now. And the Indian tribes are the only ones that can do that, the only ones that can do that.

The State of Washington for over a hundred years has been managing that resource, mismanaging it. And we come to that management in 1974. The Judge heard the Indian speak, made a decision confirmed by the United States Supreme Court in *U.S. vs. Washington*, made us co-managers in the Northwest, very unique.

But the management has to be continually throughout the whole nation. And it has to be recognized by the United States Congress through legislation of government to government, of self-governance, of funding.

It should be written very simple and very easy to coordinate with the United States. Senate and House legislation is needed in fish and wildlife management, so we don't have to run here every time we turn around to tell you we need more money.

In the international treaty in the northwest, the salmon treaty, our salmon leave our homeland and travel clean over to Japan and in Russia. All those waters out there, jurisdiction after jurisdiction, clean up in the cold water in Alaska. All over there.

And then our salmon comes home when it's adult, after seven years. And it comes back to our homeland, right to our rivers, right to our watersheds.

And our watersheds have to have a home for that salmon. And that's been our problem.

The timber's all cut down, the mismanagement continued to happen.

We've been managers now for 19 years since the *Bolt* decision. Nineteen years the Indian people have been managing our resource, and that's the salmon up there.

And the phase two part of that decision was the habitat. We're trying to get everybody together in timber, fish and wildlife initiatives, water initiatives, work together to protect our resource.

The Indian people, in 1974, there was no salmon. A minimum amount of salmon to manage. We have never gotten above that minimum yet. We're working toward a historical level of management somewhere in the future of a rebuild of all these stocks, but we're still way down here.

And so we have many our needs. And we come to Congress and tell that story.

I want to turn it over to Jim Anderson and Jim Harp. Jim has some reports that we've already made to the United States Congress and some reports that are very important that you understand who we are, and how we do our business.

Thank you.

[Prepared statement of Mr. Frank follows.]



Northwest Indian Fisheries Commission

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**TESTIMONY
OF THE
NORTHWEST INDIAN FISHERIES COMMISSION
BEFORE THE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
OF THE
HOUSE NATURAL RESOURCES COMMITTEE
ON INDIAN FISH AND WILDLIFE MANAGEMENT
WASHINGTON, DC, FEBRUARY 18, 1993**

INTRODUCTION

The Northwest Indian Fisheries Commission, and the member tribes we represent, are pleased to be appear before the Subcommittee to provide you with a briefing about fish and wildlife management issues of concern to the treaty Indian tribes in western Washington.

We appreciate and support the Subcommittee's efforts to better understand the full range of Indian fish and wildlife management. We also support, in concept, the development of legislation which would more fully embrace tribal fish and wildlife management on a governmental basis. Through such efforts will come clarification of our natural resource related rights and responsibilities, as well as a better, more complete understanding of tribal management efforts by the citizens of the United States.

As you know, the tribes have endured a long history of being misunderstood by non-Indian residents of this continent. Unfortunately, it seems at times that there has been little progress in this regard. But part of our message is that there has been progress in the Pacific Northwest. I also want you to know that with your continued support for our management efforts and programs we will continue this progress and show what a fine investment our efforts yield.

We do not ask for much. Just that which is already ours. Just those rights which we have always retained. Just recognition of the sovereign status which has been formally recognized, but frequently ignored by this country since its inception.

HISTORY OF TRIBAL NATURAL RESOURCE MANAGEMENT IN THE PACIFIC NORTHWEST

Just as the Constitution formed by the United States in the late 1700's derived much of its roots from Indian tradition, so today do we continue to contribute to the good of this country. Nowhere is this more the case than in the Pacific Northwest, where the tribes have joined efforts with the state, as well as the federal government, to cooperate in managing natural resources upon which we all depend.

Cultural perspectives of the Indian tribes are unique

You have no doubt heard many things about the natural resources of the Pacific Northwest lately. You have heard of controversy between environmentalists and the timber industry, as well as between fishermen and the power companies, irrigators and many others.

As you continue to hear these cries, we ask you to remember the Indian. The tribes have lived along all the rivers and waterways of the Pacific Northwest for thousands of years. Through the millenniums, we have shaped our existence around the fish, the trees and all other natural resources provided to sustain us. The meat kept us healthy, as did the spiritual and cultural strength we derived from these resources. Our tribal customs and ceremonies have always reflected harmony with nature, kinship with her elements and deeply felt gratitude for the gifts provided by Mother Earth.

Throughout history, tribes practiced fisheries management

Fisheries management is not a new thing to the tribes. We have managed fish from time immemorial. We have practiced conservation through the management of fishing efforts, as well as total utilization of harvested resources. We have provided for escapement of fish to the spawning grounds, and even used certain enhancement techniques long before non-Indians ever set foot on this land.

When non-Indians did come, they learned how to survive from the tribes. But it wasn't long before they were claiming resources and lands for their own purposes, at the expense of the Indian people. Not long after that, the white society set about making treaties with the tribes, and herding tribal members onto small remnants of Indian land.

Treaties signed but promises broken

Approximately 800 treaties were signed with the tribes in the 48 states. With each we gave up more and more land and more and more resources. But each also represented retention of certain lands, and retention of resource harvest rights for as long as the grasses would grow and the rivers would run. With each also came a

constitutional guarantee of sovereign status and a trust relationship with the United States government. Much of the land that was left to us was considered useless by the non-Indians. And, as far as its ability to sustain us, the non-Indians were often correct. At the time of Columbus' voyages, more than 14 million people lived in the 48-state area. By the early 1800's, less than a half million Indian people still existed.

Our culture and way of life was shattered

Of the 800 treaties established between the U.S. and the tribes, 370 were ratified by the U.S. Senate. Tribes whose treaties were not ratified did not receive their lands back. They were not permitted easy access to fish and game. They were, in fact, left to die. Others, like our member tribes, who signed treaties during 1854-55, also felt the cold hand of oppression. Our cultural ceremonies were banned. Our children were taken from us and placed in government schools and forbidden to speak the native language. Our young were introduced to a multitude of diseases and corrupt bureaucracy. In little more than a century, the proud, culturally rich indigenous people of this continent were interjected into our own "Dark Age".

Tribal self-determination to reclaim treaty protected rights

Nevertheless, we survived! We never forgot our heritage. From one generation to the next, our descendants somehow taught us what they had been taught. In my case, my father taught me to fish and to survive on the river. He taught me appreciation for nature, and he taught me the value of family. He died in 1984, at the age of 103. And now it is my turn to teach my sons, and to do what I can to leave them a better world to live in.

In the 1960's and 70's, we Indians began to assert ourselves. We began to stand up for guaranteed rights that had long been denied us. First through demonstration, then through litigation, we fought for our rights, and we won.

LEGAL BACKGROUND OF TRIBAL NATURAL RESOURCE MANAGEMENT IN THE PACIFIC NORTHWEST

As mentioned earlier, in the 1850's, the United States entered into treaties with the Indian tribes located in Washington Territory as part of the settlement of the West. In those treaties, negotiated with Territorial Governor Isaac Stevens, the Indians traded their interest in land of the territory for the exclusive use of lands within reservations, the right of continued fishing and hunting, and other guarantees.

Tribes traded interest in territory for reservations and natural resource rights

Provisions of the Stevens Treaties guaranteeing the tribes reserved rights to fish and wildlife were soon forgotten. State government and laws evolved to the point

that non-Indian settlers were allowed to monopolize the resources to the extent of almost total exclusion of the Indians. Federal and state institutions also allowed the urbanization and intensive development of the area, the rapid development of dams for electric power, unbridled logging and irrigation, and pollution of the watersheds, which reduced the quality and amount of accessible spawning grounds and rearing habitat for the treaty protected fisheries resource.

US v. Washington litigation a turning point in natural resource management

As a result of the forgotten promises of the federal government, the tribes sought redress and implementation of the treaties through the courts in the landmark decision, U.S. v. Washington. In this case, the U.S. District Court confirmed that the treaty Indian tribes have the right to take half the harvestable salmon originating in Washington waters. Five years later, in 1979, this case was fully upheld by the U.S. Supreme Court. While it was not the first time the federal judiciary upheld Indian rights, it did prove to be a monumental and significant case for Indian fishing and hunting rights across the country.

State resistance to implement US v. Washington yielded to cooperation

The state of Washington's resistance to the implementation of the case was legendary. Through 1983, the state stubbornly fought the tribes in court and sought to avoid implementing the federal court rulings upholding the tribes' fishing rights. Because the state and tribes could not work together, the court took over management of the fisheries resource by default. Almost every management decision was made by the court, with state and tribal biologist arguing before a federal magistrate every step of the way.

It slowly became obvious that if the fish resource was of primary concern the job of managing it must be taken out of the hands of the court and placed back in the hands of professional managers--the tribes and the state of Washington. This provided the impetus for the state and the tribes to move away from litigation as a full time pursuit, and instead seek to develop cooperation.

EVOLUTION OF CO-MANAGEMENT IN THE PACIFIC NORTHWEST

In 1984, the state and the tribes met at Port Ludlow, Washington, to jointly structure a cooperative management concept. State and tribal officials emerged from this meeting cautiously proclaiming that the "new era of cooperation" had arrived and that negotiation and cooperation would be totally explored prior to the filing of any last resort litigation.

It was not easy for tribes or the state leaders. Tribes had been used to winning cases, but had not seen any substantive changes in management, in spite of court orders. State officials were forced to reverse a century old tradition of dictating to

the tribes, and move toward recognizing tribal management prerogatives. Nevertheless, each began to realize the value of this approach.

Early historical management planning efforts

The Puget Sound Management Plan was negotiated and entered into the court for implementation. This plan has served as the framework for co-management between the Puget Sound tribes and the state. The state and the tribes from the Pacific Coast commenced negotiations for a management plan to implement the Hoh v. Baldrige case. This plan clarified weak-stock management responsibilities for the state and federal entities, and laid the foundation for watershed planning.

Pacific Salmon Treaty

Still later, in conjunction with sports and commercial user groups, state and tribal government officials worked with other states and the federal government to produce the U.S.-Canada Salmon Interception Treaty. This international agreement was obviously essential to good fishery management, but because of the complexity of the task, and the divergent viewpoints within the United States, the treaty was not successfully negotiated until cooperative management was in practice.

Its existence has fostered essential annual and long range international negotiations, its implementation has moved fisheries management between the two countries closer together for the good of the resource, and the federal commitment has brought millions of dollars to Washington State alone over the past several years for such efforts as management planning, fish marking, stream research, and data analysis.

Co-management is the foundation, or cornerstone, upon which many outstanding natural resource management programs have been constructed. Some of the structures we have built have, in fact, become national and even international models of cooperation in natural resource management.

COMPREHENSIVE TRIBAL NATURAL RESOURCE MANAGEMENT IN THE PACIFIC NORTHWEST

The tribal approach to natural resource management is based on the recognition that, as Chief Seattle said, "all things are connected." This is a truth that transcends boundaries, as well as management activities, cultural backgrounds and economic pursuits. All things are connected, within a given watershed, as well as from one watershed to another, and from the ocean to the mountains.

Centennial Accord and Environmental Memorandum of Understanding

The Centennial Accord, a historic document of great magnitude negotiated during the state's centennial year of 1989, provides for a tribal/state government-to-government relationship. Such a relationship, a first of its kind in the country, lays out the basic elements of sovereignty and decision making between the parties.

This document is notable in the context of co-management because it institutionalizes, to a great extent, the relationship between sovereigns. Nowhere is such a relationship more critical than in the area of natural resource management and environmental protection.

A State-Tribal Environmental Memorandum of Understanding (MOU) was also negotiated between the tribes and the state of Washington. This document identifies tribal and state environmental goals, and suggests a process to resolve environmental issues on a government to government basis. A copy of the Centennial Accord and the Environmental MOU are made available with this testimony.

Each watershed is unique and requires individual as well as regional focus

Within given watersheds or basins, however, the specific status of habitat and fish stocks will vary, due to differing terrain, water use and other environmental factors, as well as harvest and other mortality levels. These undeniable facts forced the conclusion that natural resource management must be tailored to suit local situations, as well as regional and global realities. In some areas, fish runs are strong and are comprised in large measure of wild stock. In others, wild stocks or their habitat have been decimated, and habitat and enhancement efforts are needed.

There have been those who have tried to point the finger at one industry or another, or one cause or another, for declines in some fish runs. In some watersheds the major causes are obvious, such as the Elwha River where dams have totally blocked fish passage into headwaters that originate in the Olympic National Park. But, for the most part, a multitude of causes contribute to fish management problems, and thus the concept of comprehensive management is appropriate. It is worth mentioning, incidently, that, given available habitat, most fish runs in the Puget Sound and coastal regions are in relatively good condition, and that many of these rivers support healthy percentages of wild fish. We credit the comprehensive, cooperative management approach driven by the U.S. v. Washington decision for this condition.

Clearly, however, with a host of problems coming from many directions (salmon have to swim through every conceivable ownership in their migration), cooperative management must be followed. And, it is the way we have gone for the past eight years.

Timber-Fish-Wildlife Process

In addition to the U.S.-Canada Treaty mentioned earlier, the Timber-Fish-Wildlife (TFW) Process is one of the most well known co-management-related efforts, which brought together previously warring factions of the state, timber industry, tribes, and environmental organizations. The process changed forest practice rules governing state and private timber harvest and management. It established a forum for all parties, including the tribes, to meet and work out differences. It also created a scientific committee charged with arriving at the "scientific truth," and the commitment to adapt forest management practices to the truth. Much has been said about this process over the past several years, but the principal philosophy of TFW demonstrates a truth we must all learn to accept...that people working together accomplish worthwhile things, while people fighting one another create waste and further hostility.

Watershed Planning

Cooperation in fisheries management has also been evident through regional watershed planning. An example is the Watershed Planning Process, which has called for the production of Comprehensive Resource Management Plans for every basin in the U.S. v. Washington case area. Joint management plans for each watershed are now in various stages of development. Harvest management, production and habitat restoration and protection measures are critical elements in each of these plans. Through the exchange of information and technology, as well as eggs and broodstock, the state and the tribes have made great progress in cooperative enhancement over the years.

Long Live the Kings and Nisqually Task Force

Some efforts, such as Long Live The Kings (which is having a positive impact in the Gray's Harbor region), and the Nisqually Task Force (which has helped keep the Nisqually River one of the most habitable rivers in the region) have, in fact, focussed on individual watersheds. These efforts, and others like them, are initiatives by the tribes and interested parties to solve problems and find solutions on the ground, in individual watersheds.

Chelan Water Resources Planning Process

It was clear from the beginning of cooperative management that water would eventually be a key link in the process. The health of fish, wildlife, vegetation and

people is utterly dependent on the availability of ample, clean water. Yet, even in the Pacific Northwest, there are water shortage and quality problems that have continually worsened over the years.

The planning and allocation of water resources in all western states over the past century has consisted primarily of the granting of permits in response from individuals and groups wishing to exploit this precious resource. But the realization that water is a finite resource and that competitive demands for it easily exceed its availability have increased the complexity of water management decisions.

In 1990, at the urging of the tribes, a series of tribal-state-user water resource planning retreats was held. Top ranking officials of state, tribal and local government interacted with representatives of business, agriculture, environmental organizations, recreation, hydropower, commercial fishing and other water-related interests to develop a cooperative water resource planning process.

The result was a process now known as the Chelan Process. The basic goals of the "agreement" are to 1) manage water by hydrologic unit, 2) meet water needs first with resources within each respective unit, 3) work toward the tribes' general long term policy objective of achieving an overall net gain of the productive capacity of fish and wildlife habitats, and 4) accommodate growth in a manner that protects the unique environment of the state. The process was not designed to determine or resolve legal disputes. Nor was it intended to be the only option for water management in the state. But the process does provide an historic opportunity to promote ongoing cooperation in water management planning, and thus minimize conflict.

Over the past two years, the Water Forum, a committee of affected parties, including tribes, has met to resolve a comprehensive workplan. If successful, the plan will advocate a statewide policy on instream flows, hydraulic continuity, groundwater planning, and other critical water considerations. Also during this time, pilot cooperative planning projects have been conducted on the Dungeness watershed in western Washington and on the Methow watershed in eastern Washington, to test the regional approach.

Puget Sound Water Quality Program

The tribes have been major participants in water quality, as well as water quantity-oriented programs. The primary water quality-related programs involving tribes in the state have been the Puget Sound Water Quality Authority (PSWQA) and a wide range of water quality programs supported by the U.S. Environmental Protection Agency.

The Washington State Legislature created PSWQA in 1985, and charged it with developing a comprehensive plan for water quality protection in Puget Sound, to be implemented by state and local governments. The tribal seat, filled by NWIFC Commissioner Terry Williams, was established by the state in recognition of the important role of the tribes. The tribes have, as a result, been involved in every facet of Puget Sound water quality management efforts, ranging from the nomination of watersheds for inclusion in an early action program to address nonpoint source pollution problems to conducting shellfish programs to protect and enhance that resource.

Model Water Quality Program Initiative

The western Washington tribes have also linked up with state and local governments in efforts to manage off-reservation water quality problems. Financial support for tribal participation in this program has been made available to the tribes from several sources, including the Department of Ecology's Centennial Clean Water Program, and the Environmental Protection Agency. During the early years, the tribal focus has been directed at restoring and maintaining riparian and marine habitats that support finfish, shellfish and cultural resources. In addition, as sovereigns, the tribes are involved in planning efforts that affect their jurisdiction. As a result, each tribe also conducts on-reservation nonpoint source pollution and other water quality programs.

Comprehensive water quality programs are also being conducted by the tribes in conjunction with the U.S. Environmental Protection Agency. Specifically, the program will address specific water quality problems, propose changes in policy, regulations and laws, and seek control of nonpoint and point pollution. Some of the problems of particular concern cited by the tribes include sedimentation and water temperature increases due to poorly regulated logging; bacterial and chemical pollution from agriculture, as well as urban runoff and sewage; and increased pollution of all sorts caused by voids in regulations or by non-enforcement of existing regulations and laws.

RECOMMENDATIONS AND FUTURE CONSIDERATIONS

Our experiences in the Pacific Northwest demonstrate a high level of achievement and capability. Our management efforts stem from adherence to certain underlying principles and philosophies. The success of our approach has often been affected both positively and negatively by critical limiting factors. As such, we believe that it is necessary for you understand some of our lessons and findings.

Tribes are managers of the resource, not simply users

It is important to note that tribes are natural resource managers. Such management is culturally based, and predates written history. It is also embodied in treaties, litigation and sometimes in legislation. Tribes are sovereign entities, and have primary management on-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.

Shared responsibility with the states and federal governments on off-reservation resources are critical to fulfill treaty responsibilities. In some cases tribes have been clearly integrated in off-reservation planning and management efforts. In other cases, tribes have been excluded, either deliberately or because federal policy did not afford tribal participation at the time of law passage. Support is needed for the tribes to be able to participate on fishery management councils and inter-state compacts as appropriate. It is also important that tribal governments have standing and the ability to fully participate in inter-jurisdictional decisions affecting off-reservation resources.

The federal government has obligations to the tribes

The federal government has outstanding obligations and responsibilities for the protection and proper management of fish and wildlife. This obligation extends beyond mere protection and management to insuring access and availability of natural resources to the Indian people.

This obligation also transcends mere paternalism, and must reflect 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.

Effective tribal management is a function of infrastructure

The ability of the tribes to effectively manage the natural resources we have depended upon since time immemorial requires that we have the capabilities for the next century.

As a result of the US v. Washington decision, Congress appropriated funding for each tribe to develop their individual management programs. In addition, the tribes supported resources to the Northwest Indian Fisheries Commission to assist in implementing legal obligations.

Resultant staff capabilities have been extremely valuable in allowing the tribes to address critical management issues in a positive, solution oriented way. But if tribes are to continue this effort, additional commitments to management and support staff is essential. This is especially important given the increasing needs for environmental protection.

Tribal infrastructure depends on adequate and stable funding

Tribal natural resource management programs are second to none in their effectiveness and efficiency. But even the best programs faces limiting factors. One such limit is adequate and stable financial support.

Tribal natural resource management programs have delivered many services to Indian people over the past several years. The programs have built a strong foundation for future community and economic growth. But without continued financial support, the programs will not continue to deliver the level of services needed to manage natural resources.

The sources of funding for tribal natural resource management programs have included congressional appropriations through the Bureau of Indian Affairs, Fish and Wildlife Service, Administration for Native Americans, and the Environmental Protection Agency. In addition, other tribal revenues come from state programs and tribally-imposed fish taxes and other tribally generated funds.

At the present time, the tribes do not have clear and specific access to Dingel-Johnson, Pittman-Robertson, Wallop-Breaux funds, forest legacy programs or Land and Water Conservation funds. Such access should be secured directly to the tribes. It should not have to come through the affected states, which may have different views of priorities and needs, and are often times adversarial to tribal interests.

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 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. The need for tribal programs clearly exceeds existing funding levels.

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 misguided bureaucratic initiatives, lack of cost-of-living adjustments, inflation factors, and sequestration problems.

Shortages caused by these 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.

Training and professional development is critical

It is important for tribes to receive help with training and professional career development. Such assistance is critical if the tribes are ever to be successful in enticing Indian students into the field of natural resource management and environmental protection.

In addition, 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.

CONCLUSION

Cooperation is the banner we wish to wave as we close out this millennium. Let us all pull together, so we can accomplish what none of us can accomplish alone. Let us all have the courage to take the stands we must take to secure a habitable world for our children of tomorrow, as well as our workers of today. Let us stand up to hard problems and make good decisions. Let us stand behind what we know is right, and fortify these positions with the words and actions of truth and dignity.

We believe these objectives will be aided by legislation you are now considering, if you focus on a few core concepts we have spoken to, and make them cornerstones for an Indian fish and wildlife management act.

The Indian tribes are waking up in this country, we are leaving the "Dark Ages" behind, and through cooperative efforts, we will be able to help save the natural heritage of this land for the benefit of future generations.

Thank you.

Mr. FALEOMAVAEGA. Thank you, Mr. Frank.

Without objection, gentlemen, your statements will be fully made part of the record. So I just wanted to note that.

Mr. Anderson.

Mr. ANDERSON. Yes, thank you very much.

I'll be brief, and I won't even try to follow Billy with my comments.

I have the dubious distinction of often times having to follow Billy, and it's always very flat compared to his presentation.

So what we would like to do is provide some information for the record.

We have a document which was signed by the tribes in Washington State with the State of Washington called the Centennial Accord. And it was a government-to-government relationship that was documented in 1989 and we'll make that part of the record.

It I guess shows the type of relationship that the tribes in Washington State have worked out with the State of Washington to work on issues in a cooperative and forthright manner, respecting each others sovereignty.

Mr. FALEOMAVAEGA. Without objection, the documents will be made part of the record.

[EDITOR'S NOTE.—Documents submitted by Mr. Anderson may be found in the hearing files.]

Mr. ANDERSON. I have a couple of other excerpts from reports. One in particular is the Report of the United States of America to the United Nations' Conference on Environment and Development, in which the Northwest Tribal efforts were highlighted as a good example of how tribes and the state and federal government can work together in cooperative natural resources management.

There's a memorandum of understanding that the tribes have negotiated with the State of Washington, it talks about how to work out environmental issues without necessarily litigating issues. It does reserve the opportunity to litigate, and that is available here.

And finally, I have a series of reports, one on timber, fish, wildlife, one on the tribal water quality program, and one on our fishery management program and our annual report that go into great detail about programs that Billy has talked about, and show how we've been able to package certain things.

And then, finally, we have a video tape here with four different videos on it, one about the Fish Commission and our member tribes, one on shell fish, negotiations and litigation that's very important to us right now, one on the timber, fish, wildlife initiative, which was a very ground-breaking pioneering effort, and finally a video that won an Emmy called "Moon's Prayer," and that talks about the tribal perspectives on the environment. And it was very well received, seen by hundreds of thousands of people in the Pacific Northwest.

Mr. FALEOMAVAEGA. Without objection, it will be made part of the record.

[EDITOR'S NOTE.—The videotape may be found in the hearing files.]

Mr. FALEOMAVAEGA. I want to ask you, Mr. Anderson, do you have just one tape?

Mr. ANDERSON. I have one tape, but I'd be very glad to make other tapes available.

Mr. FALEOMAVAEGA. Let me offer this as a suggestion for the tribal members of the organization.

It would be very nice to have copies of the tapes be made to the members of the subcommittee specifically, and maybe with just a courtesy letter inviting the members on their own privacy and opportunity they might have, so they might see the videos that you have indicated earlier.

I think it'll be a real good orientation for the members of the subcommittee if they are given copies of the videos.

Mr. ANDERSON. We will do that.

Thank you very much.

Mr. FALEOMAVAEGA. Mr. Harp?

STATEMENT OF JIM HARP

Mr. HARP. Mr. Chairman, good morning.

I'm pleased to appear before the Committee to express the views of the Quinault Indian Nation regarding concerns pertaining to the management of fish, wildlife, and plants.

I am Jim Harp, Fisheries Manager and an elected representative of the Quinault Indian Nation up in the State of Washington, on the coast of Washington.

We at Quinault are encouraged that Congress is seeking tribal views on how the United States could improve the administration of its trust responsibilities towards Indian tribes.

We are aware that the Senate Select Committee on Indian Affairs has also initiated efforts to determine the necessity and scope for legislative action concerning management of fish, wildlife, and plant resources of concern to Indian tribes, and urge that the House and Senate work in concert with Indian tribes to ultimately develop legislation that can be enacted into law.

I would like to premise our statement with a few remarks that may help provide perspective and understanding of our views.

Fish, wildlife, and plants have been central to our culture, economy and survival. Under the 1855 Treaty of Olympia, the United States assumed a trust responsibility to protect our rights to hunt, fish, and gather.

Since then, time and again, Indian people have been jailed, abused, and forced to the courts when attempting to exercise treaty-protected rights. Only after lengthy and costly litigation affirming our rights, has the United States been willing to provide financial resources for management of the resources which comprise our heritage.

In effect, the United States has historically taken the posture that our treaties have no meaning unless and until the courts say they do.

We find such attitudes abominable. They have led to the depletion of important resources, erosion of sovereignty, reduction in management effectiveness, and diminishment of the legacy that we leave our children.

The government to government relationship between Indian tribes and the United States which flows from the Constitution, treaties, and courses of dealings, must be strengthened and respected.

This relationship has been defined by numerous pieces of legislation and executive orders, administered by the Executive Branch, and interpreted by the courts.

The United States has obligations and responsibilities for protection, proper management, and enhancement of fish, wildlife, plants, soil, and water, so as to ensure access, sustained availability and suitability for use by Indian tribes and Alaska native peoples.

The United States should serve as an advocate for the preservation and exercise of these treaty rights, not sit idly by, a silent witness to their erosion.

We believe that the Committee's efforts should focus on a few fundamental cornerstones to establish the foundation for future initiatives in fish and wildlife management.

The foremost issue is to affirm the commitment of the United States to support, strengthen, and enhance tribal management capabilities. This commitment should be reflected in two fundamental areas.

First, tribal sovereignty and primacy to establish management direction on-reservation should be fully supported. Our reservation was established as a permanent homeland for the people of the Quinault Nation.

The policy of allotment has led to the fractionation and checker boarding of land on many reservations across the country.

Current land ownership patterns on our reservation cause enormous problems when attempting to implement responsible resource management.

Contending with trespass violations and enforcement of fish and game regulations has become an administrative nightmare, fraught with jurisdictional impediments to effective resource management.

These problems are especially severe for fish and wildlife resources which of course recognize no political or ownership boundaries.

We believe that the Congress and the Administration should recognize the primacy of tribal rights to manage fish and wildlife resources on-reservation. Support should be provided for development of effective enforcement of tribal fish and wildlife codes and regulations to apply to all persons on all lands within reservation boundaries.

In addition, adequate funding and professional development training programs are needed to improve tribal management skills and capacities.

Second, the standing of tribal governments to participate in decisions involving off-reservation resource management issues, at least on a par with the states, should be supported.

An affected tribal government should, at its own option, be entitled to take part in inter-jurisdictional decisions affecting off-reservation resources of concern.

For example, standing for tribes to fully participate in specific regulatory activities, such as habitat protection, in stream flows, water quality, and FERC licensing, should be recognized.

Further, current programs within the federal government provide for agreements with states for management direction of lands and resources, some of which Indian tribes have vital interests. This occurs without tribal consultation and participation.

Prescriptive measures are needed to prevent actions and agreements without tribal participation that involve either federal or on-reservation lands.

This would prevent agreements between states and federal agencies without participation and agreement of the affected tribes.

Another example is, presently, on the Pacific Coast, the regional fishery management councils have direct responsibility for developing ocean fishery management plans affecting the numerous salmon and other marine resources of Indian tribes.

While these councils provide for representation by states, there is no specific provision for representation by Indian tribal governments.

I am privileged to serve as an at-large voting member of the Pacific Fishery Management Council for the State of Washington. However, specific representation for tribal governments is clearly warranted and should be mandated by law.

In closing, the Quinault Nation stands ready to work with the Committee in developing reasoned and responsible approaches toward improving the management of our natural resource heritage.

Thank you for the opportunity to testify on this important topic.

[Prepared statement of Mr. Harp follows:]



Quinault Indian Nation

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**TESTIMONY OF JIM HARP ON BEHALF OF THE QUINULT INDIAN NATION
BEFORE THE HOUSE OF REPRESENTATIVES
NATURAL RESOURCES COMMITTEE
REGARDING LEGISLATION CONCERNING FISH AND WILDLIFE
RESOURCES OF INTEREST TO INDIAN COMMUNITIES
WASHINGTON, D.C., FEBRUARY 18, 1993**

I am pleased to appear before the Committee to express the views of the Quinault Indian Nation regarding concerns pertaining to management of fish, wildlife, and plants. I am Jim Harp, Fisheries Manager and an elected representative of the Quinault Nation.

We at Quinault are encouraged that Congress is seeking tribal views on how the United States could improve the administration of its trust responsibilities toward Indian tribes. We are aware that the Senate Select Committee on Indian Affairs has also initiated efforts to determine the necessity and scope for legislative action concerning management of fish, wildlife, and plant resources of concern to Indian tribes and urge that the House and Senate work in concert with Indian tribes to ultimately develop legislation that can be enacted into law.

I would like to premise our statement with a few remarks that may help provide perspective and understanding of our views. Fish, wildlife, and plants have been central to our culture, economy, and survival. Under the 1855 Treaty of Olympia, the United States assumed a trust responsibility to protect our rights to hunt, fish, and gather. Since then, time and again, Indian people been jailed, abused, and forced to the courts when attempting to exercise treaty-protected rights. Only after lengthy and costly litigation affirming our rights, has the United States been willing to provide financial resources for management of the resources which comprise our heritage. In effect, the United States has historically taken the posture that our Treaties have no meaning unless and until the courts say they do. We find such attitudes abominable. They have led to the depletion of important resources, erosion of sovereignty, reduction in management effectiveness, and diminishment of the legacy that we leave our children.

The government-to-government relationship between Indian tribes and the United States which flows from the Constitution, treaties, and course of dealings must be strengthened and respected. This relationship has been defined by numerous pieces of legislation and executive orders, administered by the Executive Branch, and interpreted by the courts. The United States has obligations and responsibilities for protection, proper management, and enhancement of fish, wildlife, plants, soil, and water -- so as to insure access, sustained availability and suitability for use by Indian tribes (and Alaska native peoples). The United States should serve as an advocate for the preservation and exercise of these treaty rights, not sit idly a by silent witness to their erosion.

We believe that the Committee's efforts should focus on a few fundamental "cornerstones" to establish the foundation for future initiatives in fish & wildlife management. The foremost issue is to affirm the commitment of the United States to support, strengthen, and enhance tribal management capabilities. This commitment should be reflected in two fundamental areas:

First, tribal sovereignty and primacy to establish management direction on-reservation should be fully supported. Our reservation was established as a permanent homeland for the people of the Quinault Nation. The policy of allotment has led to the fractionation and checker boarding of land on many reservations across the country. Current land ownership patterns on our reservation cause enormous problems when attempting to implement responsible resource management. Contending with trespass violations and enforcement of fish and game regulations has become an administrative nightmare, fraught with jurisdictional impediments to effective resource management. These problems are especially severe for fish and wildlife resources which, of course, recognize no political or ownership boundaries.

We believe that the Congress and the Administration should recognize the primacy of tribal rights to manage fish and wildlife resources on-reservation. Support should be provided for development and effective enforcement of tribal fish and wildlife codes and regulations to apply to all persons on all lands within reservation boundaries. In addition, adequate funding and professional development training programs are needed to improve tribal management skills and capacities.

Second, the standing of tribal governments to participate in decisions involving off-reservation resource management issues, at least on a par with states, should be supported. An affected tribal government should, at its own option, be entitled to take part in inter-jurisdictional decisions affecting off-reservation resources of concern. For example, standing for tribes to fully participate in specific regulatory activities, such as habitat protection, in stream flows, water quality, and FERC licensing should be recognized. Further, current programs within the Federal government provide for

agreements with states for management direction of lands and resources, some of which Indian tribes have vital interests. This occurs without tribal consultation and participation. Prescriptive measures are needed to prevent actions and agreements without tribal participation that involve either federal or on-reservation lands. This would prevent agreements between states and federal agencies without participation and agreement of affected tribes. Presently, on the Pacific Coast, the regional fishery management councils have direct responsibility for developing ocean fishery management plans affecting the numerous salmon and other marine resources of Indian tribes. While these councils provide for representation by states, there is no specific provision for representation by Indian tribal governments. I am privileged to sit as an at-large member of the Pacific Fishery Management Council for the State of Washington, however, specific representation for tribal governments is clearly warranted and should be mandated by law.

The Quinault Nation stands ready to work with the Committee in developing reasoned and responsible approaches toward improving the management of our natural resource heritage. Thank you for the opportunity to testify on this important topic.

Mr. FALCOMAVAEGA. Thank you, Mr. Harp.

A couple of observations, and I will then ask a couple more questions to the members of the panel.

One of the things that I've noted over the years is that sometimes, perhaps with sincere and good intentions, several tribal organizations hire consultant firms here in Washington to represent their interests.

But one of the things that I would certainly like to convey and to express this interest to the tribes is that whenever you're here in Washington, please make every effort to see the members themselves.

Sometimes I think our tribal members think that only the consultant firms are the only ones that can see the members.

There's nothing sacred about you not having to come and visit us directly. Because this lobbying game that goes on sometimes, in my humble opinion, gets lost in the quagmire of seeing that sometimes the information, or you don't really see the members themselves, and the message just doesn't come across.

So I would like to encourage and pass the word out to Indian country, when you are here in Washington, please make every effort to visit the member delegations of your states, or even the members of the given subcommittees, whether it be in the Senate or on the House side.

Visit with them directly. Talk to them.

That's why we're here.

And I would like to give that alert to all the tribal organizations, especially for the tribal leaders when they do come to Washington. Please make it, if you're working through our consultant firms or whatever organizations that do it, make sure that you require that they make appointments for you, and have you come visit with us directly. Tell us what your problems are.

I never see many of our tribal friends who come from the various states, and I wonder why.

And it seems that the only chance that I get to visit—and I'm sure this is true with other members—is when we have hearings. Then right after the hearing, everybody disappears.

And I would like to make that note to encourage as many of our Native American leaders to come and visit with the members directly. Make appointments with us. Tell us what your problems are.

Now I'm sure that there may be some sense of hesitation about not being able to speak proper English.

I'm still learning the English language. My mom, to her dying day, could hardly speak English. But English is only a tool. And if you need to have a translator, then get yourself a translator, and make it known what your wishes are.

This is one of the problems. Our whole educational system and the theories and the problems that affect Native Americans is the same thing that happened to us.

We don't have a Bureau of Indian Affairs, but we have what I call an isolated Bureau of Indian Affairs, and we have the same problems that you are confronted with.

And I don't mean to say this in a derogatory way, meaning that those people downtown are evil. But sometimes with the best and

sincere efforts, somehow things get lost in the cracks. And sometimes you have to keep ringing that bell, you have to keep scinching in and making sure that somebody hears and pays a little more attention to the problems affecting Native Americans.

So I would really like to pass that word onto all of our tribal leaders and friends out in Indian country. Come and visit the members. Make appointments with them. There's nothing sacred about that.

Sometimes you need to not depend too much on our consultant friends. You come and see us. And if you think you have broken English, I can speak broken English too, you know.

They call it pidgin English in Hawaii, but I really would like to offer that sense of encouragement to our friends.

And again I go back to Mr. Poynter's comments that were made earlier. I couldn't agree with him more. And this is the directing that the Chairman definitely is going to take, a very active role. He's going to plan a series of hearings in the coming weeks and months.

It is our hope that we will prepare a comprehensive legislation that will affect the needs of Native Americans dealing with wildlife and services and dealing with their economic needs.

So I'm very encouraged. And this is not taking anything away from Chairman Miller and what he's had to do on an ad hoc basis since he took over the chairmanship of this Committee.

But just the fact that Congressman Richardson in his initiative and the concerns that he's had over the years, that we've worked very closely together, and the fact that we now have an official subcommittee doing this, is a big, big change, dramatic change in what's happening here in the Congress.

And I would also suggest to have you write letters directly to the Chairman, and give him a sense of encouragement. You know, sometimes we get very depressed down here. And we don't know from our heads down to our toes if we're doing the right thing ourselves.

So give us a sense of direction. Let us know what's going on in Indian country. Sometimes, with good intentions, our friends downtown as well as even here, we don't know what's going on.

But I think a direct communication, phone calls, or whatever it is that needs to get the attention not only of the Congress, but as well as of the Administration, we need to do it.

I expressed my sense of frustration, I recall, last year. For four years, it's been on the books and by-law, that we're to establish a National Conference of Indian Education. Well, we did it but it was on a last minute basis, and was kind of a quick put together thing.

We had the conference, so we have another study, after about a thousand other studies and conferences and meetings and commissions and councils, all retreads, in my humble opinion, knowing that the same problems that we're going to be talking about this year in and year out.

But I really really hope that we're going to get some results this time.

I want to commend Mr. Frank for his directness, and certainly you couldn't have said it better.

This is the constant theme that I've heard over and over again over the years. Indian tribes want funding directly to go to them to manage their affairs.

Now here's the other side of the coin to this issue, Mr. Frank. And there are those of us who said, well, but we have to have some sense of accountability. This is the taxpayers' money. How are we going to make sure that that money is spent properly, and that it's not going to be wasted or mismanaged or there's any sense of corruption or fraud.

This is the kind of thing that has its Washington mentality going on. And say, well, we have to have some sense of accountability for it.

So that's the other side of the coin.

And perhaps maybe we can get better suggestions or recommendations from Indian country, and perhaps it can be proven that Indian tribes can do a better job in managing the money that comes from the American taxpayers' pocket.

So this is the kind of thing that goes on here. And hopefully you can give us better recommendations on how we can make improvements in this.

I appreciate Chief Wallulatum's statement. You're not here asking for funds. You're here just to give you better management skills.

Maybe this is another area that the Department of the Interior can look at.

You're not here to ask for handouts. You just want something to make you more self-sufficient. This is another constant theme that I hear from our tribal friends across the country.

I have asked previously for the opinions of the previous panel about how they feel about the Bureau of Indian Affairs as well as the Congress.

But I think pretty much we've gotten a sense of how this hearing is starting. And please bear in mind that this is just the beginning.

Like I said, I'm very very encouraged that the Chairman is going to bring our Committee to Indian country, rather than to always constantly have Indian country coming to Washington. I think it's high time that Washington needs to come and see for themselves, the members especially, what's happening out there.

And I also want to express my profound reverence and respect for High Chief Wallulatum and Mr. Frank. And I think this is a one, constant cultural theme that I would like to say, you know, Steve and I are nothing but kids.

And I always remember what Emerson said. That the years teach much which the days never know. And I always make that special note, my most profound respect for our elders here this morning.

And I really, really appreciate your presence. It's given me a sense of greater responsibility and commitment, and I'm sure Steve feels the same way.

But we need guidance, we need your wisdom. All the smarts and education don't mean beans if we don't have the guidance from our elders. And I just want to let Chief Wallulatum know that and Mr. Frank.

I'm a chief in my own culture, but I'm a small chief. In fact, when the members of the council of chiefs in my village meet, my chieftain title is so small that I sit under a coconut tree outside the chiefs' council meeting.

But nevertheless, it's my most profound respect for the culture, and this is something that I'm sure that there is a great sensitivity by the members to do this.

But we do this both for the culture, but we also need to be progressive in our thinking. And the world has changed, and I couldn't agree more with Mr. Frank about the Bolt decision. It's made a tremendous impact on this whole issue of the rights of Indian to fish and wildlife.

It's a controversial one, the problems with the rights of the states versus the federal government with the tribes. But I think we have to be constantly at it, or else things get lost on the way.

So I just want to give that sense of my feelings and certainly to the members of the panel and my respect for your being here this morning.

Mr. Frank?

Mr. FRANK. Mr. Chairman. This is part of my little, I've got a little history for you.

And I've got to say it to you. I can't say it to anybody else on the panel, but because of where you're from.

But before the turn of the century, and that's a long time ago, well, there's some warm water comes by off of our coast about 40 or 50 miles off of the mainland.

And it comes around, from Alaska, it comes around and along the Pacific Coast, and then it goes down in the South American coast toward your country. And it's documented that you have some of our logs, and that you made canoes out of them and paddles.

And canoes are part of our culture and spiritual life and the paddles that we have and make, and how we train our children to be good paddlers, and now even our women are paddlers. And you guys are certainly canoe people.

But those logs, how they got out into that ocean, was from all the storms that took place and the high water and the snow runoff and the different things that takes place up there.

Of course, there was hemlock, there was cedar, there was fir, different other types of spruce and different things that went out into the ocean.

And sooner or later, they reached your country. And so that connected us a lot of ways, in more ways than one. It connected us people.

And now today we can talk about how that connection was made. But we talk about that in our homeland and about your people over in those islands out there, because we're all one people. And now we're related to one another in different ways.

We go to school with each other, and our cultures have met. But at that particular time, it met by our natural resource, and that was by logs in the way.

And I just wanted to share that story with you.

Mr. FALEOMAVAEGA. Well, Mr. Frank, I appreciate that.

I've always said, with humor, to my Native American cousins here that I don't know what happened to the rest of you, but we were the brave ones that went out into the ocean and sought out the mysteries out there.

Mr. FRANK. Right.

Mr. FALCOMA. In the western sea.

You mentioned canoes. It's interesting to note that the catamaran, as we know them today, are the fastest vessels in the world. But if you don't realize it, that's a prototype of the Polynesian double hull canoe, believe it or not.

I was privileged to sail from Tahiti to Hawaii, which is about a 2700 mile distance, on a prototype Polynesian double hull canoe, about five years ago. And we sailed by non-instrument; in other words, strictly on the waves and the stars and the moon, the whole works.

And I wanted to say that it was one of the most spiritual experiences that I've ever had in my life. It was just like I was living a thousand years ago among my ancestors.

And so I know that your fishing methods are exactly the same as ours, believe it or not.

And there is some discussion about even our cousins, the Maoris in New Zealand, do the same type of fishing methods the way you do. And the question is how is it, maybe by coincidence.

I'd like to think that it was more than just coincidence.

But I really appreciate your comment on this issue. And I certainly want to thank you gentlemen and all the members who have testified earlier.

Please, I encourage you, write letters to the Chairman, let him know how you feel about these issues. Let's do something solid this time around concerning the needs of our Native American communities on wildlife and fisheries.

And hopefully we will come up with a comprehensive piece of legislation in the coming weeks or months. And it's all going to depend on the kind of input that we get from Indian country.

And this is the kind of thing that I know the Chairman is looking forward to.

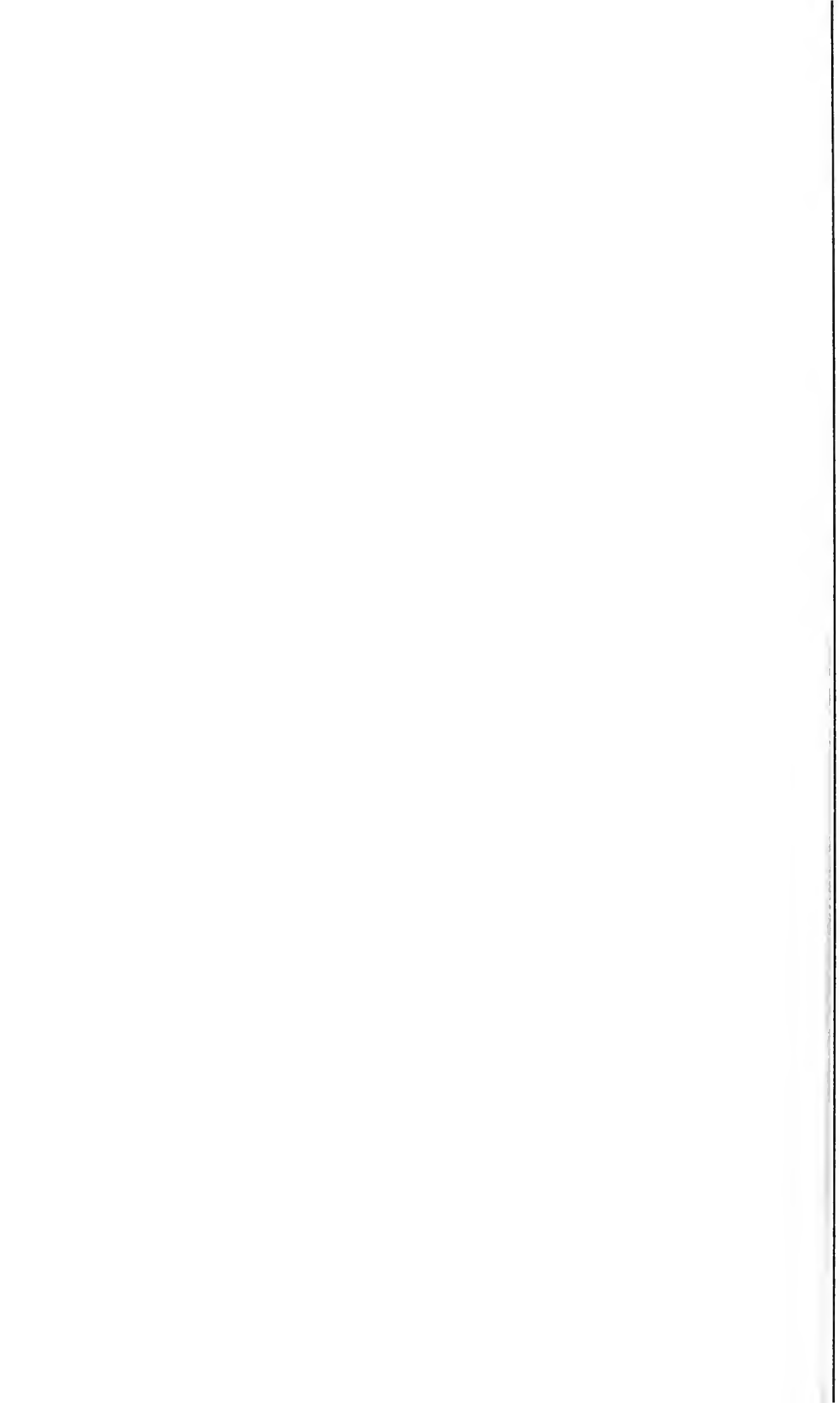
Again, I want to sincerely thank all of you for being here this morning.

I welcome you to come and visit my office. Please do so, because I'm leaving tomorrow. But, please, before you do come to Washington, make a sincere effort. Come and visit the members. Let them know how you feel about these things.

And, again, I want to thank all of you, and I wish you Godspeed and safe return to your homes.

The hearing is adjourned.

[Whereupon, at 11:45 a.m., the subcommittee was adjourned, subject to call of the Chair.]



APPENDIX

FEBRUARY 18, 1993

ADDITIONAL MATERIAL SUBMITTED FOR THE HEARING RECORD

TESTIMONY OF FERDINAND MARTINEAU

Mr. Chairman, members of the committee, my name is Ferdinand Martineau and I am submitting this written statement to you as the Executive Director of the 1854 Authority. The Authority is an inter-tribal organization created by three of the signatories of the Treaty of 1854 between the United States and the Lake Superior Chippewa. The Authority oversees the exercise of rights that were reserved in the 5 million acres that was ceded by the treaty in what is now Northeastern Minnesota. This area includes the western boundary of Lake Superior, Boundary Waters Canoe Area Wilderness in Minnesota, Superior National Forest, and several smaller state forests and parks. The Bands entered into litigation in 1985 in the case of Grand Portage Band of Lake Superior, et. al v. State of Minnesota et. al. in a dispute arising under Article Eleven of the Treaty of 1854. Article Eleven states that the Chippewa residing in the territory ceded by the Treaty of 1854 " shall have the right to hunt and fish therein... ". As litigation proceeded both sides recognized the long term bitter consequences associated with this type of litigation in other areas around the country and requested a continuance to try to negotiate a settlement. The Bands goal in these negotiations was to reach a settlement that established a relationship with the State and not to alter any rights under the Treaty of 1854. The negotiations resulted in the consummation of an Agreement between the Bands and the State that recognized the Bands rights in the Ceded Territory and required the development of an off-reservation conservation code to manage the harvest of the natural resources. The Bands deemed it necessary to develop an infrastructure for the administration, biological, enforcement, financial, legal and public relation. The Authority has been in the process of trying to develop the infrastructure but because of budget limitations has had only limited success.

Funding, or rather the lack of it, has hampered the Authority. As with all new initiative in Indian Country, the Authority has not had the benefit of any pre-existing source of funds and has had to go directly to Congress for an appropriation. Since 1988 the Authority has come to Congress and requested funds to help in the development of it's infrastructure. Each year has been a success and a failure for the Authority. The Authority has had success in being able to secure the funds necessary to maintain the limited services that it's members have come to expect, but the Authority has not been able to secure the amount that was requested. Currently the Authority receives approximately \$300,000 per year. The current request that will be presented to Congress later this session is for approximately \$2,000,000. The Authority currently employs 5 conservation officers that have the responsibility of patrolling the Ceded Territory (5,000,000 acres). The State currently employs 45 C.O's. to patrol the same area. The Authority's officers currently work as needed, which means that the coverage is sporadic and that the officers are not able to maintain a consistent or continuous schedule. In order to help alleviate this situation the Authority worked out a cross-deputization agreement with the State. All the conservation officers in the Ceded Territory now are empowered to enforce each others code. This agreement has not worked to the Authority's advantage as it has

given it's officers more to do while in the field. The Authority currently operates a court system, a registration system and an administrative system. Each of these are staffed by a very limited amount of personnel who have to handle more than their own job. The Authority does not employ any biological, financial, legal or public relations staff, not because there is no need for them but, because the money is not available to hire them. As stated earlier there is 5 million acres of land, rivers and lakes that make up the Ceded Territory.

Within the Ceded Territory the Authority has to deal with a variety of governmental agencies. Each having it's own bureaucratic system of regulations that they must follow. Each agency must be worked with on an individual basis to bring them up to date with current laws and how they affect their relationship with the Authority and the practice of Treaty Rights in the Ceded Territory. Although the Authority has implemented a conservation code to regulate their members exercise of rights in the Ceded Territory, they have been slow in their acceptance that the Authority has jurisdiction over it's member in the harvest of the natural resources in the Ceded Territory. The Authority's presence and public education remain a high priority for the Bands. The Authority continues to work within the established framework to deal with the current issues in the protection of Treaty Rights.

The environmental issues such as mining, timber harvest, disposal of hazardous material, air and water quality and a variety of other similar concerns have always been the forefront for the Bands of the Lake Superior Chippewa. The environment was an integral part of their lifestyle, culture and religion. All band members supported their way of life through harvest of the natural resources around them. Today that tradition continues through the Authority. The Bands have enacted very strict legislation on their reservations and are in the development stages for the Ceded Territory to protect this way of life for future generations of the Bands. Band members are beginning to recognize the efforts of the Authority and are starting to practice traditional values more openly.

Prior to the passage of P. L. 93-638 the Indian Self Determination and Education Act, tribal government played a limited role in the determination of it's future. The government enacted legislation designed to bring the Indian into the dominant society and to take away the traditional form of government. There was legislation that diminished the land base of the Bands and placed large portion of the reservations into private ownership, both Indian and non Indian. Most of this was done with little or no input from the Bands. Since P. L. 93-638 tribal governments have taken an active roll in the determination of their future. The Bands in Minnesota developed their infrastructures to handle the development reservations, and have begun to participate in the political process to develop good relationships with all the elected officials who represent them on a state and national level. They have become involved with lobbying efforts to effect the outcome

of legislation that affects them. Recently the Bands have turned the focus of their efforts to the Ceded Territory. The Bands recognized that the need for the natural resources to maintain the traditional lifestyle has placed a burden on reservation resources and they must now begin to use the Ceded Territory resources. As the Bands expand the practice of Treaty Rights outside their reservations new questions arise about the trust responsibility of the B. I. A. and the U. S. Government and the Bands.

Clearly the B. I. A. has a trust responsibility on reservation but, just as clearly, not off the reservation. The system currently in place has a clear delineation of how the Bands and the B. I. A. work together with on reservation concerns. The problems surface when the Bands begin to exercise off reservation rights. There is a long term litigation process that is costly to the Bands and no clear role for B. I. A. to play. The Bands have to depend upon their own financial resources to undertake this battle and, if successful, the B. I. A. then becomes a fund mechanism for them. Although this statement is short in words the problems outlined here could fill several volumes of testimony.

Legislation should be enacted that will allow the Bands access to the long term funding necessary to develop the infrastructure to enable them to be co-managers of the natural resources in the Ceded Territory. The jurisdictional questions should be dealt with by the agencies in negotiations as they currently are. The environmental issues will cease to be a concern once the infrastructure has the staff to deal with them in an informed manner. Tribal participation is always a concern with the development of legislation and should be addressed throughout the whole process. The trust responsibility of the United States and the relationship between tribal government should be cleared up so all citizens understand it. The problems that exist in Indian Country are old. They are a part of our past, our present and unless things change our future. Once the problems of funding tribal programs is stable, the jurisdiction that the tribes retained in the Ceded Territory is clear, the enactment of tribal legislation for the protection of the environment of the Ceded Territory's natural resources is recognized, there is tribal participation in legislation and the trust responsibility of the United States between Indian people is clear accepted, then, the Bands will be recognized as the true keepers of the environment that they are.

Thank you for the opportunity to present this statement before your committee in behalf of the Lake Superior Chippewa Bands of Bois Forte and Grand Portage.

Megwich.

THE SAN CARLOS APACHE TRIBE

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Harrison Talgo, Sr.
 Tribal Chairman

Raymond Stanley
 Tribal Vice Chairman



STATEMENT OF HARRISON TALGO SR., CHAIRMAN, SAN CARLOS APACHE TRIBE, BEFORE THE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS, COMMITTEE ON NATURAL RESOURCES, REGARDING FISH AND WILDLIFE ACTIVITIES

FEBRUARY 18, 1993

Mr. Chairman, my name is Harrison Talgo, Sr. I am Chairman of the San Carlos Apache Tribe of Arizona. I appreciate this opportunity to comment on problems encountered by the San Carlos Apache Tribe in its efforts to manage its wildlife populations for protection of endangered or threatened species and for subsistence hunting by members of the Tribe and sports hunting by visitors to our Reservation. This hearing will focus attention on one of the most neglected subjects of Federal trust management of Indian lands and their resources.

The San Carlos Apache Tribe recommends that legislation be enacted to (1) establish realistic funding levels for wildlife management activities; (2) improve coordination of wildlife management of nearby Federal and state lands with tribal management plans; and (3) provide scholarships and training to enable tribes to employ their own members in wildlife management activities. I will direct my remarks today to the need for equitable levels of funding.

The Bureau of Indian Affairs funding for FY 1993 provides \$28 million for Wildlife and Parks. Of this amount approximately two-thirds is dedicated for use off-reservation in connection with treaty fishing-rights obligations, chiefly in the Northwest and Great Lakes regions. Of the remaining \$9.5 million, \$2.5 million is for tribal hatchery O&M, leaving \$7.0 million for Tribal Management/ Development Programs (TMDP). TMDP funds are available, under 638 contracts, to enable tribes to: develop codes, ordinances, and regulations for conserving fish and wildlife resources on millions of acres of trust land; develop the multidisciplinary competence and professional expertise of tribes and intertribal fish and wildlife organizations; create

job- and income-producing programs; and manage public use and tourism. Of the entire \$28 million, less than 2% is available for management of big-game and bird populations on approximately 51 million acres of trust land. This works out to less than 2 cents per acre. The way the BIA structures its budget obscures the fact that very little of its wildlife and parks fund go to on-reservation wildlife management. We suggest that the Subcommittee consult with the BIA to arrive at a budget structure that more clearly displays how its funds are deployed to meet its several important on-reservation missions and to the extent feasible distinguish funding for fish, on the one hand, and all other species, on the other.

The San Carlos Apache Tribe receives \$65,000 of TMDF funds for wildlife management on its 1.8 million-acre reservation (the fourth largest in the nation) or about 3 1/2 cents per acre. The Tribe also has allocated approximately \$55,000 of other BIA funds to wildlife management at the cost of reduced funding for programs under the BIA's tribal priority system for allocation of appropriated funds. As a measure of the Tribe's concern for its wildlife resources, it contributes about \$696,000 of its Tribal funds, although it is one of the most impoverished tribes in the nation. With these funds, the Tribe tries to manage 75 species of mammals and 250 species of birds. Among the bird population are the bald eagle, peregrine falcon, Mexican spotted owl and northern goshawk. The Mohave desert tortoise is also documented. These species are designated as endangered or threatened species or are candidates for designation. The Tribe's wildlife funding needs and management structure are described in the statement of Mr. Brian Czech, Director of the San Carlos Apache Recreation and Wildlife Department, which is appended to my statement.

It is our understanding that other land management agencies of the Federal government with comparable land and wildlife resources spend as much as 10 times more money on wildlife management per acre than the BIA makes available for management on the San Carlos Apache Reservation. We suggest that the Subcommittee ask the Department of the Interior and Forest Service to provide figures on comparative levels of funding.

It has been suggested that Indian tribes should be made eligible to receive direct Federal Aid in Sport Fish and Wildlife Restoration (Dingell-Johnson, Pittman-Robertson and Wallop-Breaux programs) and Land and Water Conservation funds. Subject to certain conditions, we support this suggestion. We wish to stress, however, that tribes should be eligible for direct funding from these sources just as the United States territories, the District of Columbia, and the states are. At present, tribes must apply to the states for a share of these funds. This requirement violates the spirit of the government-to-government

relationship between the United States and the tribes and invites state interference in the internal affairs of the tribes. We further highlight our concern that the use of these funds requires that a tribe allow public hunting on its reservation. Much of our Reservation is open to off-reservation hunters and anglers, but not all of it. At least one tribe we know of has closed its entire reservation to public hunting. The Federal obligation to tribes respecting the protection and management of their trust resources must not be put at the sufferance of state governments and off-reservation hunters and fishers.

We believe the primary source of Federal funds for tribal wildlife management should be the same source that provides funds for other Federal land management agencies--appropriated funds from the Treasury.

In conclusion, the San Carlos Apache Tribe requests that legislation be enacted to establish funding standards which are not less than those of other Federal land management agencies with comparable land and wildlife resources and that such funds be available to a tribe without regard to whether or not the reservation is open, closed, or partly closed to public use or the hunting of, or fishing for, certain species is prohibited.

Your interest in this vitally important issue and your long-standing commitment to a better day for Indian tribes are deeply appreciated.

**THE SAN CARLOS APACHE TRIBE
RECREATION & WILDLIFE DEPARTMENT**

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BRIAN CZECH
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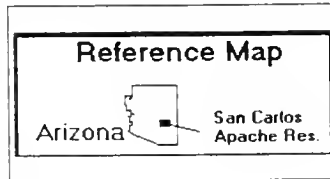
STATEMENT OF BRIAN CZECH (DIRECTOR, SAN CARLOS RECREATION & WILDLIFE DEPARTMENT, SAN CARLOS APACHE TRIBE) TO THE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS OF THE COMMITTEE ON NATURAL RESOURCES

February 16, 1994

The San Carlos Apache Tribe, Recreation & Wildlife Department, very much appreciates the opportunity to present this testimony to the Subcommittee on Native American Affairs

The most important point in this testimony is that the Tribe needs federal wildlife funding that is consistent with funding of landholdings administered by the U S Forest Service, Park Service, Fish & Wildlife Service, Bureau of Land Management, Bureau of Reclamation, and other federal agencies

The San Carlos Apache Reservation consists of 1.8 million acres in eastern Arizona. The reservation varies in elevation from 1,900 to 8,300 feet above sea level. This corresponds with plant communities varying from lower Sonoran desert to mixed conifer forest. This is one of the most diverse biological communities of any contiguous landholding in the United States. Of particular interest is the wildlife ecology of the reservation. About 75 species of mammals and 250 species of birds are found, including ten big game species, eight small game species (not including waterfowl), and dozens of neo-tropical bird species. Large portions of the reservation are de facto wilderness areas, including the regionally famous "Mineral Strip" (that part of the reservation south of the Gila River). The status of threatened, endangered, and candidate species is summarized as follows:



Species	T & E status	use of reservation	current management
bald eagle	listed	several nests, probably over 100 in wintering population	some nest protection only
peregrine falcon	listed	several nesting sites	none
spotted owl, Mexican subspecies	candidate	approximately 12 known pairs, approximately 35 identified birds	monitored by tribal Forestry Department due to lack of wildlife management funding
northern goshawk	candidate	presence, nests documented	none
desert tortoise, Mohave subspecies	candidate	documented from several areas	none
Gila topminnow	listed	two of last ten known populations	species maintained by San Carlos Fisheries Office

In addition to the diversity of wildlife populations, the reservation is famous for quality of many species (as measured by parameters such as body or antler size). Examples include:

- the largest antlers ever produced by the species *Cervus elaphus* (elk, red deer, etc.)
- two of the top ten bears on record
- the pending world record mountain lion
- record book pronghorn antelope, bighorn sheep, and Coues whitetail deer

As prescribed by San Carlos Apache Tribal Ordinance 76-1, the affairs of the Tribe pertaining to outdoor recreation and wildlife are administered by the San Carlos Recreation & Wildlife Commission, a five-tribal member body that provides policy decisions for the Recreation & Wildlife Department. Such commissions have been recognized as a key to success in tribal wildlife management.

As the director of the Recreation & Wildlife Department, and as the Tribe's first wildlife biologist from 1988 to early 1992, I testify that the federal funding level for wildlife management on the reservation is far short of any normal standards. This is distressing, when the reservation ranks far higher than normal standards in its wildlife management needs and potential.

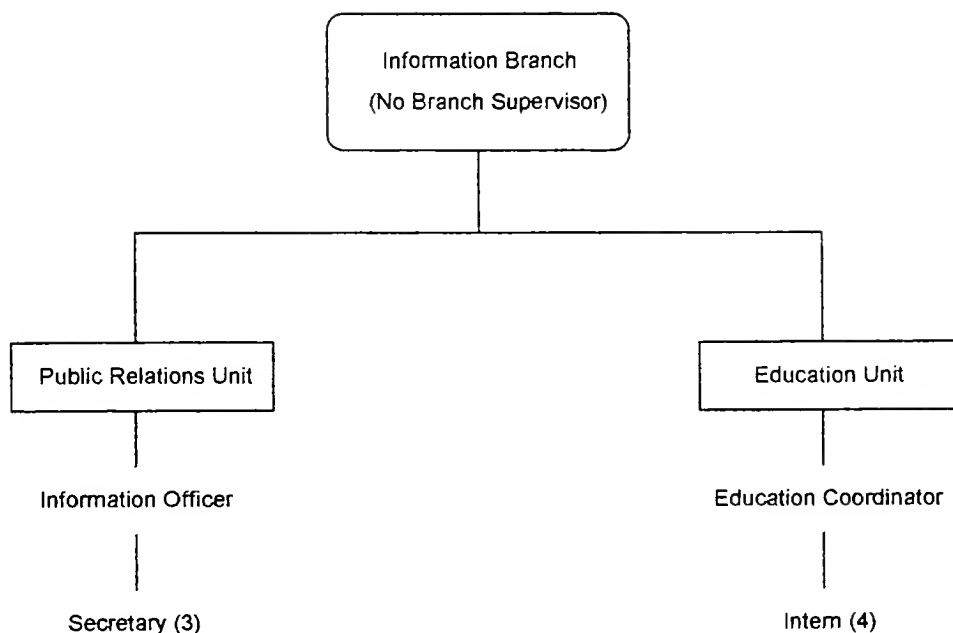
The goal of the Recreation & Wildlife Department is to preserve, protect, and enhance wildlife populations on the reservation, for the benefit of the Tribe and for the benefit of the ecosystem itself. Currently the Department consists of a Law Enforcement Division and a Wildlife Management Program. The Law Enforcement Division is comprised of nine rangers, one dispatcher, and a security guard. The Wildlife Management Program consists of one wildlife biologist and one wildlife technician. Supporting staff for the entire Department includes a maintenance man and three secretaries. The current budget of the Department is about \$696,000. \$120,000 of this is federally funded.

Please consider that: 1) **Larger** acreages (after the startup cost curve is overcome) require larger per-acre expenditures due to motor vehicle operation/repair costs and time required by field personnel to access the resource, and, 2) **Less developed** acreages require larger per-acre expenditures due to difficulty of access, and, 3) **Acreages with greater biodiversity** require larger per-acre expenditures due to the variety of species and issues to handle.

The San Carlos Apache Reservation is the fourth largest reservation in the United States and is one of the least-developed of all reservations (with only two significant communities on the entire 1.8 million acres). And, I must re-iterate, the San Carlos Apache Reservation has perhaps the most biodiversity of any contiguous landholding in the states. This indicates that the San Carlos Apache Tribe should be funded at a higher per/acre level than most federal acreages, not at a lesser level.

To accomplish the goal of the Department, a budget of \$1,775,000 is required, of which \$1,200,000 is requested of Congress. The following pages provide the justification for this budget.

Information Branch



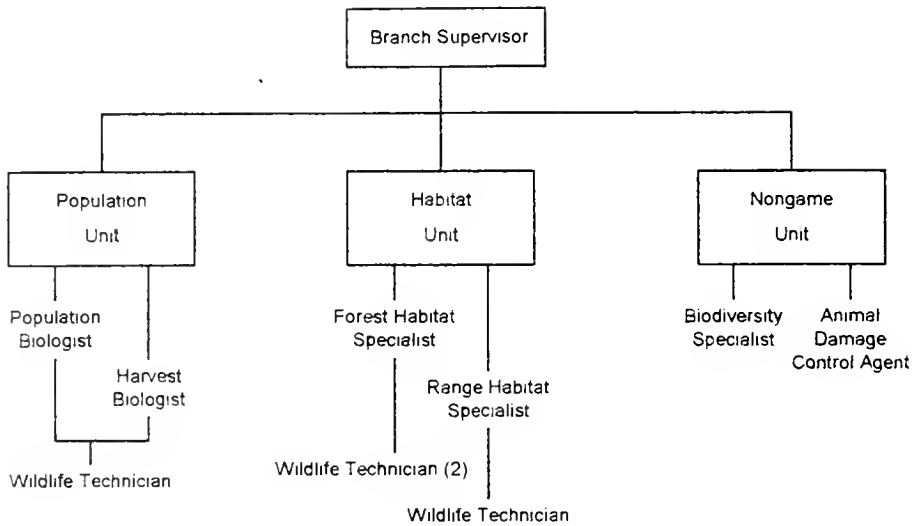
Information Officer - Answers public inquiries pertaining to hunting, fishing, and other outdoor pursuits on the reservation. Prepares promotional and educational publications (for free and for revenue). Processes public comment data. Writes news articles and other press releases. Arranges promotional events. Documents how promotional activities result in increased revenue.

Secretary - Answers basic inquiries pertaining to outdoor pursuits on the reservation. Sells permits and other items. Maintains files pertaining to permit sales and Department personnel. Sends information to those that request it.

Education Coordinator - Organizes and gives presentations for tribal elementary and high schools. Assists schools in the incorporation of Project Wild curriculum. Provides tours and presentations to visiting groups. Prepares educational handouts for public distribution. Serves as information officer in absence of information officer. Supervises and assists interns in successfully completing their college curricula.

Intern - Attends college for two semesters per year, works for Department other four months per year. Majors in wildlife science, administration of justice (with wildlife minor), or similar field. Prepares for professional position with Department or other tribal department or program. Performs wildlife technician or related duties while working for Department as intern.

Wildlife Management Branch



Senior Biologist - Coordinates activities of Wildlife Management Branch, assists other biologists on an as-needed basis, prevents duplicity of duties amongst subordinate biologists, conducts Geographic Information System activities, coordinates cooperative projects with state and federal agencies

Population Biologist - Monitors population parameters of elk, mule deer, Coues deer, pronghorn, Rocky Mountain bighorn, desert bighorn, javelina, turkey, bear, lion, and small game species. Methods include foot, horseback, vehicular, and aerial surveys. Identifies limiting factors for each species. Organizes research projects pertaining to game populations. Conducts statistical analyses on population trends and potential.

Harvest Biologist - Monitors harvests of elk, mule deer, Coues deer, pronghorn, Rocky Mountain bighorn, desert bighorn, javelina, turkey, bear, lion, and small game species. Analyzes biological samples obtained from harvests. Provides data to population biologist and financial planner. Formulates harvest strategies in consultation with population biologist and provides harvest recommendations to director.

Wildlife Technician (Population Unit) - Assists population biologist and harvest biologist in conducting wildlife and hunter surveys. Enters data into computer files

Forest Habitat Specialist - Prepares and implements habitat improvement projects in forested and wooded areas. Conducts inventory on important forest habitat features such as turkey roosts, elk security corridors, elk calving areas, nesting sites for many species, etc. Plans controlled burns in forested areas to enhance forage for big game species. Organizes research pertaining to wildlife in forests and woodlands. Provides data to forest wildlife planner.

Forest Habitat Technician - Assists forest habitat specialist in habitat inventories. Conducts habitat improvements. Supervises labor crews

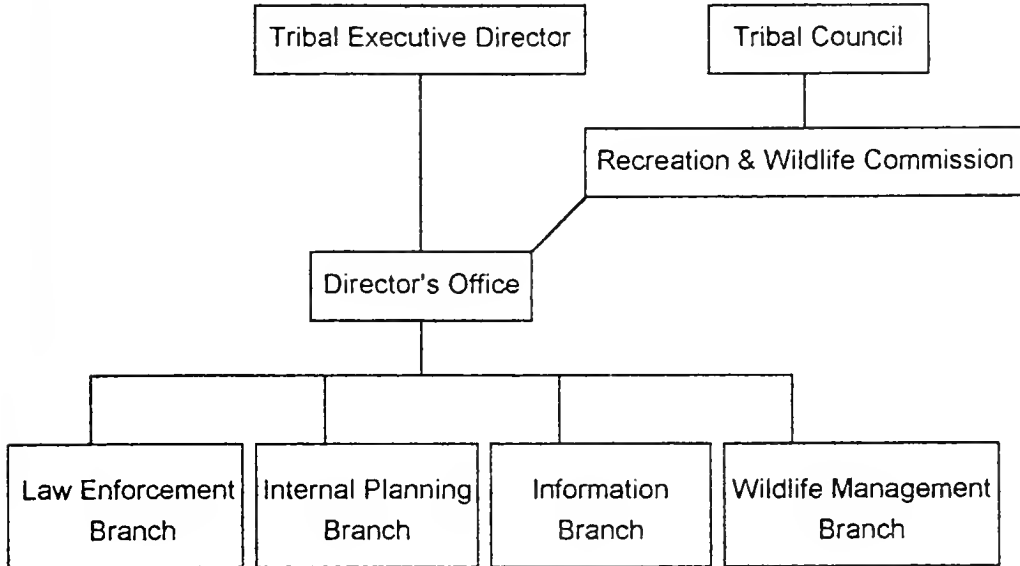
Range Habitat Specialist - Prepares and implements habitat improvement projects in rangelands. Conducts inventory on important range habitat features such as water holes, bighorn lambing areas, etc. Plans controlled range fires to enhance forage for big game species. Organizes research pertaining to wildlife in rangelands. Provides data to range wildlife planner.

Range Habitat Technician - Assists range habitat specialist in habitat inventories. Conducts habitat improvements. Supervises labor crews

Biodiversity Specialist - Monitors populations of threatened, endangered, candidate, and sensitive species. Assists forest wildlife planner in developing guidelines for timber sale administration. Provides biological assessments for other tribal departments dealing with NEPA or Endangered Species Act requirements.

Animal Damage Control Agent - Controls populations of animals that are limiting populations of big game and other valuable species

To accomplish the goal of the Recreation & Wildlife Department, the future structure of the Department should be as follows. The budget required to implement this structure is \$1,775,000 in 1993 dollars. Proceeding pages give breakdowns of each branch within the Department.



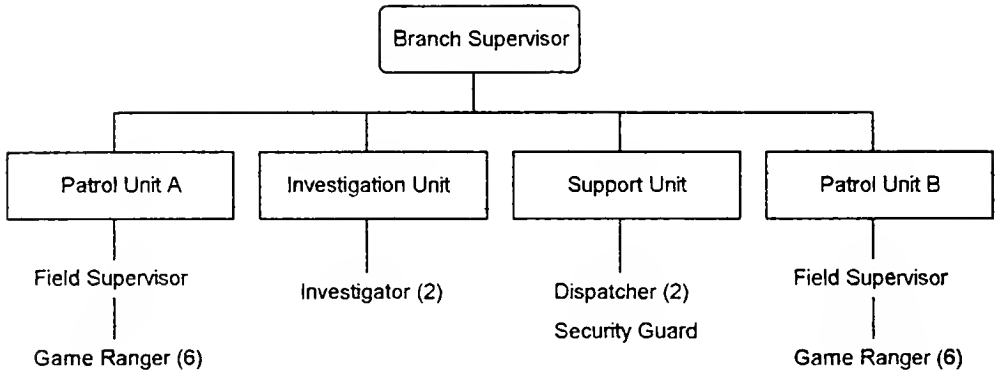
The Law Enforcement Branch is responsible for enforcing Tribal Ordinance 76-1 and annual Commission Orders. In addition, it assists other enforcement agencies in the enforcement of other tribal and federal conservation laws, and assists the Wildlife Management Branch in data collection. The annual budget required to administer this Branch is \$770,000. This budget includes the director's salary and director's office expenditures.

The Internal Planning Branch is the support branch of the Department, providing both current support and preparatory support for the Department's future. This support can be physical, financial, or administrative. This is the Branch most involved, along with the Director, in program development. This Branch also coordinates Department efforts with the San Carlos Planning Department. The annual budget required to administer this Branch is \$295,000.

The Information Branch is responsible for providing the public with information pertaining to rules, regulations, and orders of the Recreation & Wildlife Commission, and for providing educational services to the reservation school systems. The Branch also consists of tribal member trainees that will learn the duties of all administrative and professional positions in the Department. The annual budget required to administer this Branch is \$205,000.

The Wildlife Management Branch is responsible for monitoring wildlife populations, monitoring the harvests of hunters, providing recommendations for hunting regulations, monitoring and improving wildlife habitat, and controlling problem animals. The annual budget required to administer this Branch is \$505,000.

Law Enforcement Branch



Chief Ranger - Administers and coordinates law enforcement activities. Manages the Law Enforcement Branch fleet. Conducts time-keeping of Branch personnel. Prioritizes investigation and enforcement activities. Coordinates training for rangers. Enforces all laws enforced by game rangers. Provides recommendations on revisions of tribal law.

Field Supervisor - Supervises game rangers. Coordinates patrol efforts. Schedules game rangers' shifts. Assists chief ranger in coordinating training. Enforces all laws enforced by game rangers.

Game Ranger - Enforces Code 76-1 and other tribal and federal laws. Serves processes and notices. Executes warrants and subpoenas issued for violations of the provisions of Code 76-1 Recreation & Wildlife Commission Orders. Conducts searches without a warrant when there is probable cause to believe that tribal property is possessed in violation of the law. Seizes wildlife, evidence, and devices possessed in violation of the law. Collects data of use to the Wildlife Management Branch.

Investigator - Conducts investigations pertaining to Code 76-1 and other tribal laws. Assists game rangers in surveillance activities. Enforces tribal laws in absence of game rangers. Trains game rangers in investigation techniques. Coordinates undercover operations.

Dispatcher - Conducts safety checks of all Branch personnel. Provides secretarial assistance to chief ranger. Answers phone calls. Manages law enforcement filing system.

Security Guard - Keeps buildings and grounds secured during nighttime hours.

Centennial Accord and Environmental Memorandum of Understanding

The Centennial Accord, a historic document of great magnitude negotiated during the state's centennial year of 1989, provides for a tribal/state government-to-government relationship. Such a relationship, a first of its kind in the country, lays out the basic elements of sovereignty and decision making between the parties.

This document is notable in the context of co-management because it institutionalizes, to a great extent, the relationship between sovereigns. Nowhere is such a relationship more critical than in the area of natural resource management and environmental protection.

A State-Tribal Environmental Memorandum of Understanding (MOU) was also negotiated between the tribes and the state of Washington. This document identifies tribal and state environmental goals, and suggests a process to resolve environmental issues on a government to government basis. A copy of the Centennial Accord and the Environmental MOU are made available with this testimony.

Each watershed is unique and requires individual as well as regional focus

Within given watersheds or basins, however, the specific status of habitat and fish stocks will vary, due to differing terrain, water use and other environmental factors, as well as harvest and other mortality levels. These undeniable facts forced the conclusion that natural resource management must be tailored to suit local situations, as well as regional and global realities. In some areas, fish runs are strong and are comprised in large measure of wild stock. In others, wild stocks or their habitat have been decimated, and habitat and enhancement efforts are needed.

There have been those who have tried to point the finger at one industry or another, or one cause or another, for declines in some fish runs. In some watersheds the major causes are obvious, such as the Elwha River where dams have totally blocked fish passage into headwaters that originate in the Olympic National Park. But, for the most part, a multitude of causes contribute to fish management problems, and thus the concept of comprehensive management is appropriate. It is worth mentioning, incidently, that, given available habitat, most fish runs in the Puget Sound and coastal regions are in relatively good condition, and that many of these rivers support healthy percentages of wild fish. We credit the comprehensive, cooperative management approach driven by the U.S. v. Washington decision for this condition.

Clearly, however, with a host of problems coming from many directions (salmon have to swim through every conceivable ownership in their migration), cooperative management must be followed. And, it is the way we have gone for the past eight years.

Timber-Fish-Wildlife Process

In addition to the U.S.-Canada Treaty mentioned earlier, the Timber-Fish-Wildlife (TFW) Process is one of the most well known co-management-related efforts, which brought together previously warring factions of the state, timber industry, tribes, and environmental organizations. The process changed forest practice rules governing state and private timber harvest and management. It established a forum for all parties, including the tribes, to meet and work out differences. It also created a scientific committee charged with arriving at the "scientific truth," and the commitment to adapt forest management practices to the truth. Much has been said about this process over the past several years, but the principal philosophy of TFW demonstrates a truth we must all learn to accept...that people working together accomplish worthwhile things, while people fighting one another create waste and further hostility.

Watershed Planning

Cooperation in fisheries management has also been evident through regional watershed planning. An example is the Watershed Planning Process, which has called for the production of Comprehensive Resource Management Plans for every basin in the U.S. v. Washington case area. Joint management plans for each watershed are now in various stages of development. Harvest management, production and habitat restoration and protection measures are critical elements in each of these plans. Through the exchange of information and technology, as well as eggs and broodstock, the state and the tribes have made great progress in cooperative enhancement over the years.

Long Live the Kings and Nisqually Task Force

Some efforts, such as Long Live The Kings (which is having a positive impact in the Gray's Harbor region), and the Nisqually Task Force (which has helped keep the Nisqually River one of the most habitable rivers in the region) have, in fact, focussed on individual watersheds. These efforts, and others like them, are initiatives by the tribes and interested parties to solve problems and find solutions on the ground, in individual watersheds.

Chelan Water Resources Planning Process

It was clear from the beginning of cooperative management that water would eventually be a key link in the process. The health of fish, wildlife, vegetation and

people is utterly dependent on the availability of ample, clean water. Yet, even in the Pacific Northwest, there are water shortage and quality problems that have continually worsened over the years.

The planning and allocation of water resources in all western states over the past century has consisted primarily of the granting of permits in response from individuals and groups wishing to exploit this precious resource. But the realization that water is a finite resource and that competitive demands for it easily exceed its availability have increased the complexity of water management decisions.

In 1990, at the urging of the tribes, a series of tribal-state-user water resource planning retreats was held. Top ranking officials of state, tribal and local government interacted with representatives of business, agriculture, environmental organizations, recreation, hydropower, commercial fishing and other water-related interests to develop a cooperative water resource planning process.

The result was a process now known as the Chelan Process. The basic goals of the "agreement" are to 1) manage water by hydrologic unit, 2) meet water needs first with resources within each respective unit, 3) work toward the tribes' general long term policy objective of achieving an overall net gain of the productive capacity of fish and wildlife habitats, and 4) accommodate growth in a manner that protects the unique environment of the state. The process was not designed to determine or resolve legal disputes. Nor was it intended to be the only option for water management in the state. But the process does provide an historic opportunity to promote ongoing cooperation in water management planning, and thus minimize conflict.

Over the past two years, the Water Forum, a committee of affected parties, including tribes, has met to resolve a comprehensive workplan. If successful, the plan will advocate a statewide policy on instream flows, hydraulic continuity, groundwater planning, and other critical water considerations. Also during this time, pilot cooperative planning projects have been conducted on the Dungeness watershed in western Washington and on the Methow watershed in eastern Washington, to test the regional approach.

Puget Sound Water Quality Program

The tribes have been major participants in water quality, as well as water quantity-oriented programs. The primary water quality-related programs involving tribes in the state have been the Puget Sound Water Quality Authority (PSWQA) and a wide range of water quality programs supported by the U.S. Environmental Protection Agency.

The Washington State Legislature created PSWQA in 1985, and charged it with developing a comprehensive plan for water quality protection in Puget Sound, to be implemented by state and local governments. The tribal seat, filled by NWIFC Commissioner Terry Williams, was established by the state in recognition of the important role of the tribes. The tribes have, as a result, been involved in every facet of Puget Sound water quality management efforts, ranging from the nomination of watersheds for inclusion in an early action program to address nonpoint source pollution problems to conducting shellfish programs to protect and enhance that resource.

Model Water Quality Program Initiative

The western Washington tribes have also linked up with state and local governments in efforts to manage off-reservation water quality problems. Financial support for tribal participation in this program has been made available to the tribes from several sources, including the Department of Ecology's Centennial Clean Water Program, and the Environmental Protection Agency. During the early years, the tribal focus has been directed at restoring and maintaining riparian and marine habitats that support finfish, shellfish and cultural resources. In addition, as sovereigns, the tribes are involved in planning efforts that affect their jurisdiction. As a result, each tribe also conducts on-reservation nonpoint source pollution and other water quality programs.

Comprehensive water quality programs are also being conducted by the tribes in conjunction with the U.S. Environmental Protection Agency. Specifically, the program will address specific water quality problems, propose changes in policy, regulations and laws, and seek control of nonpoint and point pollution. Some of the problems of particular concern cited by the tribes include sedimentation and water temperature increases due to poorly regulated logging; bacterial and chemical pollution from agriculture, as well as urban runoff and sewage; and increased pollution of all sorts caused by voids in regulations or by non-enforcement of existing regulations and laws.

RECOMMENDATIONS AND FUTURE CONSIDERATIONS

Our experiences in the Pacific Northwest demonstrate a high level of achievement and capability. Our management efforts stem from adherence to certain underlying principles and philosophies. The success of our approach has often been affected both positively and negatively by critical limiting factors. As such, we believe that it is necessary for you understand some of our lessons and findings.

Tribes are managers of the resource, not simply users

It is important to note that tribes are natural resource managers. Such management is culturally based, and predates written history. It is also embodied in treaties, litigation and sometimes in legislation. Tribes are sovereign entities, and have primary management on-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.

Shared responsibility with the states and federal governments on off-reservation resources are critical to fulfill treaty responsibilities. In some cases tribes have been clearly integrated in off-reservation planning and management efforts. In other cases, tribes have been excluded, either deliberately or because federal policy did not afford tribal participation at the time of law passage. Support is needed for the tribes to be able to participate on fishery management councils and inter-state compacts as appropriate. It is also important that tribal governments have standing and the ability to fully participate in inter-jurisdictional decisions affecting off-reservation resources.

The federal government has obligations to the tribes

The federal government has outstanding obligations and responsibilities for the protection and proper management of fish and wildlife. This obligation extends beyond mere protection and management to insuring access and availability of natural resources to the Indian people.

This obligation also transcends mere paternalism, and must reflect 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.

Effective tribal management is a function of infrastructure

The ability of the tribes to effectively manage the natural resources we have depended upon since time immemorial requires that we have the capabilities for the next century.

As a result of the US v. Washington decision, Congress appropriated funding for each tribe to develop their individual management programs. In addition, the tribes supported resources to the Northwest Indian Fisheries Commission to assist in implementing legal obligations.

Resultant staff capabilities have been extremely valuable in allowing the tribes to address critical management issues in a positive, solution oriented way. But if tribes are to continue this effort, additional commitments to management and support staff is essential. This is especially important given the increasing needs for environmental protection.

Tribal infrastructure depends on adequate and stable funding

Tribal natural resource management programs are second to none in their effectiveness and efficiency. But even the best programs faces limiting factors. One such limit is adequate and stable financial support.

Tribal natural resource management programs have delivered many services to Indian people over the past several years. The programs have built a strong foundation for future community and economic growth. But without continued financial support, the programs will not continue to deliver the level of services needed to manage natural resources.

The sources of funding for tribal natural resource management programs have included congressional appropriations through the Bureau of Indian Affairs, Fish and Wildlife Service, Administration for Native Americans, and the Environmental Protection Agency. In addition, other tribal revenues come from state programs and tribally-imposed fish taxes and other tribally generated funds.

At the present time, the tribes do not have clear and specific access to Dingel-Johnson, Pittman-Robertson, Wallop-Breaux funds, forest legacy programs or Land and Water Conservation funds. Such access should be secured directly to the tribes. It should not have to come through the affected states, which may have different views of priorities and needs, and are often times adversarial to tribal interests.

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 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. The need for tribal programs clearly exceeds existing funding levels.

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 misguided bureaucratic initiatives, lack of cost-of-living adjustments, inflation factors, and sequestration problems.

Shortages caused by these 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.

Training and professional development is critical

It is important for tribes to receive help with training and professional career development. Such assistance is critical if the tribes are ever to be successful in enticing Indian students into the field of natural resource management and environmental protection.

In addition, 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.

CONCLUSION

Cooperation is the banner we wish to wave as we close out this millennium. Let us all pull together, so we can accomplish what none of us can accomplish alone. Let us all have the courage to take the stands we must take to secure a habitable world for our children of tomorrow, as well as our workers of today. Let us stand up to hard problems and make good decisions. Let us stand behind what we know is right, and fortify these positions with the words and actions of truth and dignity.

We believe these objectives will be aided by legislation you are now considering, if you focus on a few core concepts we have spoken to, and make them cornerstones for an Indian fish and wildlife management act.

The Indian tribes are waking up in this country, we are leaving the "Dark Ages" behind, and through cooperative efforts, we will be able to help save the natural heritage of this land for the benefit of future generations.

Thank you.

Mr. FALÉOMAVAEGA. Thank you, Mr. Frank.

Without objection, gentlemen, your statements will be fully made part of the record. So I just wanted to note that.

Mr. Anderson.

Mr. ANDERSON. Yes, thank you very much.

I'll be brief, and I won't even try to follow Billy with my comments.

I have the dubious distinction of often times having to follow Billy, and it's always very flat compared to his presentation.

So what we would like to do is provide some information for the record.

We have a document which was signed by the tribes in Washington State with the State of Washington called the Centennial Accord. And it was a government-to-government relationship that was documented in 1989 and we'll make that part of the record.

It I guess shows the type of relationship that the tribes in Washington State have worked out with the State of Washington to work on issues in a cooperative and forthright manner, respecting each others sovereignty.

Mr. FALÉOMAVAEGA. Without objection, the documents will be made part of the record.

[EDITOR'S NOTE.—Documents submitted by Mr. Anderson may be found in the hearing files.]

Mr. ANDERSON. I have a couple of other excerpts from reports. One in particular is the Report of the United States of America to the United Nations' Conference on Environment and Development, in which the Northwest Tribal efforts were highlighted as a good example of how tribes and the state and federal government can work together in cooperative natural resources management.

There's a memorandum of understanding that the tribes have negotiated with the State of Washington, it talks about how to work out environmental issues without necessarily litigating issues. It does reserve the opportunity to litigate, and that is available here.

And finally, I have a series of reports, one on timber, fish, wildlife, one on the tribal water quality program, and one on our fishery management program and our annual report that go into great detail about programs that Billy has talked about, and show how we've been able to package certain things.

And then, finally, we have a video tape here with four different videos on it, one about the Fish Commission and our member tribes, one on shell fish, negotiations and litigation that's very important to us right now, one on the timber, fish, wildlife initiative, which was a very ground-breaking pioneering effort, and finally a video that won an Emmy called "Moon's Prayer," and that talks about the tribal perspectives on the environment. And it was very well received, seen by hundreds of thousands of people in the Pacific Northwest.

Mr. FALÉOMAVAEGA. Without objection, it will be made part of the record.

[EDITOR'S NOTE.—The videotape may be found in the hearing files.]

Mr. FALÉOMAVAEGA. I want to ask you, Mr. Anderson, do you have just one tape?

Mr. ANDERSON. I have one tape, but I'd be very glad to make other tapes available.

Mr. FALEOMAVAEGA. Let me offer this as a suggestion for the tribal members of the organization.

It would be very nice to have copies of the tapes be made to the members of the subcommittee specifically, and maybe with just a courtesy letter inviting the members on their own privacy and opportunity they might have, so they might see the videos that you have indicated earlier.

I think it'll be a real good orientation for the members of the subcommittee if they are given copies of the videos.

Mr. ANDERSON. We will do that.

Thank you very much.

Mr. FALEOMAVAEGA. Mr. Harp?

STATEMENT OF JIM HARP

Mr. HARP. Mr. Chairman, good morning.

I'm pleased to appear before the Committee to express the views of the Quinault Indian Nation regarding concerns pertaining to the management of fish, wildlife, and plants.

I am Jim Harp, Fisheries Manager and an elected representative of the Quinault Indian Nation up in the State of Washington, on the coast of Washington.

We at Quinault are encouraged that Congress is seeking tribal views on how the United States could improve the administration of its trust responsibilities towards Indian tribes.

We are aware that the Senate Select Committee on Indian Affairs has also initiated efforts to determine the necessity and scope for legislative action concerning management of fish, wildlife, and plant resources of concern to Indian tribes, and urge that the House and Senate work in concert with Indian tribes to ultimately develop legislation that can be enacted into law.

I would like to premise our statement with a few remarks that may help provide perspective and understanding of our views.

Fish, wildlife, and plants have been central to our culture, economy and survival. Under the 1855 Treaty of Olympia, the United States assumed a trust responsibility to protect our rights to hunt, fish, and gather.

Since then, time and again, Indian people have been jailed, abused, and forced to the courts when attempting to exercise treaty-protected rights. Only after lengthy and costly litigation affirming our rights, has the United States been willing to provide financial resources for management of the resources which comprise our heritage.

In effect, the United States has historically taken the posture that our treaties have no meaning unless and until the courts say they do.

We find such attitudes abominable. They have led to the depletion of important resources, erosion of sovereignty, reduction in management effectiveness, and diminishment of the legacy that we leave our children.

The government to government relationship between Indian tribes and the United States which flows from the Constitution, treaties, and courses of dealings, must be strengthened and respected.

This relationship has been defined by numerous pieces of legislation and executive orders, administered by the Executive Branch, and interpreted by the courts.

The United States has obligations and responsibilities for protection, proper management, and enhancement of fish, wildlife, plants, soil, and water, so as to ensure access, sustained availability and suitability for use by Indian tribes and Alaska native peoples.

The United States should serve as an advocate for the preservation and exercise of these treaty rights, not sit idly by, a silent witness to their erosion.

We believe that the Committee's efforts should focus on a few fundamental cornerstones to establish the foundation for future initiatives in fish and wildlife management.

The foremost issue is to affirm the commitment of the United States to support, strengthen, and enhance tribal management capabilities. This commitment should be reflected in two fundamental areas.

First, tribal sovereignty and primacy to establish management direction on-reservation should be fully supported. Our reservation was established as a permanent homeland for the people of the Quinault Nation.

The policy of allotment has led to the fractionation and checker boarding of land on many reservations across the country.

Current land ownership patterns on our reservation cause enormous problems when attempting to implement responsible resource management.

Contending with trespass violations and enforcement of fish and game regulations has become an administrative nightmare, fraught with jurisdictional impediments to effective resource management.

These problems are especially severe for fish and wildlife resources which of course recognize no political or ownership boundaries.

We believe that the Congress and the Administration should recognize the primacy of tribal rights to manage fish and wildlife resources on-reservation. Support should be provided for development of effective enforcement of tribal fish and wildlife codes and regulations to apply to all persons on all lands within reservation boundaries.

In addition, adequate funding and professional development training programs are needed to improve tribal management skills and capacities.

Second, the standing of tribal governments to participate in decisions involving off-reservation resource management issues, at least on a par with the states, should be supported.

An affected tribal government should, at its own option, be entitled to take part in inter-jurisdictional decisions affecting off-reservation resources of concern.

For example, standing for tribes to fully participate in specific regulatory activities, such as habitat protection, in stream flows, water quality, and FERC licensing, should be recognized.

Further, current programs within the federal government provide for agreements with states for management direction of lands and resources, some of which Indian tribes have vital interests. This occurs without tribal consultation and participation.

Prescriptive measures are needed to prevent actions and agreements without tribal participation that involve either federal or on-reservation lands.

This would prevent agreements between states and federal agencies without participation and agreement of the affected tribes.

Another example is, presently, on the Pacific Coast, the regional fishery management councils have direct responsibility for developing ocean fishery management plans affecting the numerous salmon and other marine resources of Indian tribes.

While these councils provide for representation by states, there is no specific provision for representation by Indian tribal governments.

I am privileged to serve as an at-large voting member of the Pacific Fishery Management Council for the State of Washington. However, specific representation for tribal governments is clearly warranted and should be mandated by law.

In closing, the Quinault Nation stands ready to work with the Committee in developing reasoned and responsible approaches toward improving the management of our natural resource heritage.

Thank you for the opportunity to testify on this important topic.
[Prepared statement of Mr. Harp follows:]



Quinault Indian Nation

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**TESTIMONY OF JIM HARP ON BEHALF OF THE QUINAULT INDIAN NATION
BEFORE THE HOUSE OF REPRESENTATIVES
NATURAL RESOURCES COMMITTEE
REGARDING LEGISLATION CONCERNING FISH AND WILDLIFE
RESOURCES OF INTEREST TO INDIAN COMMUNITIES
WASHINGTON, D.C., FEBRUARY 18, 1993**

I am pleased to appear before the Committee to express the views of the Quinault Indian Nation regarding concerns pertaining to management of fish, wildlife, and plants. I am Jim Harp, Fisheries Manager and an elected representative of the Quinault Nation.

We at Quinault are encouraged that Congress is seeking tribal views on how the United States could improve the administration of its trust responsibilities toward Indian tribes. We are aware that the Senate Select Committee on Indian Affairs has also initiated efforts to determine the necessity and scope for legislative action concerning management of fish, wildlife, and plant resources of concern to Indian tribes and urge that the House and Senate work in concert with Indian tribes to ultimately develop legislation that can be enacted into law.

I would like to premise our statement with a few remarks that may help provide perspective and understanding of our views. Fish, wildlife, and plants have been central to our culture, economy, and survival. Under the 1855 Treaty of Olympia, the United States assumed a trust responsibility to protect our rights to hunt, fish, and gather. Since then, time and again, Indian people been jailed, abused, and forced to the courts when attempting to exercise treaty-protected rights. Only after lengthy and costly litigation affirming our rights, has the United States been willing to provide financial resources for management of the resources which comprise our heritage. In effect, the United States has historically taken the posture that our Treaties have no meaning unless and until the courts say they do. We find such attitudes abominable. They have led to the depletion of important resources, erosion of sovereignty, reduction in management effectiveness, and diminishment of the legacy that we leave our children.

The government-to-government relationship between Indian tribes and the United States which flows from the Constitution, treaties, and course of dealings must be strengthened and respected. This relationship has been defined by numerous pieces of legislation and executive orders, administered by the Executive Branch, and interpreted by the courts. The United States has obligations and responsibilities for protection, proper management, and enhancement of fish, wildlife, plants, soil, and water -- so as to insure access, sustained availability and suitability for use by Indian tribes (and Alaska native peoples). The United States should serve as an advocate for the preservation and exercise of these treaty rights, not sit idly by a silent witness to their erosion.

We believe that the Committee's efforts should focus on a few fundamental "cornerstones" to establish the foundation for future initiatives in fish & wildlife management. The foremost issue is to affirm the commitment of the United States to support, strengthen, and enhance tribal management capabilities. This commitment should be reflected in two fundamental areas:

First, tribal sovereignty and primacy to establish management direction on-reservation should be fully supported. Our reservation was established as a permanent homeland for the people of the Quinault Nation. The policy of allotment has led to the fractionation and checker boarding of land on many reservations across the country. Current land ownership patterns on our reservation cause enormous problems when attempting to implement responsible resource management. Contending with trespass violations and enforcement of fish and game regulations has become an administrative nightmare, fraught with jurisdictional impediments to effective resource management. These problems are especially severe for fish and wildlife resources which, of course, recognize no political or ownership boundaries.

We believe that the Congress and the Administration should recognize the primacy of tribal rights to manage fish and wildlife resources on-reservation. Support should be provided for development and effective enforcement of tribal fish and wildlife codes and regulations to apply to all persons on all lands within reservation boundaries. In addition, adequate funding and professional development training programs are needed to improve tribal management skills and capacities.

Second, the standing of tribal governments to participate in decisions involving off-reservation resource management issues, at least on a par with states, should be supported. An affected tribal government should, at its own option, be entitled to take part in inter-jurisdictional decisions affecting off-reservation resources of concern. For example, standing for tribes to fully participate in specific regulatory activities, such as habitat protection, in stream flows, water quality, and FERC licensing should be recognized. Further, current programs within the Federal government provide for

agreements with states for management direction of lands and resources, some of which Indian tribes have vital interests. This occurs without tribal consultation and participation. Prescriptive measures are needed to prevent actions and agreements without tribal participation that involve either federal or on-reservation lands. This would prevent agreements between states and federal agencies without participation and agreement of affected tribes. Presently, on the Pacific Coast, the regional fishery management councils have direct responsibility for developing ocean fishery management plans affecting the numerous salmon and other marine resources of Indian tribes. While these councils provide for representation by states, there is no specific provision for representation by Indian tribal governments. I am privileged to sit as an at-large member of the Pacific Fishery Management Council for the State of Washington, however, specific representation for tribal governments is clearly warranted and should be mandated by law.

The Quinault Nation stands ready to work with the Committee in developing reasoned and responsible approaches toward improving the management of our natural resource heritage. Thank you for the opportunity to testify on this important topic.

Mr. FALCOMAVAEGA. Thank you, Mr. Harp.

A couple of observations, and I will then ask a couple more questions to the members of the panel.

One of the things that I've noted over the years is that sometimes, perhaps with sincere and good intentions, several tribal organizations hire consultant firms here in Washington to represent their interests.

But one of the things that I would certainly like to convey and to express this interest to the tribes is that whenever you're here in Washington, please make every effort to see the members themselves.

Sometimes I think our tribal members think that only the consultant firms are the only ones that can see the members.

There's nothing sacred about you not having to come and visit us directly. Because this lobbying game that goes on sometimes, in my humble opinion, gets lost in the quagmire of seeing that sometimes the information, or you don't really see the members themselves, and the message just doesn't come across.

So I would like to encourage and pass the word out to Indian country, when you are here in Washington, please make every effort to visit the member delegations of your states, or even the members of the given subcommittees, whether it be in the Senate or on the House side.

Visit with them directly. Talk to them.

That's why we're here.

And I would like to give that alert to all the tribal organizations, especially for the tribal leaders when they do come to Washington. Please make it, if you're working through our consultant firms or whatever organizations that do it, make sure that you require that they make appointments for you, and have you come visit with us directly. Tell us what your problems are.

I never see many of our tribal friends who come from the various states, and I wonder why.

And it seems that the only chance that I get to visit—and I'm sure this is true with other members—is when we have hearings. Then right after the hearing, everybody disappears.

And I would like to make that note to encourage as many of our Native American leaders to come and visit with the members directly. Make appointments with us. Tell us what your problems are.

Now I'm sure that there may be some sense of hesitation about not being able to speak proper English.

I'm still learning the English language. My mom, to her dying day, could hardly speak English. But English is only a tool. And if you need to have a translator, then get yourself a translator, and make it known what your wishes are.

This is one of the problems. Our whole educational system and the theories and the problems that affect Native Americans is the same thing that happened to us.

We don't have a Bureau of Indian Affairs, but we have what I call an isolated Bureau of Indian Affairs, and we have the same problems that you are confronted with.

And I don't mean to say this in a derogatory way, meaning that those people downtown are evil. But sometimes with the best and

sincere efforts, somehow things get lost in the cracks. And sometimes you have to keep ringing that bell, you have to keep screeching in and making sure that somebody hears and pays a little more attention to the problems affecting Native Americans.

So I would really like to pass that word onto all of our tribal leaders and friends out in Indian country. Come and visit the members. Make appointments with them. There's nothing sacred about that.

Sometimes you need to not depend too much on our consultant friends. You come and see us. And if you think you have broken English, I can speak broken English too, you know.

They call it pidgin English in Hawaii, but I really would like to offer that sense of encouragement to our friends.

And again I go back to Mr. Poynter's comments that were made earlier. I couldn't agree with him more. And this is the directing that the Chairman definitely is going to take, a very active role. He's going to plan a series of hearings in the coming weeks and months.

It is our hope that we will prepare a comprehensive legislation that will affect the needs of Native Americans dealing with wildlife and services and dealing with their economic needs.

So I'm very encouraged. And this is not taking anything away from Chairman Miller and what he's had to do on an ad hoc basis since he took over the chairmanship of this Committee.

But just the fact that Congressman Richardson in his initiative and the concerns that he's had over the years, that we've worked very closely together, and the fact that we now have an official subcommittee doing this, is a big, big change, dramatic change in what's happening here in the Congress.

And I would also suggest to have you write letters directly to the Chairman, and give him a sense of encouragement. You know, sometimes we get very depressed down here. And we don't know from our heads down to our toes if we're doing the right thing ourselves.

So give us a sense of direction. Let us know what's going on in Indian country. Sometimes, with good intentions, our friends downtown as well as even here, we don't know what's going on.

But I think a direct communication, phone calls, or whatever it is that needs to get the attention not only of the Congress, but as well as of the Administration, we need to do it.

I expressed my sense of frustration, I recall, last year. For four years, it's been on the books and by-law, that we're to establish a National Conference of Indian Education. Well, we did it but it was on a last minute basis, and was kind of a quick put together thing.

We had the conference, so we have another study, after about a thousand other studies and conferences and meetings and commissions and councils, all retreads, in my humble opinion, knowing that the same problems that we're going to be talking about this year in and year out.

But I really really hope that we're going to get some results this time.

I want to commend Mr. Frank for his directness, and certainly you couldn't have said it better.

This is the constant theme that I've heard over and over again over the years. Indian tribes want funding directly to go to them to manage their affairs.

Now here's the other side of the coin to this issue, Mr. Frank. And there are those of us who said, well, but we have to have some sense of accountability. This is the taxpayers' money. How are we going to make sure that that money is spent properly, and that it's not going to be wasted or mismanaged or there's any sense of corruption or fraud.

This is the kind of thing that has its Washington mentality going on. And say, well, we have to have some sense of accountability for it.

So that's the other side of the coin.

And perhaps maybe we can get better suggestions or recommendations from Indian country, and perhaps it can be proven that Indian tribes can do a better job in managing the money that comes from the American taxpayers' pocket.

So this is the kind of thing that goes on here. And hopefully you can give us better recommendations on how we can make improvements in this.

I appreciate Chief Wallulatum's statement. You're not here asking for funds. You're here just to give you better management skills.

Maybe this is another area that the Department of the Interior can look at.

You're not here to ask for handouts. You just want something to make you more self-sufficient. This is another constant theme that I hear from our tribal friends across the country.

I have asked previously for the opinions of the previous panel about how they feel about the Bureau of Indian Affairs as well as the Congress.

But I think pretty much we've gotten a sense of how this hearing is starting. And please bear in mind that this is just the beginning.

Like I said, I'm very very encouraged that the Chairman is going to bring our Committee to Indian country, rather than to always constantly have Indian country coming to Washington. I think it's high time that Washington needs to come and see for themselves, the members especially, what's happening out there.

And I also want to express my profound reverence and respect for High Chief Wallulatum and Mr. Frank. And I think this is a one, constant cultural theme that I would like to say, you know, Steve and I are nothing but kids.

And I always remember what Emerson said. That the years teach much which the days never know. And I always make that special note, my most profound respect for our elders here this morning.

And I really, really appreciate your presence. It's given me a sense of greater responsibility and commitment, and I'm sure Steve feels the same way.

But we need guidance, we need your wisdom. All the smarts and education don't mean beans if we don't have the guidance from our elders. And I just want to let Chief Wallulatum know that and Mr. Frank.

I'm a chief in my own culture, but I'm a small chief. In fact, when the members of the council of chiefs in my village meet, my chieftain title is so small that I sit under a coconut tree outside the chiefs' council meeting.

But nevertheless, it's my most profound respect for the culture, and this is something that I'm sure that there is a great sensitivity by the members to do this.

But we do this both for the culture, but we also need to be progressive in our thinking. And the world has changed, and I couldn't agree more with Mr. Frank about the Bolt decision. It's made a tremendous impact on this whole issue of the rights of Indian to fish and wildlife.

It's a controversial one, the problems with the rights of the states versus the federal government with the tribes. But I think we have to be constantly at it, or else things get lost on the way.

So I just want to give that sense of my feelings and certainly to the members of the panel and my respect for your being here this morning.

Mr. Frank?

Mr. FRANK. Mr. Chairman. This is part of my little, I've got a little history for you.

And I've got to say it to you. I can't say it to anybody else on the panel, but because of where you're from.

But before the turn of the century, and that's a long time ago, well, there's some warm water comes by off of our coast about 40 or 50 miles off of the mainland.

And it comes around, from Alaska, it comes around and along the Pacific Coast, and then it goes down in the South American coast toward your country. And it's documented that you have some of our logs, and that you made canoes out of them and paddles.

And canoes are part of our culture and spiritual life and the paddles that we have and make, and how we train our children to be good paddlers, and now even our women are paddlers. And you guys are certainly canoe people.

But those logs, how they got out into that ocean, was from all the storms that took place and the high water and the snow runoff and the different things that takes place up there.

Of course, there was hemlock, there was cedar, there was fir, different other types of spruce and different things that went out into the ocean.

And sooner or later, they reached your country. And so that connected us a lot of ways, in more ways than one. It connected us people.

And now today we can talk about how that connection was made. But we talk about that in our homeland and about your people over in those islands out there, because we're all one people. And now we're related to one another in different ways.

We go to school with each other, and our cultures have met. But at that particular time, it met by our natural resource, and that was by logs in the way.

And I just wanted to share that story with you.

Mr. FALCOMAEGA. Well, Mr. Frank, I appreciate that.

I've always said, with humor, to my Native American cousins here that I don't know what happened to the rest of you, but we were the brave ones that went out into the ocean and sought out the mysteries out there.

Mr. FRANK. Right.

Mr. FALEOMAVEGA. In the western sea.

You mentioned canoes. It's interesting to note that the catamaran, as we know them today, are the fastest vessels in the world. But if you don't realize it, that's a prototype of the Polynesian double hull canoe, believe it or not.

I was privileged to sail from Tahiti to Hawaii, which is about a 2700 mile distance, on a prototype Polynesian double hull canoe, about five years ago. And we sailed by non-instrument; in other words, strictly on the waves and the stars and the moon, the whole works.

And I wanted to say that it was one of the most spiritual experiences that I've ever had in my life. It was just like I was living a thousand years ago among my ancestors.

And so I know that your fishing methods are exactly the same as ours, believe it or not.

And there is some discussion about even our cousins, the Maoris in New Zealand, do the same type of fishing methods the way you do. And the question is how is it, maybe by coincidence.

I'd like to think that it was more than just coincidence.

But I really appreciate your comment on this issue. And I certainly want to thank you gentlemen and all the members who have testified earlier.

Please, I encourage you, write letters to the Chairman, let him know how you feel about these issues. Let's do something solid this time around concerning the needs of our Native American communities on wildlife and fisheries.

And hopefully we will come up with a comprehensive piece of legislation in the coming weeks or months. And it's all going to depend on the kind of input that we get from Indian country.

And this is the kind of thing that I know the Chairman is looking forward to.

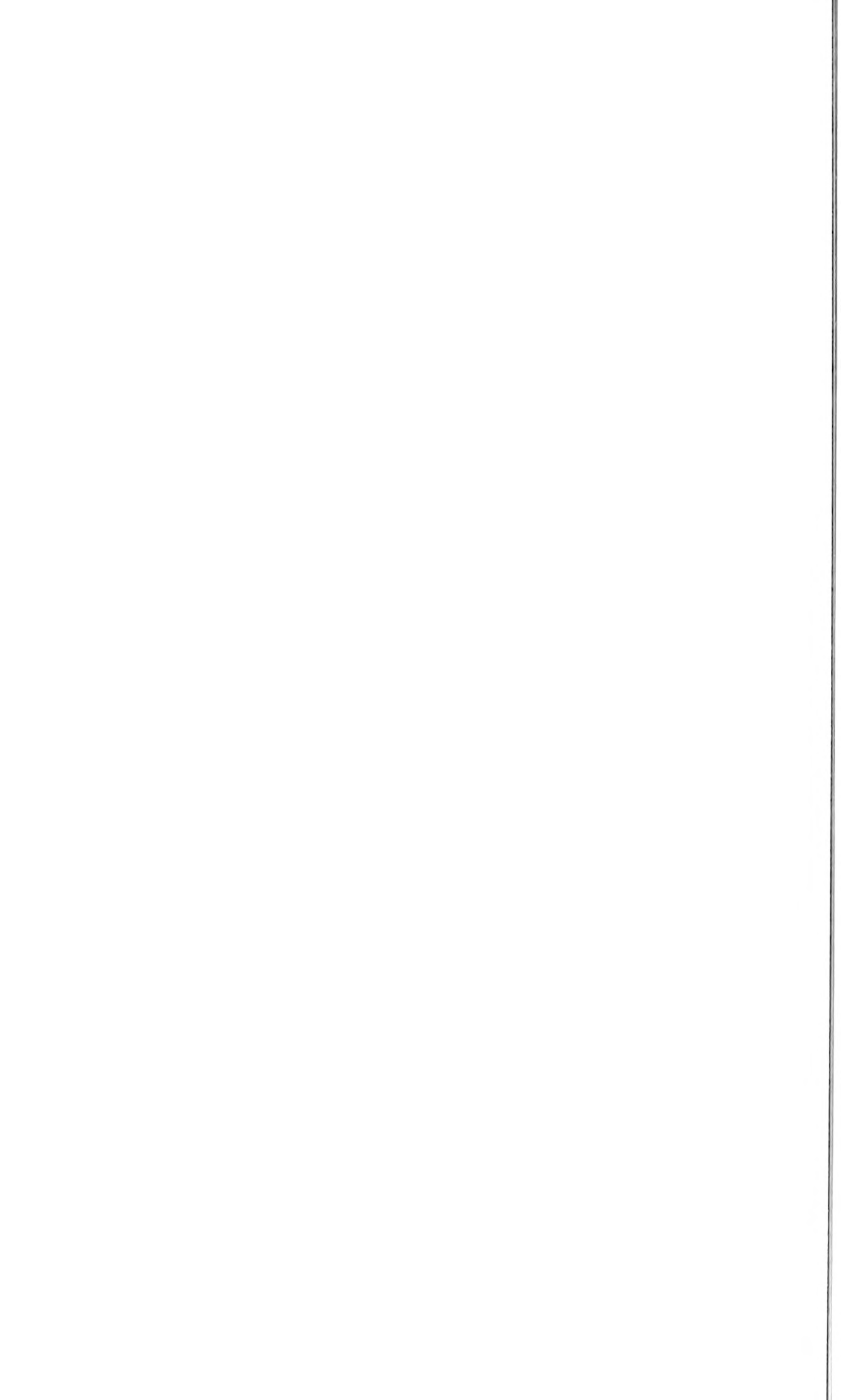
Again, I want to sincerely thank all of you for being here this morning.

I welcome you to come and visit my office. Please do so, because I'm leaving tomorrow. But, please, before you do come to Washington, make a sincere effort. Come and visit the members. Let them know how you feel about these things.

And, again, I want to thank all of you, and I wish you Godspeed and safe return to your homes.

The hearing is adjourned.

[Whereupon, at 11:45 a.m., the subcommittee was adjourned, subject to call of the Chair.]



APPENDIX

FEBRUARY 18, 1993

ADDITIONAL MATERIAL SUBMITTED FOR THE HEARING RECORD

TESTIMONY OF FERDINAND MARTINEAU

Mr. Chairman, members of the committee, my name is Ferdinand Martineau and I am submitting this written statement to you as the Executive Director of the 1854 Authority. The Authority is an inter-tribal organization created by three of the signatories of the Treaty of 1854 between the United States and the Lake Superior Chippewa. The Authority oversees the exercise of rights that were reserved in the 5 million acres that was ceded by the treaty in what is now Northeastern Minnesota. This area includes the western boundary of Lake Superior, Boundary Waters Canoe Area Wilderness in Minnesota, Superior National Forest, and several smaller state forests and parks. The Bands entered into litigation in 1985 in the case of Grand Portage Band of Lake Superior, et. al v. State of Minnesota et. al. in a dispute arising under Article Eleven of the Treaty of 1854. Article Eleven states that the Chippewa residing in the territory ceded by the Treaty of 1854 " shall have the right to hunt and fish therein... ". As litigation proceeded both sides recognized the long term bitter consequences associated with this type of litigation in other areas around the country and requested a continuance to try to negotiate a settlement. The Bands goal in these negotiations was to reach a settlement that established a relationship with the State and not to alter any rights under the Treaty of 1854. The negotiations resulted in the consummation of an Agreement between the Bands and the State that recognized the Bands rights in the Ceded Territory and required the development of an off-reservation conservation code to manage the harvest of the natural resources. The Bands deemed it necessary to develop an infrastructure for the administration, biological, enforcement, financial, legal and public relation. The Authority has been in the process of trying to develop the infrastructure but because of budget limitations has had only limited success.

Funding, or rather the lack of it, has hampered the Authority. As with all new initiative in Indian Country, the Authority has not had the benefit of any pre-existing source of funds and has had to go directly to Congress for an appropriation. Since 1988 the Authority has come to Congress and requested funds to help in the development of it's infrastructure. Each year has been a success and a failure for the Authority. The Authority has had success in being able to secure the funds necessary to maintain the limited services that it's members have come to expect, but the Authority has not been able to secure the amount that was requested. Currently the Authority receives approximately \$300,000 per year. The current request that will be presented to Congress later this session is for approximately \$2,000,000. The Authority currently employs 5 conservation officers that have the responsibility of patrolling the Ceded Territory (5,000,000 acres). The State currently employs 45 C.O's. to patrol the same area. The Authority's officers currently work as needed, which means that the coverage is sporadic and that the officers are not able to maintain a consistent or continuous schedule. In order to help alleviate this situation the Authority worked out a cross-deputization agreement with the State. All the conservation officers in the Ceded Territory now are empowered to enforce each others code. This agreement has not worked to the Authority's advantage as it has

given it's officers more to do while in the field. The Authority currently operates a court system, a registration system and an administrative system. Each of these are staffed by a very limited amount of personnel who have to handle more than their own job. The Authority does not employ any biological, financial, legal or public relations staff, not because there is no need for them but, because the money is not available to hire them. As stated earlier there is 5 million acres of land, rivers and lakes that make up the Ceded Territory.

Within the Ceded Territory the Authority has to deal with a variety of governmental agencies. Each having it's own bureaucratic system of regulations that they must follow. Each agency must be worked with on an individual basis to bring them up to date with current laws and how they affect their relationship with the Authority and the practice of Treaty Rights in the Ceded Territory. Although the Authority has implemented a conservation code to regulate their members exercise of rights in the Ceded Territory, they have been slow in their acceptance that the Authority has jurisdiction over it's member in the harvest of the natural resources in the Ceded Territory. The Authority's presence and public education remain a high priority for the Bands. The Authority continues to work within the established framework to deal with the current issues in the protection of Treaty Rights.

The environmental issues such as mining, timber harvest, disposal of hazardous material, air and water quality and a variety of other similar concerns have always been the forefront for the Bands of the Lake Superior Chippewa. The environment was an integral part of their lifestyle, culture and religion. All band members supported their way of life through harvest of the natural resources around them. Today that tradition continues through the Authority. The Bands have enacted very strict legislation on their reservations and are in the development stages for the Ceded Territory to protect this way of life for future generations of the Bands. Band members are beginning to recognize the efforts of the Authority and are starting to practice traditional values more openly.

Prior to the passage of P. L. 93-638 the Indian Self Determination and Education Act, tribal government played a limited role in the determination of it's future. The government enacted legislation designed to bring the Indian into the dominant society and to take away the traditional form of government. There was legislation that diminished the land base of the Bands and placed large portion of the reservations into private ownership, both Indian and non Indian. Most of this was done with little or no input from the Bands. Since P. L. 93-638 tribal governments have taken an active roll in the determination of their future. The Bands in Minnesota developed their infrastructures to handle the development reservations, and have begun to participate in the political process to develop good relationships with all the elected officials who represent them on a state and national level. They have become involved with lobbying efforts to effect the outcome

of legislation that affects them. Recently the Bands have turned the focus of their efforts to the Ceded Territory. The Bands recognized that the need for the natural resources to maintain the traditional lifestyle has placed a burden on reservation resources and they must now begin to use the Ceded Territory resources. As the Bands expand the practice of Treaty Rights outside their reservations new questions arise about the trust responsibility of the B. I. A. and the U. S. Government and the Bands.

Clearly the B. I. A. has a trust responsibility on reservation but, just as clearly, not off the reservation. The system currently in place has a clear delineation of how the Bands and the B. I. A. work together with on reservation concerns. The problems surface when the Bands begin to exercise off reservation rights. There is a long term litigation process that is costly to the Bands and no clear role for B. I. A. to play. The Bands have to depend upon their own financial resources to undertake this battle and, if successful, the B. I. A. then becomes a fund mechanism for them. Although this statement is short in words the problems outlined here could fill several volumes of testimony.

Legislation should be enacted that will allow the Bands access to the long term funding necessary to develop the infrastructure to enable them to be co-managers of the natural resources in the Ceded Territory. The jurisdictional questions should be dealt with by the agencies in negotiations as they currently are. The environmental issues will cease to be a concern once the infrastructure has the staff to deal with them in an informed manner. Tribal participation is always a concern with the development of legislation and should be addressed throughout the whole process. The trust responsibility of the United States and the relationship between tribal government should be cleared up so all citizens understand it. The problems that exist in Indian Country are old. They are a part of our past, our present and unless things change our future. Once the problems of funding tribal programs is stable, the jurisdiction that the tribes retained in the Ceded Territory is clear, the enactment of tribal legislation for the protection of the environment of the Ceded Territory's natural resources is recognized, there is tribal participation in legislation and the trust responsibility of the United States between Indian people is clear accepted, then, the Bands will be recognized as the true keepers of the environment that they are.

Thank you for the opportunity to present this statement before your committee in behalf of the Lake Superior Chippewa Bands of Bois Forte and Grand Portage.

Megwich.

THE SAN CARLOS APACHE TRIBE

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Harrison Talgo, Sr
 Tribal Chairman



Raymond Stanley
 Tribal Vice Chairman

STATEMENT OF HARRISON TALGO SR, CHAIRMAN, SAN CARLOS APACHE TRIBE, BEFORE THE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS, COMMITTEE ON NATURAL RESOURCES, REGARDING FISH AND WILDLIFE ACTIVITIES

FEBRUARY 18, 1993

Mr. Chairman, my name is Harrison Talgo, Sr. I am Chairman of the San Carlos Apache Tribe of Arizona. I appreciate this opportunity to comment on problems encountered by the San Carlos Apache Tribe in its efforts to manage its wildlife populations for protection of endangered or threatened species and for subsistence hunting by members of the Tribe and sports hunting by visitors to our Reservation. This hearing will focus attention on one of the most neglected subjects of Federal trust management of Indian lands and their resources.

The San Carlos Apache Tribe recommends that legislation be enacted to (1) establish realistic funding levels for wildlife management activities; (2) improve coordination of wildlife management of nearby Federal and state lands with tribal management plans; and (3) provide scholarships and training to enable tribes to employ their own members in wildlife management activities. I will direct my remarks today to the need for equitable levels of funding.

The Bureau of Indian Affairs funding for FY 1993 provides \$28 million for Wildlife and Parks. Of this amount approximately two-thirds is dedicated for use off-reservation in connection with treaty fishing-rights obligations, chiefly in the Northwest and Great Lakes regions. Of the remaining \$9.5 million, \$2.5 million is for tribal hatchery O&M, leaving \$7.0 million for Tribal Management/ Development Programs (TMDP). TMDP funds are available, under 638 contracts, to enable tribes to: develop codes, ordinances, and regulations for conserving fish and wildlife resources on millions of acres of trust land; develop the multidisciplinary competence and professional expertise of tribes and intertribal fish and wildlife organizations; create

job- and income-producing programs; and manage public use and tourism. Of the entire \$28 million, less than 2% is available for management of big-game and bird populations on approximately 51 million acres of trust land. This works out to less than 2 cents per acre. The way the BIA structures its budget obscures the fact that very little of its wildlife and parks fund go to on-reservation wildlife management. We suggest that the Subcommittee consult with the BIA to arrive at a budget structure that more clearly displays how its funds are deployed to meet its several important on-reservation missions and to the extent feasible distinguish funding for fish, on the one hand, and all other species, on the other.

The San Carlos Apache Tribe receives \$65,000 of TMDP funds for wildlife management on its 1.8 million-acre reservation (the fourth largest in the nation) or about 3 1/2 cents per acre. The Tribe also has allocated approximately \$55,000 of other BIA funds to wildlife management at the cost of reduced funding for programs under the BIA's tribal priority system for allocation of appropriated funds. As a measure of the Tribe's concern for its wildlife resources, it contributes about \$696,000 of its Tribal funds, although it is one of the most impoverished tribes in the nation. With these funds, the Tribe tries to manage 75 species of mammals and 250 species of birds. Among the bird population are the bald eagle, peregrine falcon, Mexican spotted owl and northern goshawk. The Mohave desert tortoise is also documented. These species are designated as endangered or threatened species or are candidates for designation. The Tribe's wildlife funding needs and management structure are described in the statement of Mr. Brian Czech, Director of the San Carlos Apache Recreation and Wildlife Department, which is appended to my statement.

It is our understanding that other land management agencies of the Federal government with comparable land and wildlife resources spend as much as 10 times more money on wildlife management per acre than the BIA makes available for management on the San Carlos Apache Reservation. We suggest that the Subcommittee ask the Department of the Interior and Forest Service to provide figures on comparative levels of funding.

It has been suggested that Indian tribes should be made eligible to receive direct Federal Aid in Sport Fish and Wildlife Restoration (Dingell-Johnson, Pittman-Robertson and Wallop-Breaux programs) and Land and Water Conservation funds. Subject to certain conditions, we support this suggestion. We wish to stress, however, that tribes should be eligible for direct funding from these sources just as the United States territories, the District of Columbia, and the states are. At present, tribes must apply to the states for a share of these funds. This requirement violates the spirit of the government-to-government

relationship between the United States and the tribes and invites state interference in the internal affairs of the tribes. We further highlight our concern that the use of these funds requires that a tribe allow public hunting on its reservation. Much of our Reservation is open to off-reservation hunters and anglers, but not all of it. At least one tribe we know of has closed its entire reservation to public hunting. The Federal obligation to tribes respecting the protection and management of their trust resources must not be put at the sufferance of state governments and off-reservation hunters and fishers.

We believe the primary source of Federal funds for tribal wildlife management should be the same source that provides funds for other Federal land management agencies--appropriated funds from the Treasury.

In conclusion, the San Carlos Apache Tribe requests that legislation be enacted to establish funding standards which are not less than those of other Federal land management agencies with comparable land and wildlife resources and that such funds be available to a tribe without regard to whether or not the reservation is open, closed, or partly closed to public use or the hunting of, or fishing for, certain species is prohibited.

Your interest in this vitally important issue and your long-standing commitment to a better day for Indian tribes are deeply appreciated.

THE SAN CARLOS APACHE TRIBE
RECREATION & WILDLIFE DEPARTMENT

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BRIAN CZECH
Director



COMMISSIONERS
Paul Nossie, Jr.
Dennis Nelson
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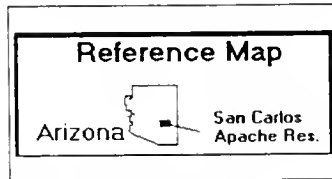
STATEMENT OF BRIAN CZECH (DIRECTOR, SAN CARLOS RECREATION & WILDLIFE DEPARTMENT, SAN CARLOS APACHE TRIBE) TO THE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS OF THE COMMITTEE ON NATURAL RESOURCES

February 16, 1994

The San Carlos Apache Tribe, Recreation & Wildlife Department, very much appreciates the opportunity to present this testimony to the Subcommittee on Native American Affairs.

The most important point in this testimony is that the Tribe needs federal wildlife funding that is consistent with funding of landholdings administered by the U.S. Forest Service, Park Service, Fish & Wildlife Service, Bureau of Land Management, Bureau of Reclamation, and other federal agencies.

The San Carlos Apache Reservation consists of 1.8 million acres in eastern Arizona. The reservation varies in elevation from 1,900 to 8,300 feet above sea level. This corresponds with plant communities varying from lower Sonoran desert to mixed conifer forest. This is one of the most diverse biological communities of any contiguous landholding in the United States. Of particular interest is the wildlife ecology of the reservation. About 75 species of mammals and 250 species of birds are found, including ten big game species, eight small game species (not including waterfowl), and dozens of neotropical bird species. Large portions of the reservation are de facto wilderness areas, including the regionally famous "Mineral Strip" (that part of the reservation south of the Gila River). The status of threatened, endangered, and candidate species is summarized as follows:



Species	T & E status	use of reservation	current management
bald eagle	listed	several nests, probably over 100 in wintering population	some nest protection only
peregrine falcon	listed	several nesting sites	none
spotted owl, Mexican subspecies	candidate	approximately 12 known pairs, approximately 35 identified birds	monitored by tribal Forestry Department due to lack of wildlife management funding
northern goshawk	candidate	presence, nests documented	none
desert tortoise, Mohave subspecies	candidate	documented from several areas	none
Gila topminnow	listed	two of last ten known populations	species maintained by San Carlos Fisheries Office

In addition to the diversity of wildlife populations, the reservation is famous for quality of many species (as measured by parameters such as body or antler size). Examples include:

- the largest antlers ever produced by the species *Cervus elaphus* (elk, red deer, etc.)
- two of the top ten bears on record
- the pending world record mountain lion
- record book pronghorn antelope, bighorn sheep, and Coues whitetail deer

As prescribed by San Carlos Apache Tribal Ordinance 76-1, the affairs of the Tribe pertaining to outdoor recreation and wildlife are administered by the San Carlos Recreation & Wildlife Commission, a five-tribal member body that provides policy decisions for the Recreation & Wildlife Department. Such commissions have been recognized as a key to success in tribal wildlife management.

As the director of the Recreation & Wildlife Department, and as the Tribe's first wildlife biologist from 1988 to early 1992, I testify that the federal funding level for wildlife management on the reservation is far short of any normal standards. This is distressing, when the reservation ranks far higher than normal standards in its wildlife management needs and potential.

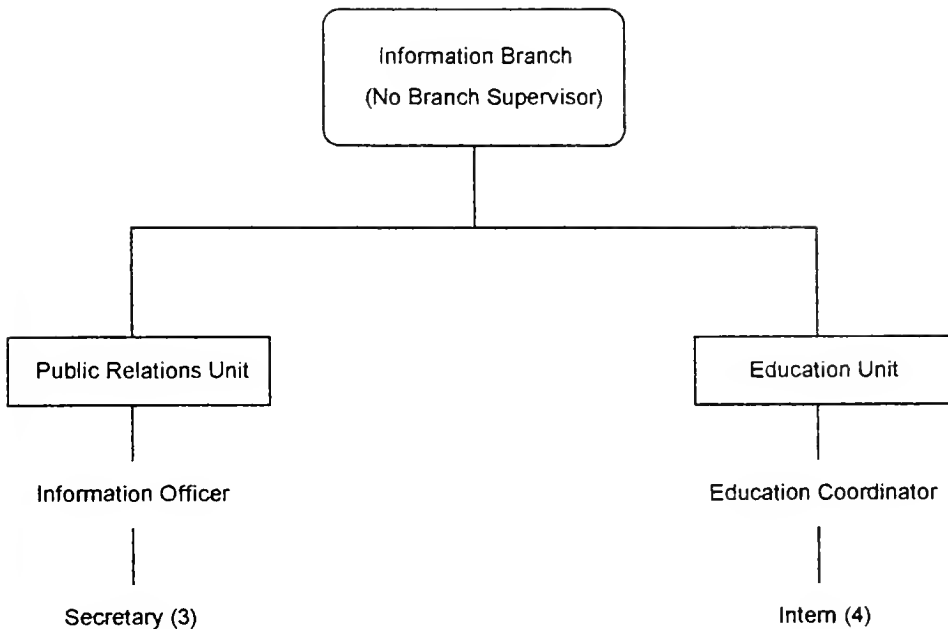
The goal of the Recreation & Wildlife Department is to preserve, protect, and enhance wildlife populations on the reservation, for the benefit of the Tribe and for the benefit of the ecosystem itself. Currently the Department consists of a Law Enforcement Division and a Wildlife Management Program. The Law Enforcement Division is comprised of nine rangers, one dispatcher, and a security guard. The Wildlife Management Program consists of one wildlife biologist and one wildlife technician. Supporting staff for the entire Department includes a maintenance man and three secretaries. The current budget of the Department is about \$696,000. \$120,000 of this is federally funded.

Please consider that: 1) **Larger** acreages (after the startup cost curve is overcome) require larger per-acre expenditures due to motor vehicle operation/repair costs and time required by field personnel to access the resource, and, 2) **Less developed** acreages require larger per-acre expenditures due to difficulty of access, and, 3) **Acreages with greater biodiversity** require larger per-acre expenditures due to the variety of species and issues to handle.

The San Carlos Apache Reservation is the fourth largest reservation in the United States and is one of the least-developed of all reservations (with only two significant communities on the entire 1.8 million acres). And, I must re-iterate, the San Carlos Apache Reservation has perhaps the most biodiversity of any contiguous landholding in the states. This indicates that the San Carlos Apache Tribe should be funded at a higher per/acre level than most federal acreages, not at a lesser level.

To accomplish the goal of the Department, a budget of \$1,775,000 is required, of which \$1,200,000 is requested of Congress. The following pages provide the justification for this budget.

Information Branch



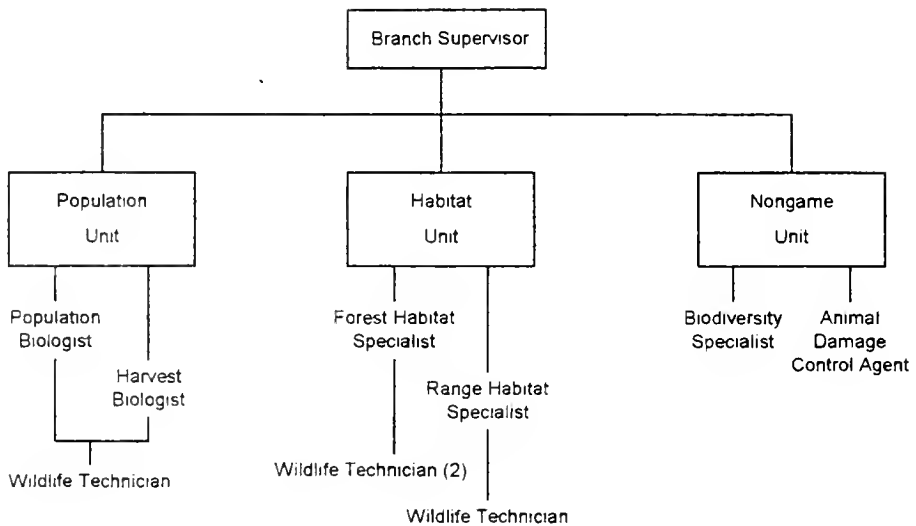
Information Officer - Answers public inquiries pertaining to hunting, fishing, and other outdoor pursuits on the reservation. Prepares promotional and educational publications (for free and for revenue). Processes public comment data. Writes news articles and other press releases. Arranges promotional events. Documents how promotional activities result in increased revenue.

Secretary - Answers basic inquiries pertaining to outdoor pursuits on the reservation. Sells permits and other items. Maintains files pertaining to permit sales and Department personnel. Sends information to those that request it.

Education Coordinator - Organizes and gives presentations for tribal elementary and high schools. Assists schools in the incorporation of Project Wild curriculum. Provides tours and presentations to visiting groups. Prepares educational handouts for public distribution. Serves as information officer in absence of information officer. Supervises and assists interns in successfully completing their college curricula.

Intern - Attends college for two semesters per year, works for Department other four months per year. Majors in wildlife science, administration of justice (with wildlife minor), or similar field. Prepares for professional position with Department or other tribal department or program. Performs wildlife technician or related duties while working for Department as intern.

Wildlife Management Branch



Senior Biologist - Coordinates activities of Wildlife Management Branch, assists other biologists on an as-needed basis, prevents duplicity of duties amongst subordinate biologists, conducts Geographic Information System activities, coordinates cooperative projects with state and federal agencies.

Population Biologist - Monitors population parameters of elk, mule deer, Coues deer, pronghorn, Rocky Mountain bighorn, desert bighorn, javelina, turkey, bear, lion, and small game species. Methods include foot, horseback, vehicular, and aerial surveys. Identifies limiting factors for each species. Organizes research projects pertaining to game populations. Conducts statistical analyses on population trends and potential.

Harvest Biologist - Monitors harvests of elk, mule deer, Coues deer, pronghorn, Rocky Mountain bighorn, desert bighorn, javelina, turkey, bear, lion, and small game species. Analyzes biological samples obtained from harvests. Provides data to population biologist and financial planner. Formulates harvest strategies in consultation with population biologist and provides harvest recommendations to director.

Wildlife Technician (Population Unit) - Assists population biologist and harvest biologist in conducting wildlife and hunter surveys. Enters data into computer files.

Forest Habitat Specialist - Prepares and implements habitat improvement projects in forested and wooded areas. Conducts inventory on important forest habitat features such as turkey roosts, elk security corridors, elk calving areas, nesting sites for many species, etc. Plans controlled burns in forested areas to enhance forage for big game species. Organizes research pertaining to wildlife in forests and woodlands. Provides data to forest wildlife planner.

Forest Habitat Technician - Assists forest habitat specialist in habitat inventories. Conducts habitat improvements. Supervises labor crews.

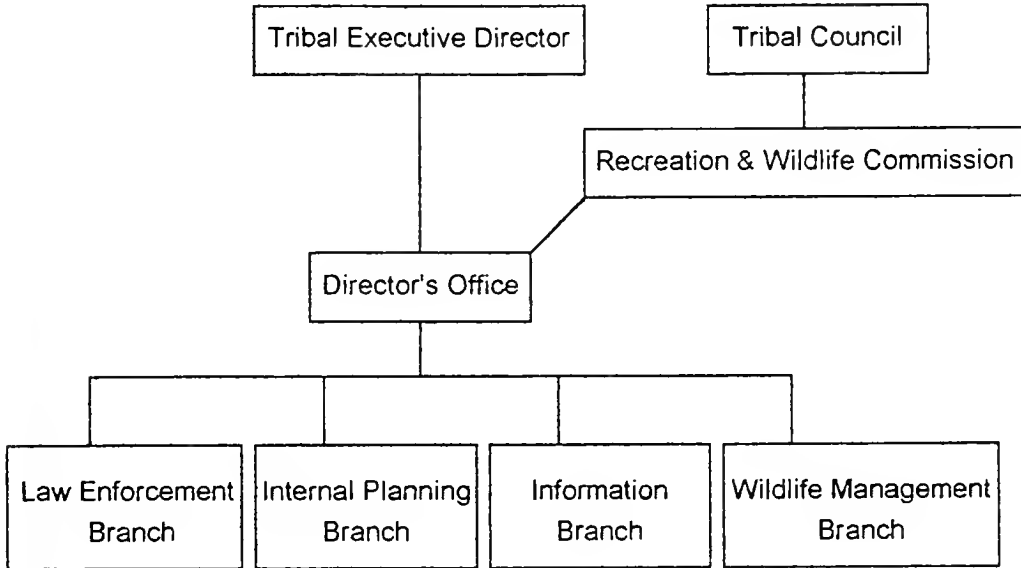
Range Habitat Specialist - Prepares and implements habitat improvement projects in rangelands. Conducts inventory on important range habitat features such as water holes, bighorn lambing areas, etc. Plans controlled range fires to enhance forage for big game species. Organizes research pertaining to wildlife in rangelands. Provides data to range wildlife planner.

Range Habitat Technician - Assists range habitat specialist in habitat inventories. Conducts habitat improvements. Supervises labor crews.

Biodiversity Specialist - Monitors populations of threatened, endangered, candidate, and sensitive species. Assists forest wildlife planner in developing guidelines for timber sale administration. Provides biological assessments for other tribal departments dealing with NEPA or Endangered Species Act requirements.

Animal Damage Control Agent - Controls populations of animals that are limiting populations of big game and other valuable species.

To accomplish the goal of the Recreation & Wildlife Department, the future structure of the Department should be as follows. The budget required to implement this structure is \$1,775,000 in 1993 dollars. Proceeding pages give breakdowns of each branch within the Department.



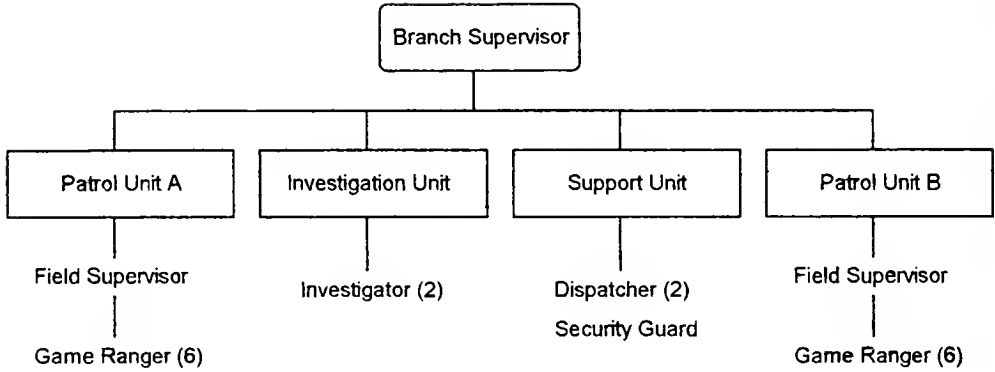
The Law Enforcement Branch is responsible for enforcing Tribal Ordinance 78-1 and annual Commission Orders. In addition, it assists other enforcement agencies in the enforcement of other tribal and federal conservation laws, and assists the Wildlife Management Branch in data collection. The annual budget required to administer this Branch is \$770,000. This budget includes the director's salary and director's office expenditures.

The Internal Planning Branch is the support branch of the Department, providing both current support and preparatory support for the Department's future. This support can be physical, financial, or administrative. This is the Branch most involved, along with the Director, in program development. This Branch also coordinates Department efforts with the San Carlos Planning Department. The annual budget required to administer this Branch is \$295,000.

The Information Branch is responsible for providing the public with information pertaining to rules, regulations, and orders of the Recreation & Wildlife Commission, and for providing educational services to the reservation school systems. The Branch also consists of tribal member trainees that will learn the duties of all administrative and professional positions in the Department. The annual budget required to administer this Branch is \$205,000.

The Wildlife Management Branch is responsible for monitoring wildlife populations, monitoring the harvests of hunters, providing recommendations for hunting regulations, monitoring and improving wildlife habitat, and controlling problem animals. The annual budget required to administer this Branch is \$505,000.

Law Enforcement Branch



Chief Ranger - Administers and coordinates law enforcement activities. Manages the Law Enforcement Branch fleet. Conducts time-keeping of Branch personnel. Prioritizes investigation and enforcement activities. Coordinates training for rangers. Enforces all laws enforced by game rangers. Provides recommendations on revisions of tribal law.

Field Supervisor - Supervises game rangers. Coordinates patrol efforts. Schedules game rangers' shifts. Assists chief ranger in coordinating training. Enforces all laws enforced by game rangers.

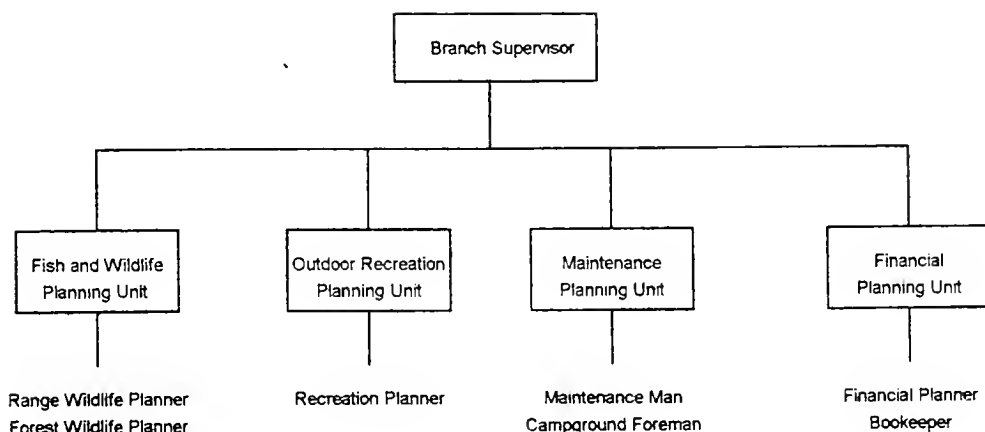
Game Ranger - Enforces Code 76-1 and other tribal and federal laws. Serves processes and notices. Executes warrants and subpoenas issued for violations of the provisions of Code 76-1 Recreation & Wildlife Commission Orders. Conducts searches without a warrant when there is probable cause to believe that tribal property is possessed in violation of the law. Seizes wildlife, evidence, and devices possessed in violation of the law. Collects data of use to the Wildlife Management Branch.

Investigator - Conducts investigations pertaining to Code 76-1 and other tribal laws. Assists game rangers in surveillance activities. Enforces tribal laws in absence of game rangers. Trains game rangers in investigation techniques. Coordinates undercover operations.

Dispatcher - Conducts safety checks of all Branch personnel. Provides secretarial assistance to chief ranger. Answers phone calls. Manages law enforcement filing system.

Security Guard - Keeps buildings and grounds secured during nighttime hours.

Internal Planning Branch



Chief Planner - Coordinates with San Carlos Planning Department, provides guidance and assistance to internal planners on an as-needed basis, coordinates any lobbying efforts undertaken by the Department, prevents duplicity of duties amongst subordinate planners, conducts and coordinates Geographic Information System activities, represents Department in planning activities with U.S. Fish & Wildlife Service (Fisheries Assistance Office), plans office layout and construction activities, handles Department insurance policies.

Range Wildlife Planner - represents the Department in interdisciplinary planning sessions with cattle associations and Fire Management Program, assists cattle associations in preparation of management plans, develops bum plans and works with Fire Management Program to implement them, assists Wildlife Management Branch in preparation of range improvement projects.

Forest Wildlife Planner - represents the Department in interdisciplinary planning sessions with Forestry Department and Fire Management Program, reviews timber sales, composes guidelines for timber management activities, assists Wildlife Management Branch in preparation of habitat improvement projects in wooded and forested areas, writes grant proposals for habitat work in forests.

Recreation Planner - represents the Department in interdisciplinary planning sessions, writes grant proposals for outdoor recreation developments, develops campground facilities, develops interpretive facilities including trails, signs, and information points, interviews public to determine outdoor activity trends and demands.

Maintenance Man - maintains Department property including buildings, grounds, and equipment.

Campground Foreman - with help of TWEP workers, removes trash from campgrounds, helps with general upkeep of recreation facilities.

Financial Planner - conducts studies on revenue maximization and optimization, maintains permit sales system, provides recommendations to Recreation & Wildlife Commission on annual permit fees, organizes marketing campaigns to increase demand of resource, conducts major purchasing activities.

Bookkeeper - maintains accounting system of Department purchases and revenue accounts, conducts lesser purchasing activities.



SOUTHERN UTE INDIAN TRIBAL COUNCIL

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U. S. HOUSE OF REPRESENTATIVES
 COMMITTEE ON NATURAL RESOURCES
 SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
 INDIAN FISH AND WILDLIFE MANAGEMENT AND ENHANCEMENT

Testimony of the Southern Ute Indian Tribe
 Leonard C. Burch, Chairman

I am Leonard C. Burch, Chairman of the Southern Ute Indian Tribe. Thank you for the opportunity to submit these written comments on issues relating to the management and enhancement of Indian fish and wildlife resources.

The Southern Ute Indian Reservation lies in southwestern Colorado, in Archuleta, La Plata and Montezuma counties. The exterior boundaries encompass 720,000 acres. Approximately 304,980 are Tribal owned and the remaining acres Non-Indian owned, resulting in a "checkerboard" land ownership pattern. Tribal membership within our tribe is 1250 members and our tribal headquarters is located in Ignacio, Colorado.

Generations of Native Americans have developed lifestyles, cultures, religious beliefs and customs around their relationships with fish and wildlife resources. The Southern Ute Indian Tribe is no exception. Today, however, some of this valuable heritage has been lost and there is danger of losing more. The ever-expanding human populations and the increasing demand for recreational opportunities has dramatically applied pressure upon tribal fish and wildlife resources.

In the past, reliance had been placed on Federal and State agencies to provide professional and technical support in the management of tribal fish and wildlife resources. However the level of assistance provided is limited, if any assistance for the resources, except in setting seasons, baglimits and enforcement of Non-Indians.

Tribes in recent years, have begun to exert their jurisdiction over tribal fish and wildlife and have developed professional management programs employing "state of the art" techniques and strategies, balancing biological and ecological principles to insure sound management is afforded the fish and wildlife species.

The Southern Ute Indian Tribe recognizing the cultural, economic and recreational values of fish and wildlife resources created by tribal resolution in 1962, the Fish and Game Department. Since its inception, the Wildlife Conservation Department has gone through progressive changes. Antiquated wildlife codes and regulations were revised in 1969, 1976, 1985 and 1989. A cooperative agreement between the Colorado Division of Wildlife and the Tribe was established in 1972. In 1988, a proposal was initiated that outlined a logical approach to the development of professional tribal expertise and capabilities in managing tribal fish and wildlife resources. This proposal became reality in 1989 with the hiring of a tribal wildlife biologist. This proposal was further strengthened by the development of a Tribal Natural Resources Management Plan in 1990. The plan integrated the developed fish and wildlife goals and objectives into a comprehensive Multi-resources plan.

Although in the infancy stage of development, this program is the building foundation for the development of tribal expertise and capabilities in managing our fish and wildlife resources. The importance of natural resources to the tribe is exemplified by the dedication and commitment to the development of sound biological management programs to insure fish and wildlife resources can be enjoyed by future generations.

The tribe's Wildlife Conservation Department has nine employees, a Department Director, Program Assistant, Wildlife Biologist, Wildlife Technician, and 5 Wildlife conservation officers. The tribe actively participates with the scientific wildlife community and is currently members of the Native American Fish and Wildlife Society, Inter-tribal Bison Cooperative, Wildlife Society, San Juan Interstate Working Group, Mule deer Foundation, Rocky Mountain Elk Foundation and other organizations involved in the conservation and management of the fish and wildlife resources. The enforcement section of the department is given the enormous task of patrolling 860 miles of tribal boundaries enforcing the Tribal Wildlife Conservation code.

Revenues to fund the department is derived from the sale of hunting and fishing permits to Non-member sportsmen. Hunting permits are sold for mule deer, elk and mountain lion and produce about \$125,000 annually. Revenues generated by the sale of permits are deposited into the Tribal general fund which are then reallocated to fund not only the department, but other tribal programs as well. We have spent an average of \$284,954 annually since 1986 and in 1993, \$398,855 was allocated to the department. While the tribe has sought alternative funding from the state of Colorado and private organizations, little is available. We receive no federal funding from the Bureau of Indian Affairs even though a P.L. 93-638 grant proposal was submitted in 1989. The BIA Southern Ute Agency does not employ a Wildlife or Fishery biologist. Fortunately though, we have been able to receive limited technical assistance from the BIA Albuquerque Area Office Wildlife and Fishery Biologists. However, they are also responsible for coordinating

wildlife and fisheries management activities on 22 other reservations within the Albuquerque Area.

Mr. Chairman and members of the committee, I am sure you will agree that we have done a commendable job despite our limited financial resources. Although, we have taken the initiative to develop our own capabilities, we have realized that present funding levels are not sufficient if we are to continue our progressive development. Federal funding to aid in the development of Tribal fish and wildlife programs has been non-existent. This appears to be prevalent not only with our Tribe but throughout Indian country as a whole. We are in dire need of assistance to remedy this situation.

At this time I would like to respectfully present some recommendations for the subcommittees consideration.

1. Direct the Bureau of Indian Affairs to fulfill their trust responsibility in fishery and wildlife management and direct more dollars for this effort.
2. Direct the U.S. Fish and Wildlife Service to make available a set amount of the Pittman-Robertson/Dingell-Johnson Administrative funds and the Reverted funds for tribal fishery and wildlife programs and projects.
3. Work with congress to amend the Pittman-Robertson/Dingell-Johnson/Wallop-Breaux Acts to allow full tribal participation in funding of fishery and wildlife projects.
4. Work with congress and the tribes to draft and introduce a Native American Fish and Wildlife Enhancement Act that will legislatively mandate and guarantee tribal governments full participation in management of fisheries and wildlife resources including adequate funding to rectify the budget shortfalls.
5. Consider the option of having the U.S. Fish and Wildlife Service be the primary agency to provide technical assistance to tribes. As you know, the U.S. Fish and Wildlife Service's mission is 100 percent fishery and wildlife management oriented. Consequently, 100 percent of their funding and effort is allocated for that purpose. On the other hand, we find the BIA's mission to be "complex" in that it deals with a multitude of programs including education, economic development, roads, law enforcement, social services, forestry, range, water rights, and archaeology, to name a few. These individual programs must compete with one another for funding and unfortunately, fishery and wildlife resources management programs are usually under-funded, if even funded at all. We receive no direct BIA funding for fish and wildlife management programs.

If you require additional information regarding any of the items submitted in this testimony. I will provide you with details at your request.

In closing, the Southern Ute Indian Tribe extends our sincere appreciation for the opportunity to submit written testimony. We wish you the best of luck with all your duties and sincerely hope that you will assist not only our tribe but all tribes nation-wide. We look forward to working with the committee to enhance tribal fish and wildlife programs.



*Chippewa-Ottawa Treaty Fishery
Management Authority*

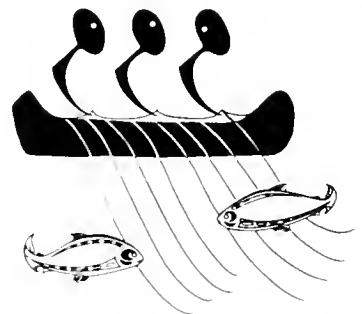
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TESTIMONY OF FAITH McGRUTHER
EXECUTIVE DIRECTOR
of the
CHIPPEWA-OTTAWA TREATY FISHERY MANAGEMENT AUTHORITY

Before the

House Committee on Natural Resources
Subcommittee on Native American Affairs

March 17, 1993



*Testimony of Faith McGruther, Executive Director
Chippewa-Ottawa Treaty Fishery Management Authority*

COTFMA Organization and Functions

The Chippewa-Ottawa Treaty Fishery Management Authority (COTFMA) is an inter-tribal entity formed by its member tribes as a result of many years of litigation with the State of Michigan over the scope and extent of the right to fish in Michigan waters of the Great Lakes.

Created in 1981 by inter-tribal agreement by the Bay Mills Indian Community, the Sault Ste. Marie Tribe of Chippewa Indians, and the Grand Traverse Band of Ottawa/Chippewa, COTFMA was delegated the responsibility of "regulating the fishing activity by members of the Tribes".

Fishing in the Great Lakes waters is guaranteed to the constituent Tribes by the Treaty of March 28, 1836 (7 Stat. 491). Litigation with the State concerning the continued existence of this right, and the State's ability to regulate member fishing, proceeded simultaneously in State and federal courts in the 1970's. The first decision on these issues was announced by the Michigan Supreme Court in *People v. LeBlanc*, 399 Mich. 31, 248 N.W.2d 199 (1976). The Court recognized the paramount status of the treaty right, and established standards for permissible State regulation of treaty-protected fishing.

Back in 1976, two Tribes were recognized as governments by the United States--the Bay Mills Indian Community and the Sault Ste. Marie Tribe of Chippewa Indians. Both Tribes had instituted conservation regulations applicable to their members' fishing activities in ceded waters. [See, for example, Conservation Code of the Bay Mills Indian Community (1973)]. Only tribal regulations applied to treaty fishers, as the State's regulations could not meet the standard required in *LeBlanc*.

In 1979, the federal court affirmed the *LeBlanc* holdings regarding the viability of the 1836 Treaty's usufructuary rights and went so far as to find State regulation of any kind to be invalid as a matter of law. *United States v. Michigan*, 471 F. Supp. 192 (W.D. Mich. 1979) Federal regulations were promulgated in 1979 under then 25 C.F.R. Part 256 (now Part 249), which were withdrawn the following year. State efforts to regulate tribal commercial fishing activities were rejected by the Sixth Circuit Court of Appeals in *United States v. Michigan*, 653 F.2d 277 (6th Cir. 1981), cert. denied, 454 U.S. 1124 (1981) in favor of the tribal fishing regulations enacted by the Bay Mills Indian Community, the Sault Ste. Marie Tribe of Chippewa Indians, and the newly-federally recognized Grand Traverse Band of Ottawa/Chippewa.

Those regulatory efforts culminated with the founding in 1981 of the inter-tribal entity known as COTFMA, which ensured uniform minimum fishing regulations, while allowing the individual tribes to establish their own, more restrictive regulations if they so chose. Additionally, subsistence fishing remained the exclusive regulatory province of each tribe. These regulations were found to be effective in protecting the fishery resource by the United States District Court in an unreported decision in 1982.

Since its founding, COTFMA has received funding from the Bureau of Indian Affairs pursuant to contracts issued under the terms of the Indian Self-Determination and Education Assistance Act of 1978, as amended (commonly termed P.L. 93-638). In 1985, the U.S. District Court issued an order under which fishing in the 1836 treaty waters was allocated; under that order, funds for COTFMA's activities have annually been appropriated by the Congress of the United States, with certain funds additionally provided pursuant to the Court's order for hatchery production, marketing assistance and fishing gear upgrading. These special purpose funds are supplemented by State monies provided under the terms of the Court's 1985 decree. All special purpose funds have been placed in a trust account, which COTFMA annually disburses with the consent of the United States and the State of Michigan. For the last several years, COTFMA's annual Congressional appropriation has been \$1.4 million.

Federal financial support has always been based on the principle of the trust relationship the United States has undertaken in respect to Indian tribes. Commonly cited in discussions about the rights reserved in the 1836 Treaty and the Tribes' efforts to implement and benefit from them is the 1981 statement of the Court of Appeals:

The protection of those [treaty-guaranteed fishing] rights is the solemn obligation of the federal government, and no principle of federalism requires the federal government to defer to states in connection with the protection of those rights. The responsibility of the federal government to protect Indian treaty rights from encroachment by state and local governments is an ancient and well-established responsibility of the national government.

United States v. Michigan, supra, 653 F.2d at 278-279.

COTFMA's earmarked appropriation falls under the Bureau of Indian Affairs, with funds administered under P.L. 93-638. Each funding cycle, the member Tribes determine which

management functions they choose to undertake by contract. This determination is made by a six-member Board of Directors, comprised of the Chairpersons of the member Tribes and the Conservation Committee Chairpersons of each of the member Tribes. Serving *ex officio* on the Board are a representative of the Bureau of Indian Affairs and a representative of the Fish and Wildlife Service.

Before turning to the description of the components of the COTFMA areas of responsibility, it is important to outline the scope of the rights reserved under the Treaty of 1836. The signatory Tribes not only reserved the right to catch the fish found in the Treaty-ceded waters, but also reserved the right to regulate the manner and means by which their members would undertake that harvest. *United States v. Michigan, supra*, 471 F. Supp. at 273-274. This component is termed "effective Indian tribal self-regulation" by the appellate court in *United States v. Michigan, supra*, 653 F.2d at 279. Effective self-regulation is not limited to the legislative function of rule promulgation; it also includes the enforcement of those regulations through the detection of violations of the Tribes' regulations (conservation wardens) and the adjudication of the resultant citations (conservation court). *United States v. Michigan, supra*, 471 F. Supp. at 273.

The rights guaranteed by treaty are meaningless, however, in the absence of a viable fishery. Whether termed an element of the treaty right, itself, or as an implementation of court orders regarding the treaty fishery, the Tribes must conduct fishery assessment and enhancement activities in order to protect the resource from irreversible harm. This is the element of tribal self-regulation termed "management." For the COTFMA-member tribes, management functions have been shared with the State of Michigan and the United States by the 1985 court decree. Further, as the court recognized in its decree, access to the resource is essential in order to harvest its bounty; significant amounts of money and personnel have been expended in locating and developing docking sites and ramps for tribal fishing boats.

Effective tribal self-regulation in the *United States v. Michigan* case area consists of the following elements:

1. Enactment of conservation-based regulations governing the manner and means by which tribal members may exercise the right to fish in ceded waters;
2. Staffing of conservation enforcement departments;
3. Establishment of adjudicatory bodies to determine the existence of violations of the fishing regulations;

and

4. Conduct of fisheries protection and enhancement programs and access development.

COTFMA carries out all of the above self-regulation functions, through the actions of the entities next described.

1. Regulations. The COTFMA Board of Directors enacts the uniform regulations applicable to all tribal members seeking to exercise the treaty right to fish. (The composition of the Board is described herein.) Each Tribe has the power to enact its own regulations governing subsistence fishing, as well as to implement commercial fishing regulations which are more restrictive than adopted by COTFMA. These regulations, as well as initial consideration of the uniform regulations, are adopted by each Tribe's Conservation Committee.

2. Enforcement Personnel. Each of the member Tribes has a conservation department, which employs law enforcement personnel to detect violations of the COTFMA regulations and those enacted by each Tribe. Bay Mills and Grand Traverse Band's wardens are employed for this sole purpose. Personnel employed by the Sault Ste. Marie Tribe are termed "public safety" officers, and combine general law enforcement duties with conservation enforcement responsibilities. Each conservation enforcement program is the subject of a contract with the Bureau of Indian Affairs under P.L. 93-638. The Bureau supplements the enforcement staff with its own conservation warden component.

3. Conservation Court. Members of the Bay Mills Indian Community and the Sault Ste. Marie Tribe who violate treaty fishing regulations are cited to appear before the Chippewa-Ottawa Conservation Court. This Court's exclusive purpose is to adjudicate such violations, for the two Tribes each separately maintain a Tribal Court for adjudication of other matters. The Court is administered by the Bay Mills Indian Community under a P.L. 93-638 contract. Distance from this forum for the Grand Traverse Band caused the Tribe to obtain a separate contract for adjudication of fishing violations in its Tribal Court.

4. Management Functions. Fisheries assessment and enhancement activities are carried out by the Inter-Tribal Fisheries and Assessment Program, which is administered by the Sault Ste. Marie Tribe under a P.L. 93-638 contract. The Program conducts population studies and analyses, operates a fish hatchery, stocks hatchery-produced fish, advises the Board on the need for conservation regulations, coordinates its activities with

the United States, the State of Michigan and the Province of Ontario, and represents COTFMA on such bodies as the Great Lakes Fish Commission and its Lake Committees. The Grand Traverse Band employs biological expertise for management of the fishery resource contained in Grand Traverse Bay, pursuant to a separate P.L. 93-638 contract. Access site identification, acquisition and development is conducted by staff employed by COTFMA under its master contract.

COTFMA's master contract also includes central staff to coordinate and facilitate the conduct of the self-regulation functions described above. The contract also provides financial support for Board members, who meet monthly to conduct business.

An integral element of the fishery management task for the COTFMA member tribes is their participation in the Executive Council, established by the 1985 federal court order to facilitate resolution of disputes concerning fisheries enhancement, fishing access, user competition for available resources, and fishing regulation. That body is composed of the tribal chairs of the member tribes, along with a representative of the Michigan DNR and of the U.S. Department of the Interior. The Council is required to undertake all actions unanimously, and must meet quarterly. The Council has no budget of its own, and receives administrative support from COTFMA staff. The Council's effectiveness is primarily as an information-sharing opportunity, as the unanimity requirement hinders it from taking any stand regarding controversial matters--and most matters confronting the Great Lakes fisheries resources **are** controversial.

Treaty Fishery Management

At first glance, it would appear that management of the tribal fishery is completely a matter of fisheries science, relating to the assessment of fish stocks over time and designing regulations to ensure harvestable surpluses over time. Any fishery manager would add the other elements of management which are not biological, meaning the politics of resource management are integral and sometimes obstructive of good policy implementation.

Off-Reservation treaty natural resources are generally shared with other users. No court has ever indicated that the tribes' rights to resources are exclusive (although there has been dicta to that effect). In practice this has meant that **allocation** of harvest opportunity has been the biggest element of day-to-day management--who fishes where, when, and with what amount of gear. Such management decisions are only effective in the **absence** of

conflict with other management entities. In the 1836-treaty ceded waters, management conflicts exist not only with the State of Michigan, but with the other jurisdictions with regulatory authority over a portion of the same territory: the Province of Ontario and the States of Minnesota, Wisconsin, Illinois, Indiana, and in many cases, the Great Lakes states bordering Lakes Erie and Ontario. The tribes are justly proud of insisting upon and obtaining a voice in the Great Lakes Fisheries Commission, but that voice is muted by the number of jurisdictions whose views must be taken into account, and by the lack of overall management authority in that body.

The areas of conflict increase exponentially when other aspects of resource management and protection are taken into account. They include: air and water pollution, non-indigenous species introduction, habitat degradation, soil erosion, shoreline development, water level regulation, and navigation restrictions. In these areas, the tribes' concerns about fishery resource protection and enhancement have no guaranteed listener, at all. Regulation of these subjects is a unpalatable stew of local, state and federal agencies, who often have no responsibility to consult with each other, and certainly feel no obligation to consult with the tribes.

The contemporary status of treaty rights is less dependent on recognition by a court for viability, but of problematic worth to the tribal signatories. No permanent guarantee of a right to fish is of benefit if (1) there are insufficient fish to catch, or (2) the fish available are dangerous to consume, or tribal fishers are prevented by conflict from harvesting. The ability of tribes to protect the continued existence of their usufructuary rights is not known; years of litigation before the courts and administrative tribunals may be required before the right of the tribe to have mandated review of the impact on the treaty resource, prior to the issuance of a permit or license. Even more necessary is the establishment of a mechanism by which tribal concerns are taken into account by regulatory agencies in setting standards or in determining the need for enforcement actions. These mechanisms are certainly non-existent at present.

The Need for Federal Legislation

In general, the responsibility of the United States to protect tribal property (the trust responsibility doctrine) has developed from court decisions going back 160 years. The courts since then have issued directives concerning the nature and scope of that responsibility, but there is no analogous comprehensive description of the duties of the United States in any legislative enactment

by the Congress. This presents continuing and numerous incentives for initiating further litigation--as court decisions are subject to differing interpretations as to their application to new factual situations. Litigation is a burden, too often borne by the least able to do so--the Tribes.

When it is the United States which is asked to file suit on behalf of a tribe for protection of its trust property (fish and game, for example), there again exists many view points within the various offices in the Departments of the Interior and Justice as to what position the United States should adopt in carrying out its trust responsibility. This places the Tribes at the risk of losing trust property to an inter-agency decision-making process.

Recommendation No. 1. Therefore the Congress must enact comprehensive legislation which describes the nature and scope of the trust responsibility of the United States to protect and enhance tribal trust natural resources, wherever such may be located.

The scope of the federal government's trust responsibility to protect tribal natural resources has usually been limited in practice to the U.S. Department of the Interior. However, many other Departments and agencies have programmatic responsibility to regulate conduct which has direct and substantial impact on tribal trust resources. The list which follows is not intended to be comprehensive, but certainly illustrates the extent to which the federal government as a whole is seriously deficient in protecting tribal trust property:

* The State Department has a significant role in shaping U.S. participation in international regulatory/informational/ management entities such as the Great Lakes Fisheries Commission. The responsibility for control of the parasitic sea lamprey, which continues to threaten the Great Lakes fisheries, lies within this Department.

* The Commerce Department includes the U.S. Coast Guard, which establishes regulations concerning shipping and navigation in the Great Lakes. Such matters as oil spill control, ballast/ bilge discharges of non-indigenous organisms, (SEE, the Non-Indigenous Aquatic Nuisance Control and Prevention Act) and safety regulation of vessels directly affect the health of the treaty fishery and the manner in which tribal fishermen may harvest the resource. NOAA regulations have a similar impact on the Great Lakes treaty fishery.

* The Defense Department also impacts the treaty fishery through its regulation of shoreline development and underwater dredging in the Army Corps of Engineers. Both activities have an immediate impact on fishery habitats and the ability of tribal fishers to gain access to the resource through marinas and boat ramps. The Corps's regulation of wetland management and development, in particular, significantly and directly impacts tribal lands.

* The Department of Agriculture contains the US Forest Service, which directly affects inland fish and game resources, but also affects the Great Lakes treaty fishery through its boat access ramp policies. More significantly, the Department establishes toxin levels for fish sold for human consumption and has enforcement powers to prohibit the sale of contaminated fish.

* The Environmental Protection Agency regulates both directly and indirectly the air and water pollutants which impact on the Great Lakes fishery. Although discharge permits are generally handled by state agencies under approved plans, the EPA sets the standards.

* The Federal Energy Regulatory Commission licenses power plants which, when sited on the Great Lakes shoreline or tributary streams, adversely impact fishery habitat.

Recommendation No. 2. It is essential for adequate protection by the United States of the trust resources that **all federal agencies and departments have that mandate and responsibility expressly declared in federal law.**

Tribes have fought long and hard to establish their right to manage, preserve and enhance their natural resources. Limiting COTFMA's comments to off-Reservation trust resources, tribal self-regulatory capacity has been a legal precondition for excluding States from regulating tribal member harvesting activities. That capacity is in the areas of biological assessment and monitoring, harvest regulations, and enforcement systems. These systems are not self-supporting, and have required financial support from the Congress in order to function; the annual appropriations process includes funds earmarked for inter-tribal natural resource management programs. COTFMA itself receives its base budget from Congress to carry out its functions.

What Congress gives, however, Congress can also take away. Tribal self-regulation (to the exclusion of State regulation) is hostage to the federal budget process. It is within Congress's power to end tribal self-regulatory capacity simply by reducing the funds necessary for

regulatory functions. This result not only ends tribal ability to manage resources according to their own goals and objectives, but also places trust resource protection in the hands of State agencies, whose hostility to tribal natural resource rights is endemic and real. To date, tribes have sought to ensure funding continuity by placing resource protection funds in the "base"; this strategy is only effective to the extent that Congress's budgetary process follows the same procedures as are currently in place.

Recommendation No. 3. The United States must explicitly recognize, in the recommended trust legislation, that **minimally adequate funding of tribal trust protection/management programs is an integral element of the federal government's trust responsibility and is not to be considered a matter of discretionary policy.**

As should be clear from the above comments on the state of tribal resource protection efforts, tribal infrastructure has developed in the area of fisheries and wildlife science and management. It does no good for the Tribes to have sophisticated management practices if they cannot obtain the ears of others whose decisions equally affect the status of tribal trust natural resources. The Tribes are currently voices calling in the dark; no one is required to hear what is being said. What is needed is more than a requirement for consultation with Tribes--that often means in practice that Tribes are advised by other entities of intended action and their comments and/or objections are not heeded. Tribes need to have accorded to them the same respect as other governments with responsibility for their lands and resources, and that includes mandated inclusion in any body established or subject to federal law concerning natural resources issues.

Recommendation No. 4. Federal legislation should include **mandatory inclusion of tribal representatives in any and all decision-making entities established or funded by the United States whose actions directly affect the viability of tribal fish, game, land and water resources.**

Conclusion

Tribal natural resources are the sinew of tribal culture and history, providing a continuity from times past to times beyond our ability to imagine. They are not artifacts of a lifeway which no longer has contemporary meaning. They constitute the basic economy of the Tribes in the 1836 cession of the Great Lakes. In order to ensure the continued existence of these resources for future generations, the United States must enact legislation which establishes the authority for all federal agencies to participate in the trustee's role of prudent management.

RED LAKE BAND of CHIPPEWA INDIANS



Red Lake, MN 56671

Phone 218-679-3341 • Fax 218-679-3378

DIVISION:

TRIBAL COUNCIL
Organized April 16, 1918
(Revised Constitution & By Laws,
January 6, 1959)

OFFICERS:

GERALD F. BRUN, Chairman
BOBBY WHITEFEATHER, Secretary
JAMES STRONG, Treasurer

DISTRICT REPRESENTATIVES:

ROMAN P. STATELY, JR.
FAHIAN COOK
LORNA L. FAIRBANKS
PRESTON GRAVES
LAWRENCE BEDEAU
ALEX ENGLISH, JR.
TOM J. STILLDAY, JR.
CLIFFORD C. HARDY

ADVISORY COUNCIL:

7 HEREDITARY CHIEFS

CHIEF COUNCIL OF 1888

May-dway-gwa-to-mind
Nah-gaure-gwan-see
Mays-co-to-see-ay
Ahna-me-ay-ge-shig
Naw-ey-tah-wowb
Nah-wah-quay-ge-shig

TESTIMONY OF THE HONORABLE GERALD F. BRUN, CHAIRMAN RED LAKE BAND OF CHIPPEWA INDIANS TRIBAL COUNCIL

Before the House Committee on Natural Resources
and its Subcommittee on Native American Affairs

February 18, 1993

Introduction

Mr. Chairman, and distinguished members of this Subcommittee, I am pleased to present testimony on behalf of the Red Lake Nation and its Reservation at this oversight hearing on fish and wildlife conservation in Indian Country.

Red Lake has a serious problem. Our natural resources, our fish and wildlife, are threatened on several fronts. Our wild game is being slaughtered by criminal trespassers. Our fish are being contaminated. Our water is being polluted, our air befouled.

Our Reservation and all of the life within it is very important to us. We are striving to protect these resources but funds are inadequate and only sporadically available.

A comprehensive tribal fish and wildlife conservation and enforcement bill is needed. In general, we strongly support the bill proposed by the Native American Fish and Wildlife Society.

We also ask that you consider several additional items in developing legislation:

Red Lake Enterprises: Red Lake Sawmill, Red Lake Fishing Industry,
Red Lake Bingo, Red Lake Builders, Chippewa Trading Post-Red Lake & Ponemah

<p>TESTIMONY OF RED LAKE CHAIRMAN GERALD F. BRUN, FEBRUARY 18, 1993 BEFORE THE HOUSE NATIVE AMERICAN AFFAIRS SUBCOMMITTEE REGARDING TRIBAL FISH AND WILDLIFE CONSERVATION LEGISLATION</p>

- strengthen Reservation trespass penalties to deter poaching on Reservations
- set aside funds to Tribes from the federal fish and wildlife conservation assistance programs
- authorize funds for stable and consistent comprehensive tribal government natural resource core management operations
- protect against environmental threats to Reservation fish and wildlife resources that are diminishing their value
- affirm that the United States' trust responsibility to Indian Tribes is the obligation of each federal agency, not just the Bureau of Indian Affairs
- direct each federal agency to deal with and fund tribal government fish, wildlife and environmental resource projects on an equal basis and a proportional level to that enjoyed by state and local governments

My staff would be happy to work with the Subcommittee staff in refining these ideas into legislation. The rest of our testimony will focus on strengthening the Reservation trespass law and allocating funding to tribal governments.

STRENGTHEN THE FEDERAL RESERVATION TRESPASS LAW

The Problem. Poaching and other illegal hunting and fishing activity on Indian Reservations is on the increase, jeopardizing our fish and wildlife. In many cases, our commercial livelihood is based on maintaining and enhancing the value of our natural resources. When our natural resources are threatened, our jobs are threatened. In many cases, our subsistence culture is interwoven with our natural resources. When our natural resources are threatened, our way of life is threatened.

Some of the more flagrant poaching violations are carried out by non-members over whom tribal governments like Red Lake have little or no enforcement powers. In such cases, we strongly believe Congress must modernize the federal-Indian law enforcement measures available to Indian Tribes and to their federal agency counterparts charged with conservation enforcement on Indian Reservations.

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Both the penalties and the enforcement procedures on Indian Reservations now lag far behind state enforcement authorities on neighboring lands, making Reservations increasingly inviting to lawless non-members who seek to gain a hunting or fishing advantage by carrying out illegal hunting or fishing with little risk of getting anything more than a slap on the wrist.

The wildlife conservation law enforcement efforts of Tribes like Red Lake are increasingly frustrated by non-members who brazenly trespass on Reservation to hunt or fish, knowing full well they face only mild penalties under 18 U.S.C. § 1165 if caught. This problem arises from the antiquity of the trespass statute penalties and from a chronic underfunding of tribal conservation enforcement efforts. An effective solution will require legislative amendment.

Example From Our Experience. Our Tribe prohibits all non-member hunting on our closed Reservation. Last year, Red Lake Tribal Wardens discovered a group of non-Indian poachers several miles within the well-marked borders of our Reservation. Carcass drag marks and other evidence indicated the poachers appeared to have been hunting and killing moose and deer over a period of days. This occurred well after the state hunting season in nearby Minnesota had ended.

Our tribal wardens approached the poachers who fled at high-speed. The wardens gave chase and eventually apprehended two non-Indians. Our wardens seized their rifles and related hunting equipment, as well as a sophisticated plexiglass tree stand for spotting game that was furnished with an elaborate heating system, chairs and other comforts. The wardens also seized two "snow-planes", multi-purpose vehicles on large skis that are thrustured by aircraft engine propellers.

We were shocked that our Reservation game, preserved as it has been from sporting encroachments that have diminished wildlife populations in surrounding states, has now become so desirable that it attracts outsiders with the latest in heated tree stands and big game chase vehicles. Our Tribal Wardens were proud of their law enforcement work. But if this case turns out like all the rest, they will quickly become discouraged.

Typically our wardens must release poachers at the edge of the Reservation and prepare the prosecution paperwork for the U.S. Fish and Wildlife Service. Weeks later the federal warden orders our tribal wardens to release property they have seized because the violator has paid a bond. Months later our tribal wardens must travel for hours to testify in federal court without reimbursement, often several times for each case. The outcome is

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typically hollow -- poachers are cited by the federal wardens as Reservation trespassers under Title 18 of the United States Code, Section 1165, fined \$100 to \$150, and released with all their equipment. The maximum penalty under this law is a \$200 fine and 90 days imprisonment. Section 1165 authorizes only the confiscation of any game seized, it does not authorize confiscation and forfeiture of a violator's poaching equipment.

When these same U.S. Fish and Wildlife wardens prosecute fish and game violators on federal conservation and recreation areas, the maximum fine is \$500 and one year imprisonment. The federal wardens may confiscate seized equipment and either use it or the proceeds from its sale to supplement the funding of local conservation enforcement efforts.

In the surrounding state of Minnesota, state game wardens have even stronger penalties to bring against fish and game violators, who face punishments of hunting or fishing license revocation for life and a maximum fine of \$3,000 and one year imprisonment. Additionally, state wardens can and do confiscate seized equipment and devote it or the proceeds of its sale to local conservation enforcement programs.

All this adds up to some very simple reasons why any shrewd poacher is going to prefer to poach on an Indian Reservation rather than federal or state lands -- Indian Reservations are where most of the game is, where there are the fewest conservation enforcement officers, and where the possible penalties are the oldest and lightest.

The Solution. In an attachment to this testimony, Red Lake proposes amendment bill language to strengthen the reservation trespass statute (18 U.S.C. § 1165).

The objective is to amend the law to stiffen the penalties for prohibited non-member hunting and fishing on-Reservation, *increasing the maximum fine* from \$200 to \$3,000 *and the maximum jail term* from 90 days to one year, and *authorizing tribal confiscation and forfeiture* of violators' poaching equipment and vehicles.

This amendment is necessary to make Indian Reservations less attractive to poachers and other non-Indian trespassers. Tribal game wardens need this kind of support; otherwise their apprehension activities are nearly futile and our game is at even greater peril.

The penalties in 18 U.S.C. § 1165 have not been altered for more than thirty years and inflation has eroded the impact of the maximum \$200 fine. For example, if the \$200 maximum fine is adjusted for an average annual inflation rate of 5%, the maximum penalty

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of \$200 in 1960 is really only \$38.74 in today's dollars. Or, put another way, if the \$200 fine set in 1960 had grown with inflation, it would be a \$953 fine today.

Inflation is not the only factor weakening conservation enforcement on Reservations. Criminals are getting more sophisticated. To maintain their effectiveness, state and federal enforcement measures are becoming increasingly sophisticated. One of the most effective of the new enforcement tools is the authority to seize and forfeit a poacher's equipment and vehicle. Like in the area of drug enforcement, taking the tools of the criminal enterprise has emerged as an important and effective measure in conservation enforcement by federal and state governments. These same forfeiture powers should be applied to Indian Reservation conservation enforcement efforts to assist under-funded tribal government conservation programs.

For these reasons, Red Lake proposes that 18 U.S.C. § 1165 be amended to increase maximum penalties to a \$3,000 fine, or one year imprisonment, or both, and to additionally vest tribal conservation enforcement programs with the authority to seize and forfeit to their programs' use all personal property used by the violator to carry out the violation. This would include forfeiture powers over hunting and fishing as well as all transportation equipment used in the criminal enterprise.

We believe it may be most politically feasible to include a provision that would automatically apply the higher of either the new federal penalties we propose or the neighboring state's penalties for prohibited hunting and fishing on state-administered game preserves. Since state penalties vary from state to state, Congress could in this way ensure that penalties applied on Reservations are no less stringent than surrounding state penalties.

*SET ASIDE FUNDS TO TRIBES FROM THE FEDERAL FISH
AND WILDLIFE CONSERVATION ASSISTANCE PROGRAMS*

Tribal governments are finding it increasingly difficult to manage their natural resource programs. Increasing numbers of people are residing upon and using the Reservation as populations swell and tribal members return home to live and work. This has resulted in increased reliance on natural resources for sustenance as well as increased environmental degradation.

Nevertheless, in recent years BIA funding for natural resources has been declining in favor of modest increases targeted for human services programs. And what funding does

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come through to the tribal government level is sporadic and often project specific. There is a critical need for Congress to authorize and appropriate stable and consistent levels of funds specifically targeted for the comprehensive tribal government operation of its natural resource core management program.

Funding for such a comprehensive program could have little impact on the federal budget because of the unique revenue collection and distribution mechanisms under the Dingell-Johnson and Pittman-Robertson Acts. State and local governments, even the District of Columbia, now receive a proportional share of funds collected under these Acts from special taxes levied on the sale of licenses, permits, weapons, ammunition, gear, equipment, boats, fuel, and related consumer goods used in fishing and hunting activities. These funds are collected by the federal government and returned to states and local units of government in proportional shares for fish and wildlife restoration projects.

But while some of the hunting and fishing activities occur on tribal lands, including those lands over which state and local governments have no jurisdiction or conservation responsibility, none of these funds are now allocated to tribal governments who do have that jurisdiction and responsibility. Nothing is allocated to Indian Reservations despite the fact that all Reservation fish and wildlife recreational activities contribute money to these funds. There is a strong case to be made, on basic fairness and equity, that tribal conservation and enforcement programs should get a share of these funds.

In an attachment to this testimony, Red Lake submits proposed amendment language which would allocate to Indian Tribes a portion of the Dingell-Johnson and Pittman-Robertson Act funds. We strongly support such a measure. However, we ask that in considering such an amendment, the Subcommittee make every effort to ensure that BIA officials are not permitted any discretion to reduce fish and wildlife related funding to Tribes because Tribes obtain Dingell-Johnson and Pittman-Robertson funds. Tribes need additional funds, and that is our objective in seeking the Dingell-Johnson and Pittman-Robertson funding. We make this request because we have heard BIA officials view such an amendment as a way for BIA to redirect BIA fish and wildlife funds into other areas of the BIA budget. We would oppose all such efforts and ask that you make sure BIA cannot do so.

Please let us know if we can assist you in developing the legislation, in refining these proposed amendments, and in securing passage of a bill during this session of Congress. We sorely need early action on this critical topic. Thank you for this opportunity to be heard.

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RESERVATION TRESPASS/POACHER AMENDMENT
 18 U.S.C. § 1165 (Indian Reservation trespass statute)

18 U.S.C. § 1165 is amended to read as follows:

1 **§ 1165. HUNTING, TRAPPING, OR FISHING ON INDIAN LAND**

2 Whoever, without lawful authority or permission, willfully and knowingly goes upon
 3 any land that belongs to any Indian or Indian tribe, band, or group and either are held by
 4 the United States in trust or are subject to a restriction against alienation imposed by the
 5 United States, or upon any lands of the United States that are reserved for Indian use, for
 6 the purpose of hunting, trapping, or fishing thereon, or for the removal of game, peltries,
 7 or fish therefrom, shall be fined not more than ~~\$200~~ \$3,000 or imprisoned not more than
 8 ~~ninety days~~ one year, or both, and all game, fish, ~~and peltries, vehicles, weapons, gear, and~~
 9 other hunting and fishing equipment in his possession shall be forfeited to the Indian tribal
 10 government exercising conservation authority over the Indian land upon which the trespass
 11 occurred. The forfeited property, or the proceeds therefrom, shall be used by said tribe in
 12 furtherance of its conservation enforcement activities.

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FEDERAL WILDLIFE ASSISTANCE AMENDMENT

16 U.S.C. § 669 *et seq.*

Popular Names: the "Federal Aid in Wildlife Restoration Act"
 and the "Pittman-Robertson Wildlife Restoration Act"

16 U.S.C § 669g-1 is amended to read as follows:

1 § 669G-1. PAYMENT OF FUNDS TO AND COOPERATION WITH PUERTO RICO, GUAM,
 2 AMERICAN SAMOA, COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, AND VIRGIN
 3 ISLANDS, AND AMERICAN INDIAN TRIBAL GOVERNMENTS.

4 The Secretary of the Interior is authorized to cooperate with the Secretary of
 5 Agriculture of Puerto Rico, the Governor of Guam, the Governor of American Samoa, the
 6 Governor of the Commonwealth of the Northern Mariana Islands, ~~and~~ the Governor of the
 7 Virgin Islands, and the governments of Indian tribes, as defined in 25 U.S.C. 450b(e), in the
 8 conduct of wildlife-restoration projects, as defined in section 669a of this title, and hunter
 9 safety programs as provided by section 669g(b) of this title, upon such terms and conditions
 10 as he shall deem fair, just and equitable, and is authorized to apportion to Puerto Rico,
 11 Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, ~~and~~ the
 12 Virgin Islands, and said tribal governments, out of the money available for apportionment
 13 under this chapter, such sums as he shall determine, not exceeding for Puerto Rico one-half
 14 of 1 per centum, for Guam one-sixth of 1 per centum, for American Samoa one-sixth of one

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1 per centum, for the Commonwealth of the Northern Mariana Islands one-sixth of 1 per
2 centum, ~~and~~ for the Virgin Islands one-sixth of 1 per centum, and for the combined total of
3 all of said tribal governments 2-and-one-quarter per centum, of the total amount
4 apportioned, in any one year, but the Secretary shall in no event require any of said
5 cooperating agencies to pay an amount which will exceed 25 per centum of the cost of any
6 project, nor require any of said tribal governments to pay any amount toward the cost of any
7 project. Any unexpended or unobligated balance of any apportionment made pursuant to
8 this section shall be available for expenditure in Puerto Rico, Guam, American Samoa, the
9 Commonwealth of the Northern Mariana Islands, ~~or~~ the Virgin Islands, or by said tribal
10 governments, as the case may be, in the succeeding year, on any approved project, and if
11 unexpended or unobligated at the end of such year is authorized to be made available for
12 expenditure by the Secretary of the Interior in carrying out the provisions of the Migratory
13 Bird Conservation Act [16 U.S.C.A. § 715 et seq.].

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FEDERAL FISH ASSISTANCE AMENDMENT

16 U.S.C. § 777 *et seq.*

Popular Names: the "Federal Aid in Fish Restoration Act",
 the "Fish Restoration Management Projects Act",
 and the "Dingell-Johnson Sport Fish Restoration Act"

16 U.S.C § 777k is amended to read as follows:

1 § 777k. PAYMENT OF FUNDS TO AND COOPERATION WITH PUERTO RICO, DISTRICT OF
 2 COLUMBIA, GUAM, AMERICAN SAMOA, COMMONWEALTH OF THE NORTHERN MARIANA
 3 ISLANDS, ~~AND~~ VIRGIN ISLANDS, ~~AND~~ AMERICAN INDIAN TRIBAL GOVERNMENTS.

4 The Secretary of the Interior is authorized to cooperate with the Secretary of
 5 Agriculture of Puerto Rico, the Mayor of the District of Columbia, the Governor of Guam,
 6 the Governor of American Samoa, the Governor of the Commonwealth of the Northern
 7 Mariana Islands, ~~and~~ the Governor of the Virgin Islands, and the governments of Indian
 8 tribes, as defined in 25 U.S.C. 450b(e), in the conduct of fish restoration and management
 9 projects, as defined in section 777a of this title, upon such terms and conditions as he shall
 10 deem fair, just and equitable, and is authorized to apportion to Puerto Rico, the District of
 11 Columbia, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands,
 12 ~~and~~ the Virgin Islands, and said tribal governments, out of the money available for
 13 apportionment under this chapter, such sums as he shall determine, not exceeding for Puerto
 14 Rico 1 per centum, for the District of Columbia one-third of 1 per centum, for Guam one-

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1 third of 1 per centum, for American Samoa one-third of 1 per centum, for the
2 Commonwealth of the Northern Mariana Islands one-third of 1 per centum, ~~and~~ for the
3 Virgin Islands one-third of 1 per centum, and for the combined total of all of said tribal
4 governments 2-and-one-quarter per centum, of the total amount apportioned in any one
5 year, but the Secretary shall in no event require any of said cooperating agencies to pay an
6 amount which will exceed 25 per centum of the cost of any project nor require any of said
7 tribal governments to pay any amount toward the cost of any project. Any unexpended or
8 unobligated balance of any apportionment made pursuant to this section shall be available
9 for expenditure in Puerto Rico, the District of Columbia, Guam, American Samoa, the
10 Commonwealth of the Northern Mariana Islands, ~~or~~ the Virgin Islands, or by said tribal
11 governments, as the case may be, in the succeeding year, on any approved projects, and if
12 unexpended or unobligated at the end of such year is authorized to be made available for
13 expenditure by the Secretary of the Interior in carrying on the research program of the Fish
14 and Wildlife Service in respect to fish of material value for sport or recreation. For
15 purposes of this section, the apportionments made to Indian tribes shall be adjusted
16 equitably so that no tribe shall receive less than one-quarter of 1 per centum nor more than
17 5 per centum of the total amount apportioned to Indian tribes. For purposes of section
18 777e of this chapter, the Secretary may finance up to 100 per centum of the total costs:

TESTIMONY OF RED LAKE CHAIRMAN GERALD F. BRUN, FEBRUARY 18, 1993
BEFORE THE HOUSE NATIVE AMERICAN AFFAIRS SUBCOMMITTEE
REGARDING TRIBAL FISH AND WILDLIFE CONSERVATION LEGISLATION

1 (1) of implementing a tribe's comprehensive fish and wildlife resource
2 management plan, and

3 (2) of a tribe's fish restoration and management project approved by the
4 Secretary, and

5 (3) of a tribe's acquisition of lands or interests therein and the construction of
6 structures or facilities.

7 Notwithstanding subsection (c) of section 777e, the administrative costs of a tribe charged
8 against programs or projects supported by funds made available under this chapter shall not
9 exceed that tribe's indirect cost rate negotiated with the Office of Inspector General of that
10 tribe's cognizant federal agency.

TESTIMONY OF THE PUEBLO OF LAGUNA
TO THE
SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
OF THE COMMITTEE ON NATURAL RESOURCES
Honorable Congressman Bill Richardson, Chairman

Re: Indian Fish and Wildlife Management and Enhancement

Dear Mr. Chairman and Distinguished Members:

My name is Harry D. Early and I am Governor of the Pueblo of Laguna Tribe of New Mexico. Membership within our tribe is comprised of 7,180 members and our land base consists of approximately 528,000 acres. Our reservation is located in northwest New Mexico, with our headquarters in the village of Old Laguna, which is approximately 45 miles west of Albuquerque.

The Pueblo of Laguna Tribe (Tribe), like other Indian Tribes throughout North America, have developed strong ties with wildlife and other natural components of the universe. Wildlife resources play an important part of our Tribal culture and tradition.

Wildlife species such as deer and eagles are represented in tribal dances to pay homage and give thanks to the Great Spirit (Creator) who has given these magnificent creatures to the people. Our clan system is also based on natural components that occur within this universe. Some clans are named after the sun, water, eagle, turkey, roadrunner, badger, and antelope. Songs about deer, butterfly, and other wildlife species are also sung, again signifying the importance of these resources.

Thus it was only fitting that our Tribe, in June of 1990, adopted the Laguna Wildlife Conservation Code (Code) which set the stage for wildlife management on our Reservation. This action was perhaps one of the most important steps taken by the Tribal Council in recent history. With the enactment of this Code, we made a commitment to manage our wildlife resources and further declared that it is our policy "that all wildlife will be managed for human enjoyment and welfare, for traditional, cultural and scientific purposes, and to insure the perpetuation of wildlife."

With the enactment of the Code also came the establishment of the Laguna Wildlife Conservation Program (Program) which is responsible for carrying out the provisions of the Code. In attempting to develop strategies to implement the policies set forth in the Code, we have come to realize that present funding levels are not sufficient.

During the time our Code was being drafted and reviewed, we submitted a funding proposal for the Establishment of the Pueblo of Laguna Wildlife Management Program in the amount of \$196,220. This funding proposal was included with others as part of the

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Re: Indian Fish and Wildlife Management/Enhancement

March 1, 1993

initiative sponsored in Fiscal Year 1990 by the Native American Fish and Wildlife Society. This initiative resulted in the submission of a total funding package to the U.S. Congress. Unfortunately, our proposal was not funded. However, that did not prevent us with moving ahead with our plan to initiate a wildlife management program. In June of 1990, our Tribal Council allocated \$58,000 to establish the first tribal wildlife program and thus began our first official effort to address our fishery and wildlife management needs.

Despite our limited funding and the fact that we have only two Wildlife Conservation Officers to patrol 528,000 acres, we have made great strides in our efforts to curtail illegal hunting activities. We have also made excellent progress in re-establishing our native big game populations. We have recently transplanted pronghorn antelope to augment an existing herd in an effort to increase productivity. These newly transplanted antelope need to be protected or our efforts were in vain. We are also in the process of doing similar transplants with mule deer. We have also implemented a successful mule deer and elk hunting program for tribal members. This system is currently operating under a application/drawing basis as we cannot yet accommodate all interested hunters. Because of our increasing elk populations, we are also planning to open the elk hunt to non-tribal members as well. Because of this hunting program, we need to expand the collection of biological information so that sound harvest strategies can be developed.

Prior to transplanting of the pronghorn antelope, we conducted an extensive state-of-the-art radio telemetry project to determine home ranges, seasonal use, migration, and critical use areas. The information is now loaded into a Geographic Information System (GIS) and we now have established a antelope habitat model that can be used reservation-wide to determine suitable locations for additional antelope transplants. So you can see that we are serious in our attempts to provide effective and efficient management of our wildlife resources. But our efforts do not stop at big game management.

It has long been our wish here on our reservation to establish a permanent water-based recreation facility that would satisfy our needs in sport fishing. Although we do have repairs pending on several reservoirs (Paguata Ponds and Seama) with completion scheduled soon, they will be used primarily for irrigation and consequently, sport fishing and other water-based activities will not be available. It would be in our best interest to have a large reservoir built strictly for water-based recreation

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Re: Indian Fish and Wildlife Management/Enhancement
March 1, 1993

activities. Since we are located between two major cities (Grants and Albuquerque being located approximately 20 and 40 miles to the west and east, respectively), I am sure you can see the enormous potential we have to benefit economically from water-based recreation activities including fishing.

Two existing reservoirs that also deserve mention are the Mesita and New Laguna Reservoirs. Both reservoirs have historically provided excellent waterfowl habitat and still have enormous potential as waterfowl reserves but siltation over the past years has just about filled both reservoirs. The New Laguna Reservoir once sported a decent recreational warm water fisheries but has since been reduced to a bog because of siltation. The earthen spillway has also been breached in an effort to remove the silt but to no avail. Downstream agriculture uses for farming have also suffered due to the lack of irrigation water.

The Rio San Jose was once touted as a good quality fishery but due to upstream water quality degradation and siltation of the majority of the stream, the fishery has been seriously degraded and is almost non-existent.

As you can see from this short synopsis of our surface water situation, we are in dire need of assistance to remedy this situation. Mr. Chairman, being from New Mexico and being familiar with our Reservation, I am sure you can relate to our concern for our lack of ability to store water. As you know, water is the "lifeblood" of our Pueblo people.

Another item I would like to bring to your attention is the inequity in federal funding that appears to be prevalent not only with our Tribe but throughout Indian country as a whole.

Direct federal funding has been non-existent although the Bureau of Indian Affairs (BIA) has contributed matching funding for winter big game aerial surveys. However, this came to a halt this past winter and we funded our own aerial survey. Since then, we have been unsuccessful in obtaining any federal funding from the BIA. Fortunately though, we have been able to receive technical assistance from the BIA Albuquerque Area Office Wildlife and Fishery Biologist's. However, they are also responsible for coordinating wildlife management activities on 22 other Indian reservations in Southern Colorado and New Mexico. Not only are they stretched pretty thin but these job responsibilities are proposed to be shifted to the local BIA agencies under the proposed BIA Reorganization Plan. However, we are unaware of any plan by the Agency to fund these positions.

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As you may also be aware, the Federal Aid in Wildlife and Sport Fish Restoration Programs, more commonly known as the Pittman-Robertson/Dingell-Johnson/Wallop-Breaux Acts (Acts), provide federal funds derived through various excise taxes on sport fishing and hunting equipment and motor boat fuel, to the states and territories of the United States. These are apportioned annually through the U.S. Fish and Wildlife Service based on formulae that include land and surface water acreage, number of permits sold and population. The territories, as we understand, receive a set percentage each year.

In 1992, records indicate that the State of New Mexico Department of Game and Fish received \$2,802,800 for Wildlife Restoration, \$279,000 for Hunter Education, and \$3,636,284 for Sport Fish Restoration. This amounts to a grand total of \$6,764,665 apportioned under these Acts to the New Mexico Department of Game and Fish. In 1992, a total of \$353,400,000 was apportioned nationwide and to the territories for fishery and wildlife enhancement. In the meantime, our tribe had to use its own financial resources to manage its wildlife resources, including species that are both migratory and resident.

We, as well as other tribes statewide, are not eligible for any of this funding because the language of the Acts limit participation to states and territories only. We are of the opinion that this is discriminatory and unequitable since our tribal members pay this same excise tax when they purchase taxable sporting equipment. To further illustrate this inequity, the territory of Guam, whose land base is 135,680 acres, received \$927,000 in 1992. In comparison, our land base totals 528,000 acres (five times greater than Guam) and we did not receive one cent of these federal aid dollars. Because of our decreasing tribal revenues we could only allocate tribal dollars in the amount \$85,000 in the same year.

Mr. Chairman and members of the Sub-Committee, I am sure you will agree that we have done a commendable job despite our limited financial resources. It is our opinion that it would be in our best interest and in line with "true tribal self-government" if we were able to establish our own tribal in-house capabilities to manage our fishery and wildlife resources. By establish our own tribal staff, only then can we begin to manage our resources from a "true tribal perspective." It is our estimation that it would require funding in the amount of \$344,000 to begin addressing these needs. We certainly do hope that you will be able to assist us in this regard and would be happy to provide you with the details of this funding requirement.

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In an effort to begin to address some of our problems, I would like to respectfully present some recommendations for the Sub-committees consideration.

1. Direct the Bureau of Indian Affairs to fulfill their trust responsibility in fishery and wildlife management and direct more dollars for this effort.
2. Direct the U.S. Fish and Wildlife Service to make available a set amount of the Pittman-Robertson/Dingell-Johnson Administrative Funds and the Reverted Funds for Tribal fishery and wildlife programs and projects.
3. Work with Congress to amend the Pittman-Robertson/Dingell-Johnson/Wallop-Breaux Acts to allow full tribal participation in funding of fishery and wildlife projects.
4. Work with Congress and the Tribes to draft and introduce a Native American Fish and Wildlife Enhancement Act that will legislatively mandate and guarantee Tribal Governments full participation in management of fisheries and wildlife resources including adequate funding to rectify the budget shortfalls.
5. Consider the option of having the U.S. Fish and Wildlife Service be the primary agency to provide technical assistance to Tribes. As you know, the U.S. Fish and Wildlife Services' mission is 100 percent fishery and wildlife management oriented. Consequently, one hundred percent of their funding and effort is allocated for that purpose. On the other hand, we find the BIA's mission to be "complex" in that it deals with a multitude of programs including education, economic development, roads, law enforcement, social services, forestry, range, water rights, and archaeology, to name a few. These individual programs must compete with one another for funding and unfortunately, fishery and wildlife resource management programs are usually under-funded. In our tribal situation, we have received no direct BIA funding.
6. Provide financial assistance to establish a new reservoir for water-based recreation with emphasis on sport fishing and to restore our valuable wetlands at Mesita and New Laguna Reservoirs.
7. Seriously consider funding, on an annual basis, our Pueblo of Laguna Wildlife Conservation Program, as requested.

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If you require additional information regarding any of the items presented, I will be happy to provide you with full details at your request.

In closing, the Pueblo of Laguna extends a sincere thanks to you Mr. Chairman and the Distinguished Members of your committee for allowing us the opportunity to submit written testimony. We wish you the best of luck with all your duties and sincerely hope that you will assist not only our Tribe but all Tribes nation-wide. We will ask that the Great Spirit guide you and give you the strength you need to work on behalf of all your constituents.

Keeping in line with our well known "Pueblo hospitality", we invite you all to visit our Pueblo someday. Mr. Chairman, we would especially like for you to come visit with our Tribal Council someday soon. Thank you!

PUEBLO OF LAGUNA
Resolution No. 09-93

At a duly called meeting of the Pueblo of Laguna Council held on the 2nd day of March, 1993, the following resolution was adopted.

WHEREAS, the Pueblo of Laguna is concerned about the efficient and effective management of its fishery and wildlife resources; and

WHEREAS, the Pueblo of Laguna has enacted wildlife codes and regulations to ensure that their resources are managed properly; and

WHEREAS, the Pueblo of Laguna has totally funded its Wildlife Conservation Program, without financial assistance from any other governmental, state, or private source; and

WHEREAS, the Pueblo of Laguna desires that the Congress of the United States make adequate funding available for the Pueblo and other tribes for the establishment and maintenance of sound tribal fishery and wildlife management programs; and

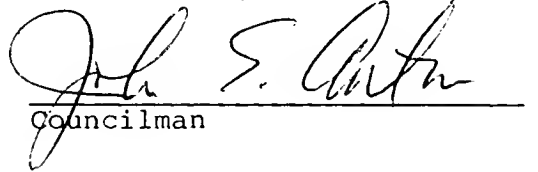
WHEREAS, the Pueblo of Laguna supports the efforts of the House Subcommittee on Native American Affairs of the Committee on Natural Resources in its mission to provide adequate support to tribes in the area of fishery and wildlife management and enhancement.

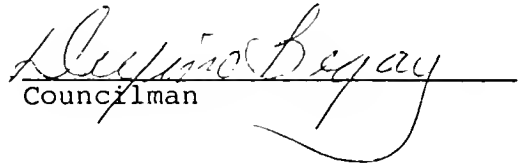
NOW, THEREFORE, LET IT BE RESOLVED, that the Pueblo of Laguna hereby submits written testimony on behalf of support to tribes in the area of fishery and wildlife management and enhancement.

Resolution No. 09-93

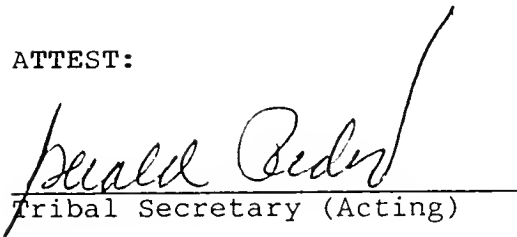
BE IT FURTHER RESOLVED, that the Pueblo of Laguna requests the Subcommittee on Native American Affairs of the Committee on Natural Resources to consider our recommendations.


Governor


Councilman

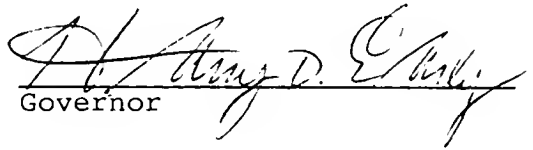

Councilman

ATTEST:


Tribal Secretary (Acting)

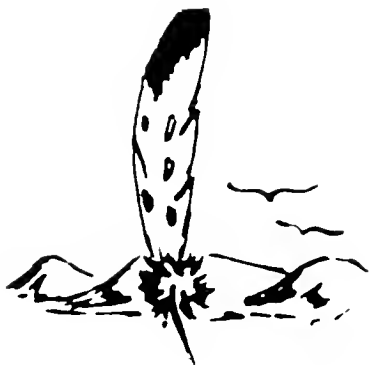
Resolution No. 09-93C E R T I F I C A T I O N

The foregoing resolution was enacted upon by the Council of the Pueblo of Laguna on the 2nd day of March, 1993, by a vote of 18 for, 0 opposed, 0 abstaining, at a duly called meeting at which a quorum of the Pueblo Council was present.


Governor

ATTEST:


Acting Tribal Secretary



**WESTERN SHOSHONE NATIONAL COUNCIL
P.O. BOX 140115
DUCKWATER, NV 89314-0115
TELEPHONE/FACSIMILE: (702) 863-0332**

February 18, 1993

To: House of Representative
Committee on National Resources
Sub-Committee
Native American Affairs

From: Western Shoshone Wildlife & Plant Resource Commission

Subject: Management of Wildlife and etc.

Management problems of fishery and wildlife conservation are as varied and as changing as the habitats themselves. They depend on various kinds of land use and on human population pressure. Basically, the role of wildlife management is to keep animal populations optimal, diversified, and harmonized with the environment in order to satisfy the needs of man. These needs are economic, recreational, scientific, educational, social. A sound management policy also requires some basic conservation concepts, including ecological and biological considerations and a respect for native plants and animals, which should always have priority over exotic species. The development and application of management measures to obtain the greatest sustained public benefit from wildlife, or any other natural resource, should never be allowed to go so far as to threaten a species or subspecies with extinction.

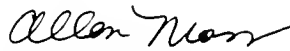
Wildlife management includes restoring, protecting, conserving, and maintaining animal populations. All these stages require successful cooperation with the environment, a long-term, ecologically based policy, and synchronization with other kinds of land use within and outside the area involved. No management can ever be successful if it is not based on biological research.

Modern wildlife management must function by planning ahead, foreseeing the future's tremendous human pressure on habitat and wild animals. It can draw a great deal from numerous human mistakes and land misuse during past centuries to reduce as far as possible man's detrimental impact on the environment and wildlife. Much of the damage done to wildlife and its habitats during past centuries is irreparable. Nevertheless management measures should include environmental restorations designed to put back the natural interactions that lead to wildlife fertility in a healthy landscape.

MANAGEMENT & CONTROL OF SHOSHONE RESOURCES ARE:

1. Trapping
2. Hunting
3. Fishing
4. Gathering (plants and pinuts)
5. Mustangs
6. Wildlife Reserves
7. Water Use/Rights
8. Seeding/Native Grass and Trees

Sincerely Yours,



Allen Moss
Chairman, WSWPRC

MAJOR CONCERNS OF THE WESTERN SHOSHONE NATION

1. 1863 Treaty of Ruby Valley is still valid.
2. Management and control of Western Shoshone resources:
 - Trapping
 - Hunting
 - Fishing
 - Gathering Rights
 - Mustangs
 - Wildlife Refuges
 - Water Rights/Water Use
 - Land
 - Plants
 - Other
3. Western Shoshone interests:
 - Maximum Land Retention
 - Ranching Operations/
Livestock Grazing
 - Farming Operations
 - Mining
 - Oil & Gas Exploration
 - Geothermal
 - Water Rights/Water Use
 - Leasing
 - Jurisdiction
 - Other.
 - Smoke Shops/Truck Stops
 - Private Enterprises
 - Tribal Enterprises
 - Royalties
 - Taxation
 - Monetary Distribution
 - Culture/Language/Traditions
 - Religious & Sacred Areas
(Protection and Control)
 - Education
 - Passports
4. Environmental issues:
 - High level nuclear waste dump/transportation routes
 - Nuclear testing
 - Rights-of-way for railroads and roads
 - Contamination of water and air
 - Hazardous waste and products
 - Air space/overflights
 - Telephone/telegraph
 - Transmission lines
 - Other
5. Since time immemorial, the Western Shoshone People continue to live on their nation's homelands.
6. Western Shoshone issues require Western Shoshone participation and determination to put together our best possible comprehensive legislative package.

Western Shoshone Wildlife and Plant Resource Code
Enacted October 3, 1987

Preamble:

A Code adopted by the Western Shoshone Nation to protect the wildlife and plant resources subject to its jurisdiction and the natural beauty of the Western Shoshone ancestral lands.

Whereas, from time immemorial the Western Shoshone Nation has practiced conservation to protect the invaluable wildlife and plant resources subject to its jurisdiction from waste and excessive exploitation, and has been proud of the great natural beauty of its ancestral lands, and

Whereas, from time immemorial the Western Shoshone Nation has exercised sovereignty over its citizens and territory, and,

Whereas, the United States of America, by the Treaty of Ruby Valley, 18 Stat. 689, ratified on October 21, 1869, and recognized the sovereignty and aboriginal rights of the Western Shoshone Nation,

Now, Therefore, the Western Shoshone National Council hereby adopts this Code to protect the wildlife and plant resources within the jurisdiction of the Western Shoshone ancestral lands.

A. Jurisdiction.

This Code shall be applicable to all persons exercising or purporting to exercise the hunting, fishing, trapping, or gathering rights reserved to the Western Shoshone Nation by treaty and arising out of aboriginal use and occupancy within the boundaries of the Western Shoshone ancestral territory.

B. The Western Shoshone Wildlife and Plant Resource Commission.

1. Establishment and Purpose.

The Western Shoshone Wildlife and Plant Resource Commission (hereinafter referred to as the "Commission") is hereby established for the purpose of implementing and enforcing this Code. The Commission shall have authority to implement this Code by appropriate regulations.

2. Duties of the Commission.

The Commission is directed to:

- (A) to enforce the provisions of this Code;

- (B) to report on the operations of the Commission to the Western Shoshone National Council (herein referred to as the "National Council");
- (C) to plan and execute programs and activities for the conservation and enhancement of the wildlife and plant resources, including the management of animals and plants injurious to the communities, livestock and crops;
- (D) to design, implement and supervise a plan for control, disposition, elimination and prevention of plant and animal diseases;
- (E) to coordinate with the National Council, community leaders and individuals to formulate a plan to further develop the wildlife resources;
- (F) to develop a plan of public education and public relations, informing the community of the Commission's goals and objectives;
- (G) to prepare written materials intended to keep the public informed of the applicable laws;
- (H) to judiciously recommend to the National Council expenditures necessary to the development of wildlife resource potential;
- (I) to report bite cases, outbreaks of diseases, potential health problems and other significant events to the United States Public Health Service and other agencies as necessary;
- (J) to represent the Western Shoshone Nation at state wide or regional wildlife planning meetings;
- (K) to seek federal, state and local funds and technical assistance in the further development of the Western Shoshone wildlife programs;
- (L) to render emergency assistance to the federal or state law enforcement officials, or to individuals needing emergency medical care or who risk extreme exposure to the natural elements;
- (M) to design, implement and supervise a plan for control, disposition or elimination of animals injurious to the wildlife resources of the Western Shoshone Nation;
- (N) to maintain a system of recording and preserving all items or wildlife seized in the course of Commission duties; and,
- (O) to maintain fiscal records of the Commission's income and expenditure.

3. Enforcement Authority.

- (A) The Commission shall exercise enforcement authority through special conservation officers or game protectors it may commission. Such conservation officers or game protectors may issue citations for violations of this Code & Regulations and/or take into custody any citizen of the Western Shoshone Nation without warrant for violation of the same after first having considered:

1. Whether the person has identified himself satisfactorily;
2. Whether detention appears reasonably necessary to prevent imminent bodily harm to himself, to another, to property, or breach the peace;
3. Whether the person is a local resident so as to provide reasonable assurance of his or her appearance before the Western Shoshone Nation Tribal court, or whether there is substantial likelihood that he will refuse to respond to the citation; and
4. Whether the person has previously failed to appear in response to a citation issued pursuant to this section or other lawful process of the Western Shoshone Nation.

(B) Any conservation officer or game protector may search without warrant any conveyance, vehicle, game bag, game basket, game coat or other receptacle for game animals, game birds or fish, or any package, box, tent, camp or other similar place which he has reason to believe contains evidence of violations of this Code & Regulations pertaining to hunting and fishing.

(C) Any conservation officer or game protector may seize without warrant all game animals, game birds, fish or parts thereof taken, killed, transported or possessed contrary to this Code & Regulations; and any dog, gun, vehicle, trap, net, seine, decoy, bait, boat, light, or other device used in hunting, fishing or trapping, or held with intent to be used for purposes violating this Code & Regulations

(D)

C. Regulation.

1. Commission Empowered to Regulate.

The Commission shall promulgate such regulations as it deems proper and necessary to carry out the policy of the Western Shoshone Nation with respect to hunting, fishing, trapping, gathering, and all other activities considered in this Code within the Western Shoshone National jurisdiction. Such regulation may establish closed and open seasons, closed areas, bag and catch limits, gear restriction, permit requirements, and any other provisions that the Commission deems necessary to carry out the policies and provisions of this code.

2. Review By the National Council.

The National Council shall take all actions necessary to implement the provisions of this Code and may review and may amend all regulations of the Commission by resolution.

3. Notice of Regulations.

Proposed regulations, other than emergency regulations, shall be communicated to the public at least ten (10) days prior to enactment. All regulations promulgated by the Commission shall be communicated to the public as widely as is necessary, including providing information with respect to such newspaper, broadcast media, and any other media that are likely to bring such news to the attention of the general public, and shall make copies of such regulations available to all persons.

4. Effective Date of Regulations.

Regulations shall become effective upon promulgation by the Commission.

5. Emergency Regulations.

The Commission may promulgate emergency regulations governing hunting, fishing, trapping, or gathering within the Western Shoshone National jurisdiction but no such regulation shall remain in effect longer than fifteen (15) days.

6. Noncompliance with Regulations.

Failure to comply with regulations properly promulgated under this section shall be a violation of this Code.

D. Proof of Identity.

1. Identification Cards.

Any person in any activity governed or permitted by this Code shall have on his or her person any license, permit, identification card, or other document required by regulations adopted pursuant to this statute while engaged in any such activity.

E. Prohibited Acts.

1. Hunting in Violation of Closed Seasons, Bag Limits, or Closed Areas.

It shall be unlawful for any person to hunt, trap, or fish during the respective closed seasons thereof. It also shall be unlawful for any person to kill, take, or catch any species of birds, animals, or fish in excess of the number fixed as the bag limit. It also shall be unlawful for any person to hunt, fish, or trap for any birds, fish or animals within the boundaries of any

closed area.

2. Hunting While Intoxicated.

It shall be unlawful for any person to hunt with firearms while under the influence of intoxicating liquor.

3. Wasting Wildlife

It shall be unlawful for any person to permit any animal or any person to permit any animal or any part of it needlessly to go to waste after killing it. Trophy hunting is prohibited.

4. Obstructing Law Officers

It shall be unlawful for any member to resist or obstruct any Conservation Officer or other duly authorized tribal law enforcement officer or other peace officer in the discharge of his duty while enforcing the provisions of this statute or other regulations promulgated under this statute.

5. Interference with Game Control Signs

It shall be unlawful for any person to destroy, tear down, shoot at, deface or erase any printed matter or signs placed or posted by or under the instructions of the Fish and Game Commission to assist in the enforcement of tribal hunting and fishing regulations.

F. Enforcement

1. Violations of this Code, regulations made pursuant to this Code, or conditions of permits given pursuant to this Code, shall be punished by appropriate criminal or civil proceedings in the Western Shoshone Nation Tribal courts.
2. Any game, fish, pelts, and any hunting, fishing, trapping gear and any receptacles, vehicles, machinery, dog, or waterborne craft obtained by, used in, or intended to be used in violation of this Code may be seized, confiscated, and impounded by Western Shoshone law enforcement officers and conservation officers.
3. Violators of this Code may have hunting, fishing or gathering privileges suspended for any length of time deemed appropriate by the Commission in its regulations.
4. Western Shoshone law enforcement officers and conservation officers may inspect all fish and wildlife taken or transported, and may search without warrant any vehicle, boat, box, outhouse, hunting camp, game bag, or other package, where there is a

reasonable belief that fish, game wildlife or part thereof is possessed in violation of this Code.

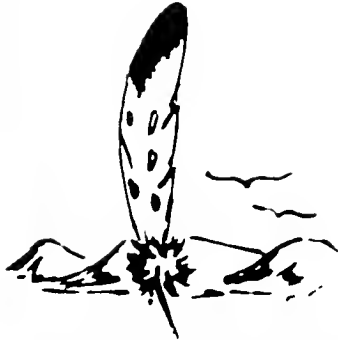
5. Property seized or confiscated pursuant to this Code may be forfeited and given away or sold at the discretion of the adjudicating Western Shoshone Nation Tribal court, after proper notice of hearing on action to forfeit has been given to known owners, and a hearing has been held.
 - (A) Notice of action to forfeit shall be given by summons to owners.
 - (B) A hearing on action to forfeit shall be held fifteen (15) days after actual service of summons or last date of publication.
5. In the event that the court orders forfeiture of any articles seized, such articles shall be turned over to the Western Shoshone National Council for the use and benefit of the Western Shoshone Nation. If any articles are not declared forfeited by order of the court, they shall be returned to the owner after the case has been concluded and the fines paid, if any.
6. The court may also, upon a showing of probable cause by a sworn statement of a conservation officer or game protector, issue a search warrant and direct the search to be made in any place wherein it is alleged that any game animal, game bird, or fish, or any part thereof taken or in possession contrary to this Code & Regulations, is concealed or illegally kept. Such warrant shall authorize the search of any building, enclosures of vehicles, and any apartment, chest, box, locker, crate, basket, package, or other receptacle to be opened and the contents thereof to be searched provided that the scope of the warrant is limited the Western Shoshone Nation's treaty hunting area boundaries.

G. Penalty

Any person who shall violate the provision of this Code or any regulation properly promulgated pursuant to it may be guilty of an offense, and shall, upon conviction thereof, be sentenced to confinement for not more than (3) months or to pay a fine of not more than \$300.00, or both, with costs.

H. Revolving Fund

All fees collected by the Commission or fines exacted as punishment shall be placed in a fund which may be used at the direction of the National Council for Commission operating costs. The Commission shall give the National Council an accounting of such funds on demand.



WESTERN SHOSHONE NATIONAL COUNCIL
 P.O. BOX 140115
 DUCKWATER, NV 89314-0115
 TELEPHONE/FACSIMILE: (702) 863-0332

WESTERN SHOSHONE WILDLIFE & PLANT RESOURCE CONSERVATION COMMISSION

MANAGEMENT OF WILD HORSES

INTRODUCTION

The wild mustangs, long a symbol of the vanishing west, has provided Nevada, indeed the Nation, with many of the conundrums connected with preserving natural resources in the face of growing urbanization and multi-use of Western lands.

In Nevada, the wild horses became a protected group after a long emotional battle led by "Wild Horse Annie" in 19--. Ranchers were prohibited from trapping or shooting the mustangs they considered a nuisance as they grazed grasslands intended for cattle or lamb production.

The long term result of this protection has left the wild horses worse off than before. Their freedom to roam has been protected, but that freedom now means freedom to die from starvation or thirst as no successful range management program has been instituted to support them.

The Bureau of Land Management has struggled to meet the intent of the law, but has found that bureaucratic design and methods based upon legislation designed on the East Coast is not compatible with the natural forces at play in the high mountain deserts of Nevada.

Talk about bad stuff
 bad genetics, cost over runs, etc

PURPOSE

It has been stated that the United States Government stewardship in regard to Native Americans has gone through five official phases: kill them off, train them, adopt them, relocate them, forget them.

Treatment of wild horses can be equated to the above: shoot them, primary training program, adopt a horse program, relocate through helicopter round-ups, leave them to starve and desiccate.

Given this experience, the -----proposes to
 institute a ten year Wild Horse Management plan that will _____

1. overcome past failures;
2. rely on natural forces to upgrade stock;
3. restore a balance of reason to discussion of the issue;
4. provide a mechanism of self support, thereby lessening demands on public budget.

METHOD

Years One and Two

Reducing the herds to a size that can co-exist with the land will be the main focus of stage one. Determination of natural foliage, available water, demands of cattle/sheep ranching, other wildlife constraints will be variable factors.

In the designated range areas for reduction of wild horses, good water holes with easy access will be determined by on-site survey. Water entrapment will be used to attract the stock into the area for round up by helicopter, dirt bike, an conventional horse back methods.

Transportation of horses out of the area will be by pull trailers, gooseneck and regular diesel livestock trucks/trailers. Shipping fever shots will be administered.

Horse herds to be left at designated areas will be upgraded to good stock by culling by color, size, breed and configuration and by introduction of high powered stallions.

Years Three and Four

Permanent water hole corrals will be built and proper stock water tanks and watering troughs installed. Permanent feed systems will also be devised.

Reduction of herds would continue as range dictates. Culling of surplus stock would continue according to age, size, color and sex. Colored horses would be held back to establish colored horse herds. This could include a herd of stickly Indian Pinto ponies. Both colored horses and Pintos are in demand.

By keeping back all big boned mares and fillies and turning out draft horse stallions, a herd for third world meat consumption could be established.

The same process could be used to create a herd of mules, by introducing burros to one herd.

Years Four and Five

Annual reduction of base herds would begin to take place. Young stallions (2-3 years) would be gelded; cripples and standard colors culled.

Sales of horses would begin to support management costs.

Years Six through Ten

Range development should be in operation. Basic herd sizes are established. Annual round-up reduction of horse herds will be in place.

Other Management Techniques

Vaccination

As long as horse herds are left on their own natural range above congested elevations, Nature has provided a disease free environment. It is the incarceration in storage facilities and exposure to crowded environments that contaminates.

Vaccinations will be administered to stock moved into wild horse sanctuary or in situations required for transport.

Hoof Trimming

By having horses in their own habitat, again Mother Nature will resolve the problem. Running on the natural terrain will keep hooves and legs in top shape without application of artificial methods.

Casturization

This will be done to all 2 and 3 year olds during the annual trapping, depending on sales and range dictates to be determined annually.

Wild Horse Sanctuary

It is proposed that the majority of wild horse management will be performed on high altitude range lands away from population centers. It is also proposed that one range land sanctuary be located with easy access to the more populated areas as an education center.

Planned field trips for all ages of school children could provide not only information and appreciation for the horses themselves, but at a secondary level, through history and government classes, provoke discussion and information about such topics as the Taylor Grazing Act, responsibilities and constraints of the Bureau of Land Management, and long term implications of the Mustang Protection Act.

This facility would also be open to the general public, providing not only an additional tourist attraction, but again, another forum from which to impart visual as well as factual information. Only by having a well informed public can the issues of management in a changing world be discussed in a manner that fosters the best results for all.

Administration

This program shall be part of the Division of Shoshone Nation Natural Resources.

The Shoshone Nation will contract with Kahnee, Inc. to develop, institute, and manage the above program. Kahnee, Inc. (KI) shall maintain a full year management team of---persons who will also recruit and train support staff for each heard area as it is established. These wranglers will be primarily drawn from the scattered Shoshone communities throughout Nevada or from prison and DUI units where outdoor, cowboy work is an appropriate alternative to jail time.

(See Appendix for proposed staffing pattern).

Results/Benefits

It is envisioned that by establishing and maintaining small, healthy herds that the key issues of this controversy will be addressed.

The American public will be served in its desire to protect and sustain bands of wild horses. These bands, however, will not be subjected to the slow death they currently suffer through inbreeding, lack of forage and water, and malicious attacks by vandals. The species itself will be strengthened and better able to enjoy survival in natural surroundings.

The cattlemen, the sheepherder, and now the military (an expanding user of the Nevada rangeland) will also be served by this management plan. Horse herds, by virtue of assured water and feed sources, will not need to invade other grazing areas for survival. Should a herd stray from its designated territory, anyone so impacted will have a permanent, "ready-to-go" crew, familiar with both the terrain and the herd, that can humanely move them back to where they should be.

The Nevada public will be served with an additional education center and a positive approach to a problem that has stymied and drained time and energy from all sectors. The problems of competing land use, of changing public values, and of shifting economic forces are not unique to Nevada, yet the wild horse management issue is specifically in its area, needing local resolution, not application designs from Metro areas that do not experience this unique combination of factors.

The Shoshone Nation, in meeting its responsibility to future generations by promoting and practicing conservation and stewardship of the natural resources of its territory, will also be stimulating avenues of employment for its people, creating another tourism asset for the region, and demonstrating a cost effective method of resource management.

And somewhere, looking into a vast landscape unfettered with architectural creations, a small child will be inspired watching a mustang reach for the wind.

WESTERN SHOSHONE WILDLIFE & PLANT RESOURCE COMMISSION
WILDLIFE PROGRAM
FIRST YEAR BUDGET EXPLANATION
SECTION 1

PERSONNEL:

This section of the Wildlife Program is budgeted for 5 persons. A chief game warden, a secretary and three game wardens. All positions will work 100% on program activities.

The Chief Game Warden will: carry out the policies, code & regulations of the Western Shoshone Wildlife & Plant Resource Commission (WSWPRC); attend all meetings of the Western Shoshone National Council (WSNC), WSWPRC, , other Tribal, State & Federal meetings as is necessary. Will manage the wildlife program for the protection, propagation, restoration, introduction and maintain public relations to the best of his/her ability, as well as maintain communication and regular reports to the WSWPRC on the status of the program, i.e. budget, property assignment, employee management, patrol scheduling, safety & defence training, incident reports, judicial, technical recommendations, etc. Act as secretary of the WSWPRC, without voting power. Salary figure for this position is appropriate to similar positions with other Tribal organizations.

The secretary will: be responsible for for: maintaining program administrative, program, and compliance records; document and communication from the WSNC/WSWPRC; scheduling and revisiting program activities and work travel; handling program activities; communications and correspondence. Salary figures for this position is appropriate to similar positions with other Tribal organizations.

Game Wardens will: enforce with full power and authority the provisions of the WSWPRC Code & Regulations; as peace officers for the service of such legal process, including warrants and subpoenas, as may be required in the performance of their duties.

Fringe Benefits:

The amount budgeted is for fringe benefits on salary for program staff. The current fringe benefit rate is 20.62%. The total is based on the following breakdown: FICA- 7.51%; SUTA- 1.20%; SIIS- .91%; Retirement- 4.00%; Health Insurance- 7.00%.

Consultant & Contract Services:

There are three categories of contract and consultant services, Wildlife Biologist consultant, bookkeeping services & audit, legal consultant. Wildlife biologist will study existing and new research data and compile such technical information for the review of the WSWPRC, under the direction of the Chief Game Warden.

Bookkeeping & audit will services the financial dealings of the WSWPRC, and maintain the accuracy of the WSWPRC accounting services.

Legal consultant is necessary in defining the legal uncharted waters of WSWPRC jurisdiction thereby avoiding legal challenges, litigation, and/or negotiating remedies and producing recommendations on the development of applicable regulations, etc..

NON-PERSONNEL:

Office space lease/ rental, utilities and janitorial services are necessary for the constant and effective implementation of the WSWPRC Code & Regulations; and basing operations of the Wildlife Program.

Rental, lease, and purchase of equipment is key to the ability of the Wildlife Program, conservation and enforcement of the WSWPRC Code & Regulations.

Consumable supplies will be used in the maintenance and operation of the Wildlife Program offices and vehicles.

Telephone, copies and postage are necessary for the timely compilation, and dissemination of information to various Tribal, State, Federal entities and the general public, as well as for the internal operation of the Wildlife Program.

Insurance is necessary to prevent liability and loss of the WSWPRC.

Official Commission travel is for the Chief Game Warden and WSWPRC Commissioners both in and out of State, as is determined necessary.

**WESTERN SHOSHONE WILDLIFE & PLANT RESOURCE COMMISSION
WILDLIFE PROGRAM
FIRST YEAR BUDGET EXPLANATION
SECTION 2**

PERSONNEL:

This section requires five animal handlers required to maintain the safety of the wildlife resource management activities, and implement to objectives of the Wildlife Program. These positions are at a rate appropriate to other positions within other Tribal organizations.

FRINGE BENEFITS:

The amount budgeted is for fringe benefits on salary for program staff. The current fringe benefit rate is 20.62%. The total is based on the following breakdown: FICA- 7.51%; SUTA- 1.20%; SIIS- .91%; Retirement- 4.00%; Health Insurance- 7.00%.

NON- PERSONNEL:

Rental, lease and purchase of equipment for the implementation of the

WESTERN SHOSHONE WILDLIFE & PLANT RESOURCE COMMISSION
WILDLIFE PROGRAM
BUDGET

FY 1993

=====
Section 1- Resource Conservation & Management

I. PERSONNEL

A. Salaries & Wages.

(1) Chief Game Warden	\$ 20,000.00
(1) Game Warden	18,000.00
(1) Game Warden	18,000.00
(1) Game Warden	18,000.00
(1) Secretary	16,000.00

=====
Sub Total \$ 90,000.00

B. Fringe Benefits.

FICA----- 7.51%	\$ 6,759.00
SUTA----- 1.20%	1,080.00
SIIS----- .91%	819.00
Retirement----- 4.00%	3,600.00
Health Insurance-- 7.00%	6,300.00

=====
Sub Total \$ 18,558.00

C. Consultant & Contract Services.

Consulting Wildlife Biologist	\$ 28,000.00
Bookkeeping Services & Audit	10,000.00
Legal Consultant	5,000.00

=====
Sub Total \$ 43,000.00

II. NON-PERSONNEL

A. Office Space.

Lease/ Rental	\$ 3,500.00
Utilities	2,000.00
Janitorial Services	1,000.00

=====
Sub Total \$ 6,500.00

B. Rental, Lease or Purchase of Equipment.

(3) Desks @ \$200.00 Ea.	\$ 600.00
(5) Chairs @ \$60.00 Ea.	300.00
(4) File Cabinets @ \$150.00 Ea.	600.00
(1) Personal Computer W/Periferals	5,000.00

(1) Typewriter	
(1) Self Contained Portable	300.00
ID Camera/Lamination Machine	3,500.00
(3) 4WD Trucks W/Extra Tanks @ \$18,000.00 Ea.	54,000.00
(3) Camper Shells @ \$1,600 Ea.	5,400.00
(3) Field Radios & (1) Base Radio	14,200.00
(3) Tire Chains, Basic Tools & First Aid Kits	460.00
Incidentals	3,000.00

=====
Sub Total \$ 87,360.00

C. Consumable Supplies.

Office Supplies	\$ 5,000.00
Fuel & Engine Fluids	10,000.00

=====
Sub Total \$ 5,000.00

D. Telephone, Copies & Postage.

Copies	\$ 1,800.00
Telephone @ \$200.00 Per Mo.	2,400.00
Telephone Installation & Deposit	300.00
Regular & Bulk Postage	500.00

=====
Sub Total \$ 5,000.00

E. Insurance.

Vehicle Insurance	\$ 8,000.00
Professional Liability Insurance	4,000.00

=====
Sub Total \$ 12,000.00

F. Official Commission Travel.

In State/Local	\$ 3,000.00
Out of State	3,000.00

=====
Sub Total \$ 6,000.00

=====
Sub Grand Total \$ 273,418.00
=====

Section 2- Mustang & Wildlife Habitat Restoration

I. PERSONNEL

A. Saleries & Wages.

(1) Handler	\$ 15,000.00
(1) Handler	15,000.00
(1) Handler	15,000.00
(1) Handler	15,000.00
(1) Handler	15,000.00
	=====
Sub Total	\$ 75,000.00

B. Fringe Benefits.

FICA----- 7.51%	\$ 5,632.50
SUTA----- 1.20%	900.00
SIIS----- .91%	682.50
Retirement----- 4.00%	3,000.00
Health Insurance-- 7.00%	5,250.00
	=====
Sub Total	\$ 15,465.00

II. NON-PERSONNEL

A. Rental, Lease or Purchase of Equipment.

Helicopter Rental & Per diem @ \$3,325 a day x 10	\$ 33,250.00
Trap Fence & Traps (Mustang & Beaver)	600.00
Mustang & Elk Stock Transportation Truck	6,000.00
Holding Pen Timber Poles 250 @ \$30.00	7,000.00
Breeding Stock	7,500.00
	=====
Sub Total	\$54,350.00

B. Consumable Supplies.

Native Grass Seed	10,000.00
Vetrinary Supplies	1,000.00
Feed 600 x \$ 2.00 x 60 days	72,000.00
	=====
Sub Total	\$83,000.00

Sub Grand Total \$227,815.00
=====

Section 1 Total \$273,418.00

Section 2 Total 227,815.00
=====

Grand Total \$501,233.00

Fond Du Lac Reservation

Business Committee

105 University Road,
Cloquet, MN 55720
Phone (218) 879-4593
Fax (218) 879-4146

March 12, 1993



Honorable Bill Richardson, Chair
Subcommittee on Native American Affairs
House Committee on Natural Resources
1522 Longworth House Office Building
Washington, D.C. 20515-6201

Dear Chairman and Honored Committee Members:

Chairman
Robert B. Peacock

Secretary/Treasurer
Peter J. Defoe

Dist. I Councilman
Clifton Rabideaux

Dist. II Councilman
Herman Wise

Dist. III Councilman
George Dupuis

Executive Director
I. Jean Mulder

As Chairman of the Fond du Lac Band of Lake Superior Chippewa, I wish to express my appreciation for this opportunity to present testimony, regarding the management and enhancement of Indian Fish and Wildlife resources, to the Subcommittee on Native American Affairs of the Committee on Natural Resources. The Fond du Lac Reservation is a sovereignty, created by the 1854 Treaty of September 30, 1854, 10 Stat. 1109. The Fond du Lac Band is one of the three Chippewa Bands which retain specific Treaty rights within the 1854 Ceded Territory of Minnesota, and is also one of six Bands within the Minnesota Chippewa Tribe. We are also a member Reservation of the Great Lakes Indian Fish and Wildlife Commission. Our Reservation encompasses 100,000+ acres, and is located about 20 miles west of Duluth, Minnesota. There are presently some 4,200 Fond du Lac Band Members.

The Fond du Lac Band of Lake Superior Chippewa is committed to managing, protecting, and enhancing the natural resources which are a vital part of our culture, identity, and livelihood. In order to accomplish these goals we have developed Tribal Programs in Conservation Enforcement, Natural Resources, Forestry, and Environmental Management. The Fond du Lac Reservation has an Integrated Resource Management Plan (IRMP) which provides a set of management goals and an assessment of the resources and environmental conditions on the Reservation. We also have a Ceded Territory Conservation Enforcement Program, and have plans to develop a 1854 Ceded Territory Natural Resources Program. These Programs have been developed in cooperation with the United States Government through the Bureau of Indian Affairs and the U.S. Environmental Protection Agency because of its Trust Responsibility.

The Fond du Lac Reservation recommends that, in order to manage and enhance the natural resources of the Band, Tribal programs must receive the funding support as primary recipients, along with State and Federal agencies under all legislation affecting natural resources and environmental protection. This will fulfill the Trust Relationship we have with the U.S. Government.

This Trust relationship continues to be essential in order for Native Americans to manage and enhance fish and wildlife populations, the habitat they need to survive on, and the environmental protection to ensure and intact and healthy ecosystem. The efforts which we undertake directly benefit more citizens than our own Band Members. Beyond the management and protection of the natural resources on our own Reservation, we have expended considerable efforts to initiate participation in, and support of joint Tribal, local, State, and Federal natural resource and environmental projects and programs. In many instances this level of commitment and support has been significant; especially when "outside" forces which oppose the protection of natural resources and the environment have stalled action by other government agencies. Examples of the natural resource management efforts undertaken by Fond du Lac will be presented later in this document, and more specific recommendations to the Federal government will also be presented. As in our written testimony and Resolution to the Senate Select Committee on Indian Affairs, (Attach. A, January 4, 1993) we request equitable access to the Federal Aid in Sport Fish and Wildlife Restoration Programs (Dingell-Johnson/Pittman-Robertson/Wallop-Breaux). Our Band Members have helped support these programs for many years through the Federal taxes on hunting and fishing equipment, however we have never had access to these funds for natural resource enhancement projects.

We also must recommend that if these funds are made available to Tribal programs that other Federal agencies should not reduce their support for the programs because of this. The result would be a net loss in our capabilities to manage our natural resources. The "Federal Aid" funds are for specific projects, and do not have the same function as base program funding from the BIA.

The President should direct OMB and the Department of Interior to include natural resource add-ons, pay increases, and COLA's in Tribal base budgets, without reducing funding in other Indian Programs. The draft of the National Indian Fish and Wildlife Resource Management Act of 1993 is a positive approach to solving many current natural resource management problems. We support this initiative and will comment further when the final bill is submitted to Congress.

There are a number of specific policy and legislative recommendations within the Report of the Long's Peak Working Group on National Water Policy America's Waters: A New Era of Sustainability, December 1992. We wish to expand on some of the specific recommendations within this report. The following recommendations will express our views.

The Fond du Lac Natural Resource Program has been working on a large FERC Relicensing project on the St. Louis River. The Federal Energy Regulatory Commission (FERC) regulations and their application and interpretation by FERC have been a major problem for Tribes and Federal and State resource agencies. In order to protect the instream flows, and restore the watershed and wetland ecosystems which have been adversely impacted by the hydropower system, we recommend the changes as stated within this report. Specifically, we will be sending a letter to President Clinton to appoint FERC Commissioners which are sensitive to Tribal resource concerns and support equal value protection of ecological and non-power values. Furthermore, the EPA along with the U.S. Fish and Wildlife Service should be able to recommend and require operational changes of hydropower systems which affect the water quality, instream flow, and watershed ecosystems. Funds should be provided by the hydro-power companies in order for Federal, Tribal, and state resource agencies to maintain, enhance, and restore the affected aquatic resources. The FERC should be reformed in order to reflect the changes suggested here, and in the Report. These reforms have also been recommended jointly by the Izaak Walton League and American Rivers.

The 1991 Wetlands Delineation Manual should be revised according to regional variations and recommendations of the National Academy of Sciences. The restoration and maintenance of wild rice in its natural environment (not to be confused with "paddy rice") should also be addressed in all federal regulations and programs involving wetland protection and enhancement. Wild rice is a genetically diverse "wild crop" which is becoming endangered in many wetland ecosystems.

Our Natural Resource Program is currently working on a large wetland and wild rice restoration project on the Reservation. We are also cooperating with the Minnesota Department of Natural Resources (MDNR) and other Bands on a Wild Rice Council which is trying to address the issue of the loss of unique wild rice beds on many lakes and rivers.

We strongly recommend that Tribal (93-638) Natural Resource Programs should be dealt with as a separate program within the BIA, and not through the Forestry Program. Furthermore, the funds for Natural Resource Programs should be allocated more directly in this same fashion, and more support for these programs and our environmental needs is also needed.

In order to address the serious concerns we have about the mercury contamination of the fish from our regional lakes and rivers, we have conducted extensive research on assessing the levels of mercury in fish, and initiated a study of mercury levels in subsistence fishermen. A copy of our most recent mercury Assessment, Mercury Concentrations

in Fish from the St. Louis River on and near the Fond du Lac Reservation, October-1992, is attached. The information is proving valuable as it shows the changes in mercury levels in walleyes throughout much of the watershed, and its relationship to contaminated sediments and also runoff from forested watersheds. The current problem is mainly the ongoing airborne fallout of mercury, which increases mercury concentrations in game fish by 3% to 5% per year! At this rate the public will be unable to safely consume these fish in a matter of years.

Our Natural Resource Program in cooperation with the University of Minnesota/Duluth is proposing to conduct ground-breaking research on the means to mitigate for mercury contamination in aquatic ecosystems to prevent the uptake of mercury into the food chain and thereby decrease the mercury levels in game fish. If an economical and safe way is found to accomplish this, the fish will again be safe for subsistence use and will also save a multi billion dollar recreational industry in this region. One problem is that the funds available in the EPA Region 5, Great Lakes Program Office are quite inadequate to fund all of the assessment research needed in the Great Lakes area for the States and Reservations research proposals. The \$1 Million now available should be substantially increased and mitigation research should become a major focus in order to clean up these ecosystems and not just continue endless assessments. Our research proposal to EPA-GLNPO is attached.

The Fond du Lac Environmental Program is one of the newly funded "Multi-Media" Tribal environmental programs funded by the EPA. Although this is a relatively new program it has greatly expanded our capabilities to address the many environmental problems on our Reservation. We therefore urgently request that this entire program be fully funded by the EPA, and that Native American staff be employed to oversee this program in the Washington D.C. office. In addition to this the BIA Environmental Office should meet the needs of environmental problems on reservations, by expanding its objectives and by providing meaningful funding.

The Fond du Lac Community College is a Tribal college which is jointly funded by the State of Minnesota. The new campus is now complete and some 650 students attend classes there. The Community College and the Fond du Lac Reservation are working on developing an Environmental Institute which would contract for environmental research and also provide a major educational role at the college. We will be seeking assistance in the near future to help with the development of this concept.

I again wish to thank the Subcommittee on Native American Affairs of the Committee on Natural Resources for this opportunity to submit this written testimony. If you staff have any questions regarding these comments please refer them to Larry Schwarzkopf, FDL Natural Resources Manager, (218) 879-4593 ext.55.

Sincerely,



Robert B. Peacock
Chairman

Fond Du Lac Reservation Business Committee

105 University Road,
Cloquet, MN 55720
Phone (218) 879-4593
Fax (218) 879-4146

January 4, 1993

Senate Select Committee on Indian Affairs
Attn: Patricia M. Zell or Pete Taylor
838 Senate Hart Office Building
Washington, D.C. 20510



Chairman
Robert B. Peacock

Secretary/Treasurer
Peter J. DeFoe

Dist. I Councilman
Clifton Rabideaux

Dist. II Councilman
Herman Wise

Dist. III Councilman
George Dupuis

Executive Director
I. Jean Mulder

Dear Mr. Chairman and Honored Committee Members:

The Fond du Lac Band of Lake Superior Chippewa is actively engaged in the management and enhancement of natural resources under jurisdiction of the Band. In the past we were dependent upon the federal government to provide technical assistance for management purposes. The Fond du Lac Band wishes to continue the development of our resource management capabilities. In order to develop and maintain these capabilities, the Band needs equitable access to the sources of funds which sustain State fish and wildlife management programs; the Federal Aid in Sport Fish & Wildlife Restoration Programs (Dingell-Johnson/Pittman Robertson/Wallop-Breaux).

These programs currently are not available for Tribal management of fish and wildlife resources which is inequitable and discriminatory in view of the fact that these programs are financed through taxes on fishing and hunting equipment and boat fuel which is paid by both Band members and non-Band members utilizing tribal fish and wildlife resources.

The Band hereby requests that an equitable mechanism be established to distribute federal funds to tribal governments for participation in all federal fish, wildlife and recreational enhancement programs, especially the Dingell-Johnson/Pittman Robertson/Wallop-Breaux, North American Wetlands Conservation Act, and the Land and Water Act.

Our request of support would assist us in developing our internal management capabilities, thus protecting the resources that are essential to our well-being.

Sincerely,

Robert B. Peacock
Chairman

Fond Du Lac Reservation

Business Committee

105 University Road,
 Ch... MN 55720
 Ph... (218) 879-4592
 Fax (218) 879-4146

RESOLUTION # 1004/93



Chairman
 Robert B. Peacock

Secretary/Treasurer
 Peter J. Defoe

Dist. I Councilman
 Clifton Rabideaux

Dist. II Councilman
 Herman Wise

Dist. III Councilman
 George Dupuis

Executive Director
 I. Jean Mulder

The Fond du Lac Reservation Business Committee, on behalf of the Fond du Lac Band of Lake Superior Chippewa, hereby enacts the following Resolution:

WHEREAS, the Fond du Lac Reservation is a sovereignty, created by the Treaty of September 30, 1854 10 Stat. 1109, as the perpetual home of the Fond du Lac Band of Lake Superior Chippewa, which possesses the inherent jurisdiction and authority to exercise regulatory control within the boundaries of the Fond du Lac Reservation, and

WHEREAS, it is the sovereign obligation of the Fond du Lac Reservation Business Committee, as the Governing Body of the Fond du Lac Band, under the Indian Reorganization Act, 25 U.S.C. section 461 et seq., and in accordance with the Indian Self Determination Act, 25 U.S.C. section 450 et seq., to assume responsibilities of Self-Government, and

WHEREAS, the Fond du Lac Band wishes to exercise its jurisdiction over the management of fish, wildlife, and recreation resources within the reservation boundaries by developing new and/or expanding upon existing professional management capabilities; and

WHEREAS, the Fond du Lac Band has learned of the existence of federal fish and wildlife enhancement funding opportunities through the Federal Aid in Sport Fish & Wildlife Restoration Programs (Dingell-Johnson/Pittman Robertson/Wallop-Breaux), and further understands that these programs currently are not available for Tribal management of fish and wildlife resources which is inequitable and discriminatory, and

WHEREAS, these programs are financed through taxes on fishing and hunting equipment and boat fuel which is paid by both Band members and non-Band members utilizing tribal fish and wildlife resources; and

WHEREAS, the Fond du Lac Band holds beneficial title to the resources on 100,000 acres of land providing opportunities for religious, subsistence, recreational, and commercial activities for Tribal members and visitors; and

RESOLUTION # 1004/93

WHEREAS, the Fond du Lac Band has developed management projects that will enhance the fish and wildlife populations of the Fond du Lac Reservation, and the recreational and subsistence uses for the reservation residents and visitors.

NOW THEREFORE BE IT RESOLVED, the Fond du Lac Reservation Business Committee hereby requests that the federal funding available to State fish and wildlife programs be made available to tribal governments to conduct fish and wildlife management activities; and,

BE IT FURTHER RESOLVED, by the Fond du Lac Reservation Business Committee requests than an equitable mechanism be established to distribute federal funds to tribal governments for participation in all federal fish, wildlife, and recreation enhancement programs, especially the Dingell-Johnson/Pittman Robertson/Wallop-Breaux, North American Wetlands Conservation Act, and the Land and Water Act, etc.; and,

BE IT FINALLY RESOLVED, that the Fond du Lac Reservation Business Committee supports the Native American Fish & Wildlife Society in its efforts to provide technical services to tribal governments in the development of sound professional fish and wildlife and recreation initiatives.

We do hereby certify that the foregoing Resolution was duly presented and enacted upon by a vote of 3 for, 0 against, a quorum of 4 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on JANUARY 5, 1993, at the Fond du Lac Reservation Business Committee offices in Cloquet, Minnesota.

Robert B. Peacock Peter J. Defoe
Robert B. Peacock, Chairman Peter J. Defoe, Sec./Trés.

Report on the St. Louis River Water Resources Project

Title: MERCURY CONCENTRATIONS IN FISH FROM THE ST. LOUIS RIVER ON
AND NEAR THE FOND DU LAC INDIAN RESERVATION

by

J. A. Sorensen, G. E. Glass, K. W. Schmidt, and G. R. Rapp, Jr.

Archaeometry Laboratory
University of Minnesota, Duluth
10 University Drive
Duluth, MN 55812-2496

October 1992

Prepared for

Larry Schwarzkopf, Biologist, with the Natural Resource Department of the Fond du Lac
Indian Reservation; Cloquet, MN

Mercury Concentrations in Fish from the St. Louis River on and near the Fond Du Lac Indian Reservation

Introduction

The Minnesota Department of Health (MDH) has listed separate advisories for three main segments of the St. Louis River (above Cloquet, below Cloquet, and below Fond du Lac) in the May 1992 Minnesota Fish Consumption Advisory (MDH, 1992). The upper two sections of the river are the most relevant to the concerns of the Fond du Lac Indian Reservation (FDLIR) because they are part of the northern and eastern boundaries of the FDLIR. The fish contaminants of concern, listed by the MDH, are mercury (above Cloquet) and mercury and PCBs (below Cloquet). In general, the advisory lists one meal per week as the restriction for most species and sizes. Below Cloquet, however, the advisory suggests that meals should be restricted to one per month for yellow perch, carp, and larger walleye.

Because of several landfills, waste disposal sites, municipalities, industries, and the construction of several reservoirs along the St. Louis River (StLR) there exists a potential for locally higher mercury concentration "hot spots" (StLR RAP, 1992; Bodaly et al., 1984). The limited data from which the consumption advisories are derived are inadequate to detect these potential hot spots and may, thus, be inadequate for advising the public to limit consumption of fish along this river stretch.

The objective of this study was to quantify mercury concentrations in fish commonly caught and eaten by local fishermen in conjunction with the data needs for the Subsistence Fishermen/Mercury Study on the FDLIR and to provide baseline information for evaluating possible mercury sources and transports. This work was initiated as part of a larger project studying St. Louis River Water Resources being conducted by the Natural Resource Program of FDLIR.

Study Design

Thirteen StLR fish study areas (Figure 1) were selected between Chambers Grove (near southeast corner of FDLIR) and Paupores (near northwest corner of FDLIR). The goal was to collect the widest possible range of fish sizes per species from each area in order to model mercury concentrations as a function of fish size. Results of this modeling should give better

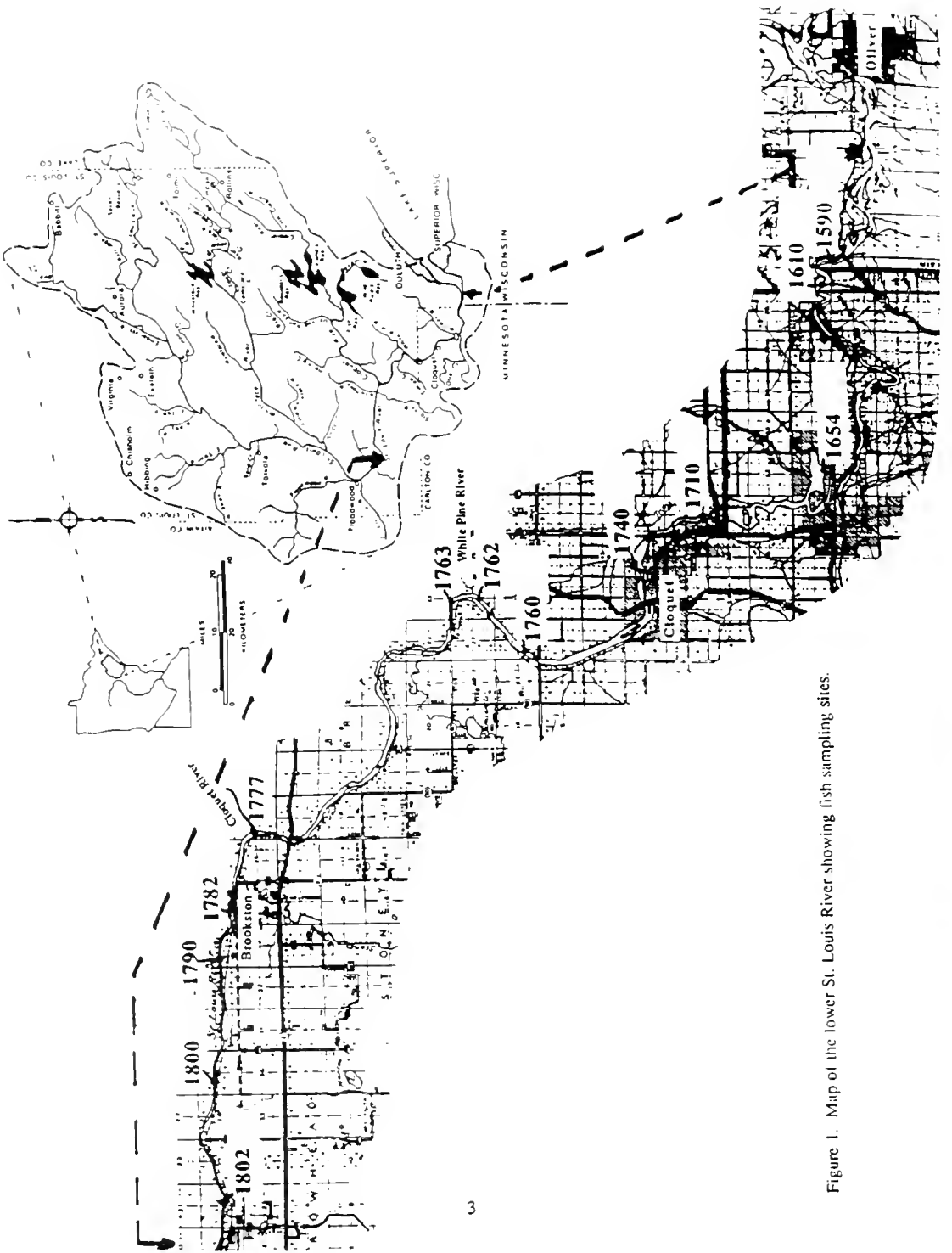


Figure 1. Map of the lower St. Louis River showing fish sampling sites.

resolution to fish consumption concerns in addition to providing information on mercury contamination sources.

Because fish may in some cases be highly mobile and slow to change mercury levels in response to new surroundings, results must be interpreted carefully. That is, some areas may show both high and low fish mercury levels indicating a mixture of both local and transient fish. For those areas as well as "upstream input areas" additional measurements of mercury in medium (such as water, plankton, and sediment) that respond differently (temporally) to mercury contamination are needed. For this purpose we chose to sample water (fast mercury response), plankton (intermediate response), and sediment (slow response; downstream mobility only). Appendix A describes each sampling site and indicates fish movement constraints resulting from various dams.

Methods and Materials

Fish Sampling. During the summer of 1990, personnel from the FDLIR made several sampling visits to two sites on the St. Louis River (near Brookston and Cloquet) to collect various game fish for mercury analysis. A total of 62 fish were collected using both trotlines and gillnets as follows: black crappie (1), channel catfish (26), northern pike (3), northern redhorse sucker (3), white sucker (6), rock bass (7), smallmouth bass (11), and walleye (5).

In 1991 additional sites on the St. Louis River were added to the survey started in 1990. A total of 152 fish were collected in 1991 as follows: black crappie (1), bluegill sunfish (1), channel catfish (64), northern pike (15), northern redhorse sucker (2), white sucker (2), rock bass (2), smallmouth bass (29), and walleye (36). A summary of the fish collection inventory is shown in Table I; site locations are defined in Figure 1 and Appendix A; and sampling dates and raw data are given in the Appendix B.

Immediately after the fish were collected, weights and lengths were measured and fillets were removed and frozen. The samples were sent to the UMD/ERL-D (University of Minnesota-Duluth / Environmental Research Laboratory-Duluth) mercury laboratory and kept frozen until analyzed.

Table I. Inventory of Fish Sampling from the St. Louis River^a

site number	black crappie	bluegill	channel catfish	northern pike	n.rh. sucker	rock bass	sm. bass	walleye	white sucker	Total
1590	0	0	2	0	0	0	1	11	0	14
1610	0	0	12	3	0	0	13	4	0	32
1654	0	0	1	4	0	0	12	11	0	28
1710	0	0	4	0	0	0	0	0	0	4
1740	1	0	0	0	0	0	0	0	0	1
1760	0	0	23 (15,8)	4 (2,2)	2 (0,2)	3 (1,2)	4 (2,2)	6 (1,5)	3 (1,2)	45 (22,23)
1762	0	0	11	2	0	0	0	3	0	16
1763	0	0	10	0	0	0	0	0	0	10
1777	1 (1,0)	1 (0,1)	11 (11,0)	5 (1,4)	3 (3,0)	6 (6,0)	10 (9,1)	6 (4,2)	5 (5,0)	48 (40,8)
1782	0	0	10	0	0	0	0	0	0	10
1790	0	0	2	0	0	0	0	0	0	2
1800	0	0	2	0	0	0	0	0	0	2
1802	0	0	2	0	0	0	0	0	0	2
Total	2 (1,1)	1 (0,1)	90 (26,64)	18 (3,15)	5 (3,2)	9 (7,2)	40 (11,29)	41 (5,36)	8 (6,2)	214 (62,152)

^aEntries are for the 1991 sampling year except for sites 1760 and 1777 where 1990 samples were also taken. The totals for the individual years (1990,1991) are shown within the parentheses.

Other Sampling. Water, plankton (mesh size > 80 μ), and sediment were sampled by personnel from UMD in October of 1991 (15 sites for water, 4 sites for plankton, and 10 sites for sediment) and again in June 1992 (11 sites for water, 11 sites for plankton, and 1 site for sediment) using the methods described in Glass *et al.* (1990) and Sorensen *et al.* (1990).

Analytical Methods

Mercury (total) measurement methods utilized cold vapor atomic absorption spectrometry (CVAA) approved by the USEPA (1983) with modifications for standardizing operating procedures and screening reagents for lowest levels of Hg content to reduce the blank value. General details for analysis and quality assurance are published in Glass *et al.* (1990) and Sorensen *et al.* (1990). Specific details regarding fish analysis are given in Olson *et al.* (1975). Mercury concentrations in fish are expressed in terms of wet tissue weight while those for plankton and sediment are in terms of dry sample weight.

Fish ages were determined by personnel from the FDLIR by counting annular growth rings on scales. In some cases ages were reported as greater than (e.g. 5+ yr), and were treated as the next highest half-year ages for all analyses in this report (e.g. 5+ yr = 5.5 yr).

Results

Quality Assurance

The results of the quality assurance analyses of mercury measurements of various environmental samples are shown in Table II. Accuracy and precision of the measurements are within acceptable limits of expectation. The sampling precision values for plankton and water are high and may be due to variant flow conditions encountered and values near the detection limit (for water).

Table II. Analytical Characteristics of Mercury Measurements^a

parameter	% precision ^b		% reference recovery ^d	% spike recovery
	lab ^c	field		
fish	6 (35)	-	100 (22)	94 (11)
plankton	4 (2)	56 (13)	103 (10)	83 (7) ^e
water	11 (4)	51 (25)	97 (16)	97 (8) ^e
sediment	9 (5)	30 (4)	95 (3)	114 (3)

^aNumbers in parentheses refer to the number of samples or sample pairs associated with the entry.

^bPrecision divided by mean measurement x 100%.

^cPrecision for fish is based on replicate analyses of the same fillet.

^dCertified reference materials are as follows: walleye - Nat. Res. Cncl., Canada DORM-1 dogfish muscle; water - Nat. Bureau of Stds 1641b water; and sediment - Nat. Bureau of Stds 1645 Buffalo R. sediment.

^eIncludes St. Louis River water samples from Sorensen et al. (1992a)

An additional check was made for internal consistencies in the data by testing the relationships among fish size parameters (length, weight, and age). Plots of these relationships are shown in Figures 2, 3, and 4 where power curves ($Y=A \cdot X^B$) have been fitted.

The weight vs length plots in Figure 2 show no significant outlier points relative to the fitted curves. However, numerous departures from the fitted curves (suggesting varying growth rates) are found in Figures 3 and 4 where length and weight are plotted against age. This is especially true for the case of channel catfish where several weights (or lengths) are significantly above the norm. Many of those outliers (dark circles) are from channel catfish taken from the Fond du Lac Reservoir (site 1610).

Mercury in Fish. Summaries of fish mercury concentration statistics for each species across all sites are given in Table III and a summary of species length, weight, and age are given in Table IV. Individual results for each fish are given in Appendix B.

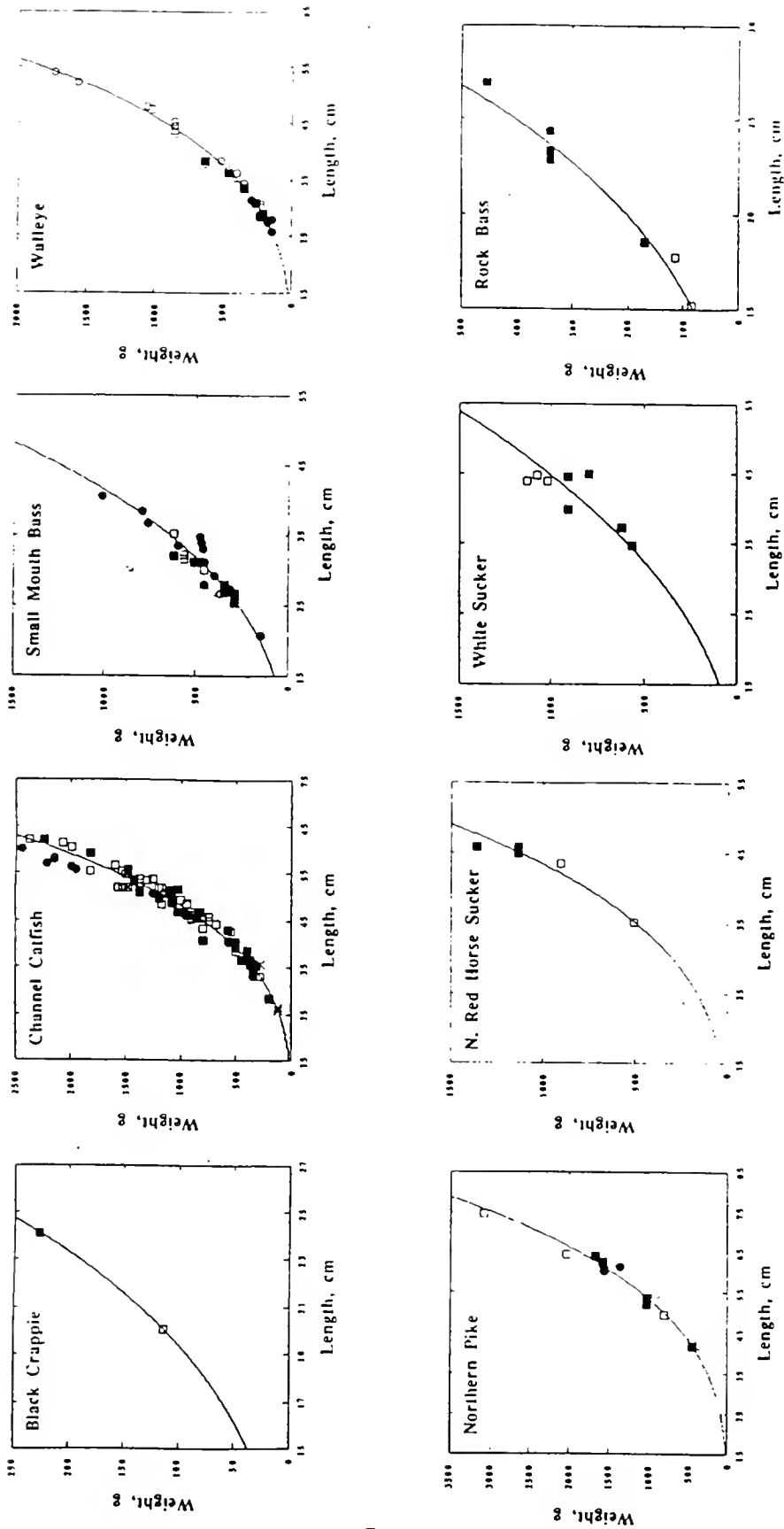


Figure 2. Relationships between weight and length for each fish species. Symbols are as follows: open circle - site 1590, closed circle - site 1610, X - site 1710, open square - sites 1740-1763, and closed squares sites 1777-1802.

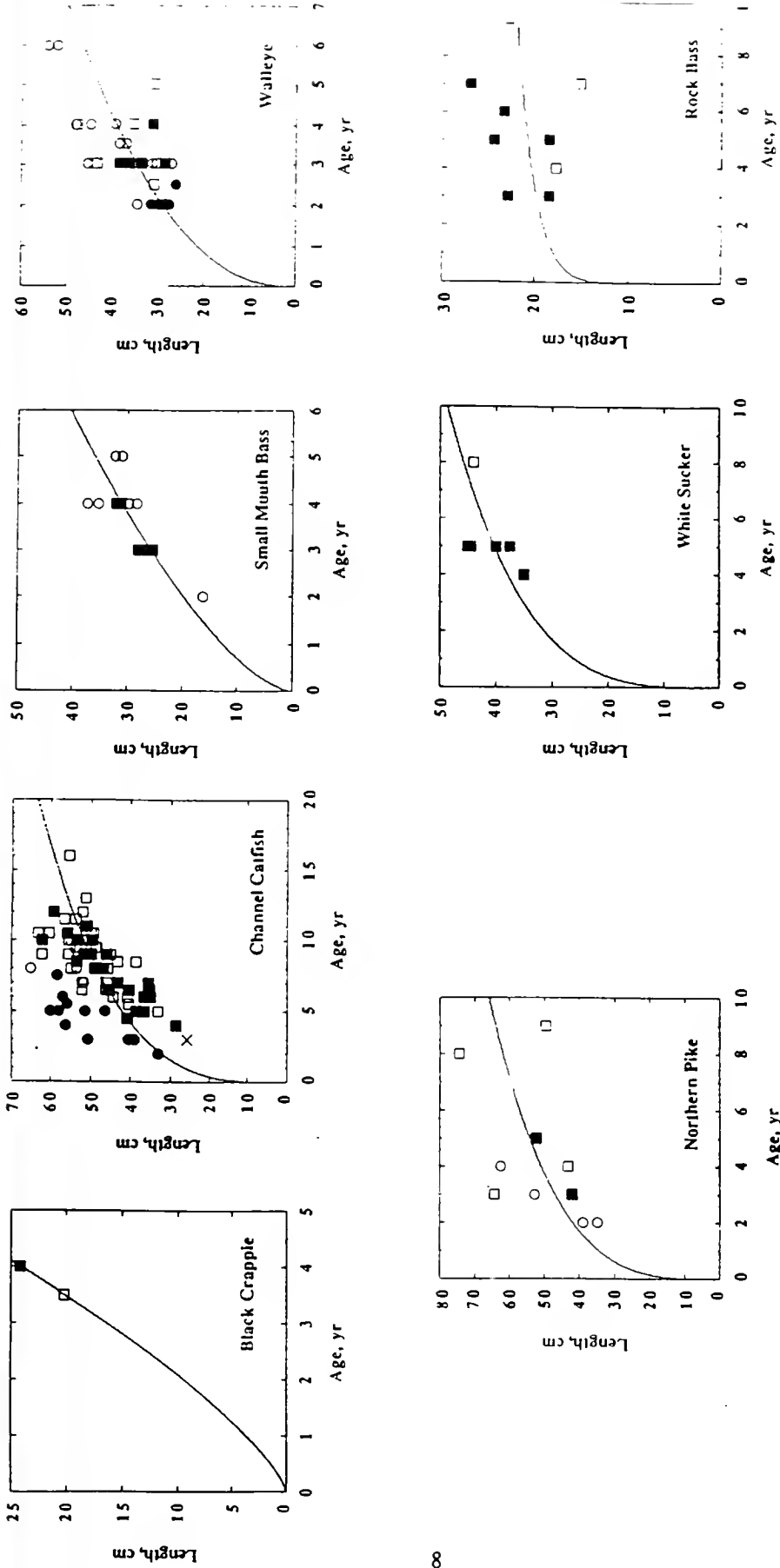


Figure 3. Relationships between length and age for each fish species. Symbols are as follows: open circle - site 1590, closed circle - site 1610, X - site 1710, open square - sites 1740-1763, and closed squares sites 1777-1802.

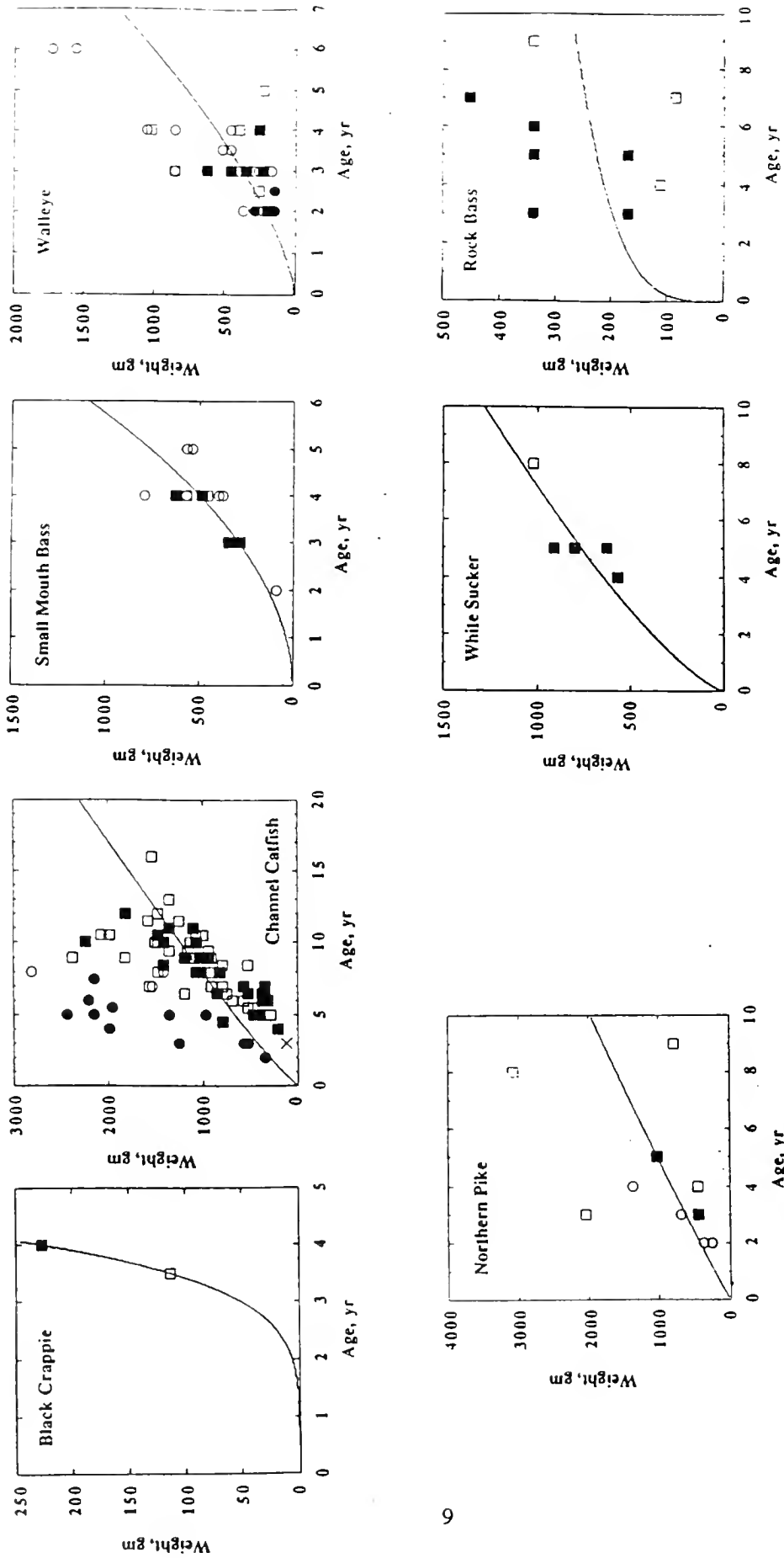


Figure 4. Relationships between weight and age for each fish species. Symbols are as follows: open circle - site 1590, closed circle - site 1610, X - site 1710, open square - sites 1740-1763, and closed squares sites 1777-1802.

Table III indicates, overall, that black crappie are the lowest in mercury concentration while channel catfish are the highest. A more quantitative and accurate comparison may be accomplished, though, by taking into account fish size and location. Both of these factors have been shown in other studies (e.g. Sorensen *et al.*, 1990) to strongly influence fish mercury concentrations. In order to address these dependencies, we determine or mathematically model the relationship between mercury concentration and fish size for each sampling site.

Table III. Statistical Summary of Mercury in Fish for Each Species Across All Sampling Sites

species	n	mercury concentration (ppb)			
		min	max	mean	median
black crappie	2	62	130	96	96
channel catfish	90	152	1860	466	412
northern pike	18	158	640	339	305
redhorse sucker	5	318	718	457	375
white sucker	8	124	366	272	288
rock bass	9	130	608	344	334
sm. bass	40	117	758	352	307
walleye	41	136	1486	438	358

Table IV. Statistical Summary of Fish Size Parameters for Each Species Across All Sampling Sites

species	n ^a	length (cm)				weight (gm)				age (yr)			
		min	max	mean	median	min	max	mean	median	min	max	mean	median
black crappie	2	20.1	24.1	22.1	22.1	113	227	170	170	3.5	4	3.8	3.8
channel catfish	90	25.9	64.8	47.6	49.0	113	2807	1090	1049	2	16	7.7	8
northern pike	18	34.8	74.4	54.0	54.4	255	3090	1144	1021	2	9	4.3	3.5
redhorse sucker	5	35.1	45.7	43.0	45.0	510	1362	1010	1135	6	6	6.0	6
white sucker	8	34.8	45.0	41.7	43.9	568	1134	879	908	4	8	5.3	5
rock bass	9	15.2	26.9	21.2	22.9	85	454	262	340	3	9	5.4	5
sm. bass	40	16.3	40.4	30.6	31.1	85	1021	486	459	2	5	3.6	4
walleye	41	25.9	54.1	35.1	33.5	142	1729	461	340	2	6	3.1	3

^aAges were not determined for all fish; the n value for the age statistics are 2, 83, 10, 3, 6, 9, 20, and 41 for black crappie through walleye, respectively.

Before modeling the fish mercury concentration data we must resolve two issues: 1) can fish mercury concentration data from two sampling years (1990 and 1991) be merged? and 2) which fish size parameter is the most appropriate? Figure 5 shows the relationships between mercury levels in catfish and fish length for two sampling regions along the river with the two sampling years delineated. With the exception of three outliers (all from 1991) there is no significant difference between the two years.

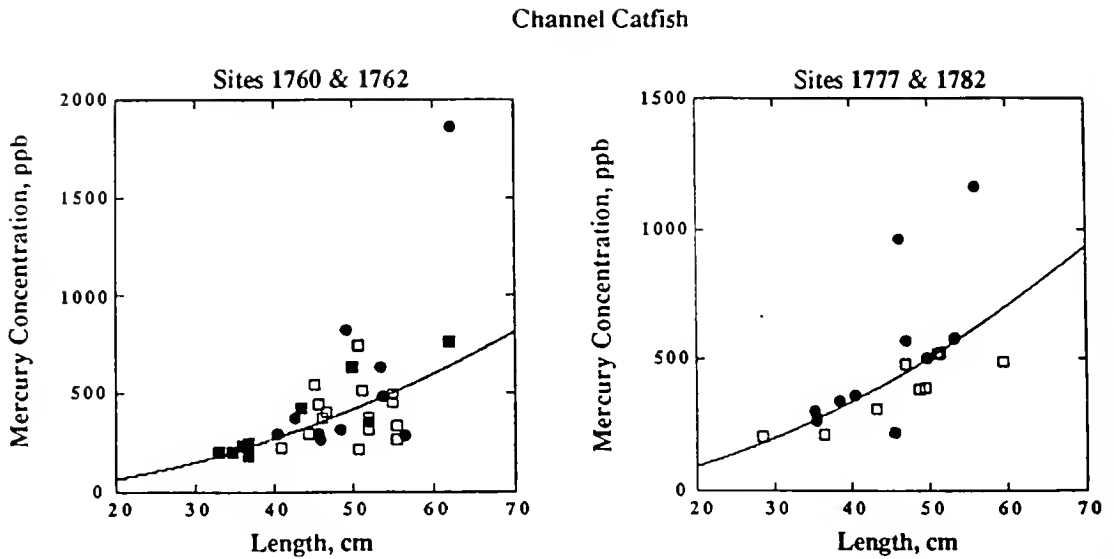


Figure 5. Mercury concentrations in channel catfish for two regions of the St. Louis River. Symbols are as follows: squares - sites 1760 and 1777, circles - sites 1762 and 1782, white - 1990 samples, and black - 1991 samples.

The statistical relationships between size and age variables are given in Table V as Pearson correlation coefficients (using log transformed variables) between fish mercury concentrations and fish size parameters (length, weight, and age) for each species and site where sufficient data were available. In general, fish length scores slightly higher than weight and significantly higher than age in correlating with mercury residue levels. The results suggest a power relationship of the following form

$$(1) \quad C_{Hg} = A * L^B$$

where C_{Hg} is the mercury concentration in fish, L is the fish length, and A and B are constants that vary depending on fish species and body of water. This is the same expression used for walleye and northern pike for 65 Minnesota lakes by Sorensen *et al.* (1990).

The constants A and B for each species and site are found by regression and are shown in Table V. These constants and equation (1) are then used to calculate a reference mercury concentration for each species and site for a chosen reference fish length. The reference fish lengths for walleye and northern pike are 39 cm and 55 cm, respectively, based on several considerations (Sorensen *et al.*, 1990). For other species, the median lengths given in Table IIIA are used as the reference lengths.

Table V. Site and Species Specific Summary of Statistical Analyses of Mercury in Fish

species	site	n	correlation ^a of Hg conc with fish size parameters			regression ^c constants		reference ^d Hg conc. (ppb)	reference ^d 95% conf Int. (ppb)
			length	weight	age ^b	A	B		
<i>channel catfish</i>									
	1610	12	0.88	0.86	0.82	0.0738	2.20	393	366 - 422
	1710	4	0.97	0.97	†	2.52	1.54	994	871 - 1135
	1760	23	0.67	0.66	0.54	0.581	1.67	385	358 - 414
	1762	11	0.63	0.60	0.55	0.00382	2.98	420	361 - 488
	1763	10	0.44	0.46	0.16	6.93	1.05	410	368 - 457
	1777	11	0.91	0.88	0.93	1.05	1.54	426	404 - 449
	1782	10	0.72	0.70	0.83	0.0442	2.44	586	503 - 682
<i>northern pike</i>									
	1654	4	0.89	0.94	0.93	1.19	1.38	294	253 - 342
	1760	4	0.95	0.95	†	108	0.254	298	295 - 301
	1777	5	0.76	0.72	†	0.480	1.63	332	294 - 375
<i>white sucker</i>									
	1777	5	0.80	0.55	0.87	0.00217	3.15	326	271 - 392
<i>rock bass</i>									
	1777	6	0.86	0.93	0.34	0.0128	3.28	375	327 - 429
<i>smallmouth bass</i>									
	1610	13	0.87	0.82	†	0.289	2.08	371	349 - 395
	1654	12	0.87	0.89	0.81	0.883	1.74	349	327 - 372
	1760	4	0.53	0.18	†	0.00091	3.76	373	281 - 494
	1777	10	0.44	0.37	0.28	0.328	1.95	263	218 - 319
<i>walleye</i>									
	1590	11	0.89	0.92	0.81	0.599	1.90	474	435 - 516
	1610	4	0.51	0.34	0.03	0.0121	3.00	726	216 - 2438
	1654	11	0.84	0.82	0.27	0.00110	3.57	519	436 - 618
	1760	6	0.64	0.63	0.18	1.92	1.46	401	349 - 460
	1777	6	0.24	0.27	0.08	-	-	309	284 - 336

^aCorrelations are for log-transformed variables.

^bAges were not determined for all fish; a † indicates insufficient data for the age-Hg conc. correlation. Other age entries are derived from the same number of data points as weight and length entries except for smallmouth bass sites 1654 and 1777 where n (for age) are both nine.

^cRegression equation is: Hg conc(ppb) = A x length(cm)^B.

^dReference mercury concentrations are calculated using the regression equation for the following fish lengths: 55 cm northern pike and 39 cm walleye (Sorensen *et al.*, 1990) and median lengths (Table IV) for other species.

From Table V it is clear that channel catfish from site 1710 (Scanlon Dam) have significantly more mercury contamination than fish from the other sites. Mercury in walleye from site 1610 (Fond du Lac Reservoir) are also high but there is a high degree of uncertainty associated with those results because of the small range of fish sizes and few samples collected.

Figure 6 shows the site specific relationship between mercury concentrations in fish and length for various species. In general, one finds that individual data points from the smaller confined river stretches (sites downstream of 1740) exhibit less variabilities about the modeled curves than those for sites above the last barrier within the study area (1740 and above).

For the downstream sites, the fish mercury data are adequate to describe the mercury exposure within those areas. However, some upstream sites (e.g. 1760 and 1762; channel catfish), clearly show the influence of fish that have been subject to different mercury exposures. From this data one may hypothesize the existence of one or more mercury source(s) somewhere within or above that stretch of the river.

Consumption Advisory Levels. Of the 214 fish analyzed, 15 fell within the MDH advisory category 1, 180 were in category 2, and 19 were in category 3. These categories are defined in the footnotes in Table VI.

As a final application of the regression constants in Table V and equation (1) we may calculate the fish lengths that correspond to the MDH mercury consumption advisory levels. Table VI summarizes the results of these calculations for each species and site listed in Table V. These calculations were extended to 20% above/below the maximum and minimum fish lengths sampled.

Mercury in Water. A basic statistical summary of mercury in water, plankton (>80 μ), and sediments are given in Table VII while the raw data for each sample are listed in Appendix C.

Mercury concentrations in water can be characterized as mostly between the detection limit of 2 ng/L and 4 ng/L. The variabilities at some sites could be a result of varying amounts of particulates in the water sample that have been shown to contain significant amounts of mercury (Glass et al., 1990). The sites with samples higher than average mercury in water concentrations are 1651 (Forbay Lake), 1780 (St. Louis River at Hwy 31), 1820 (St. Louis River at Gowan), 2710 (Stoney Brook at Hwy 31), and 2850 (Whiteface River at Hwy 226).

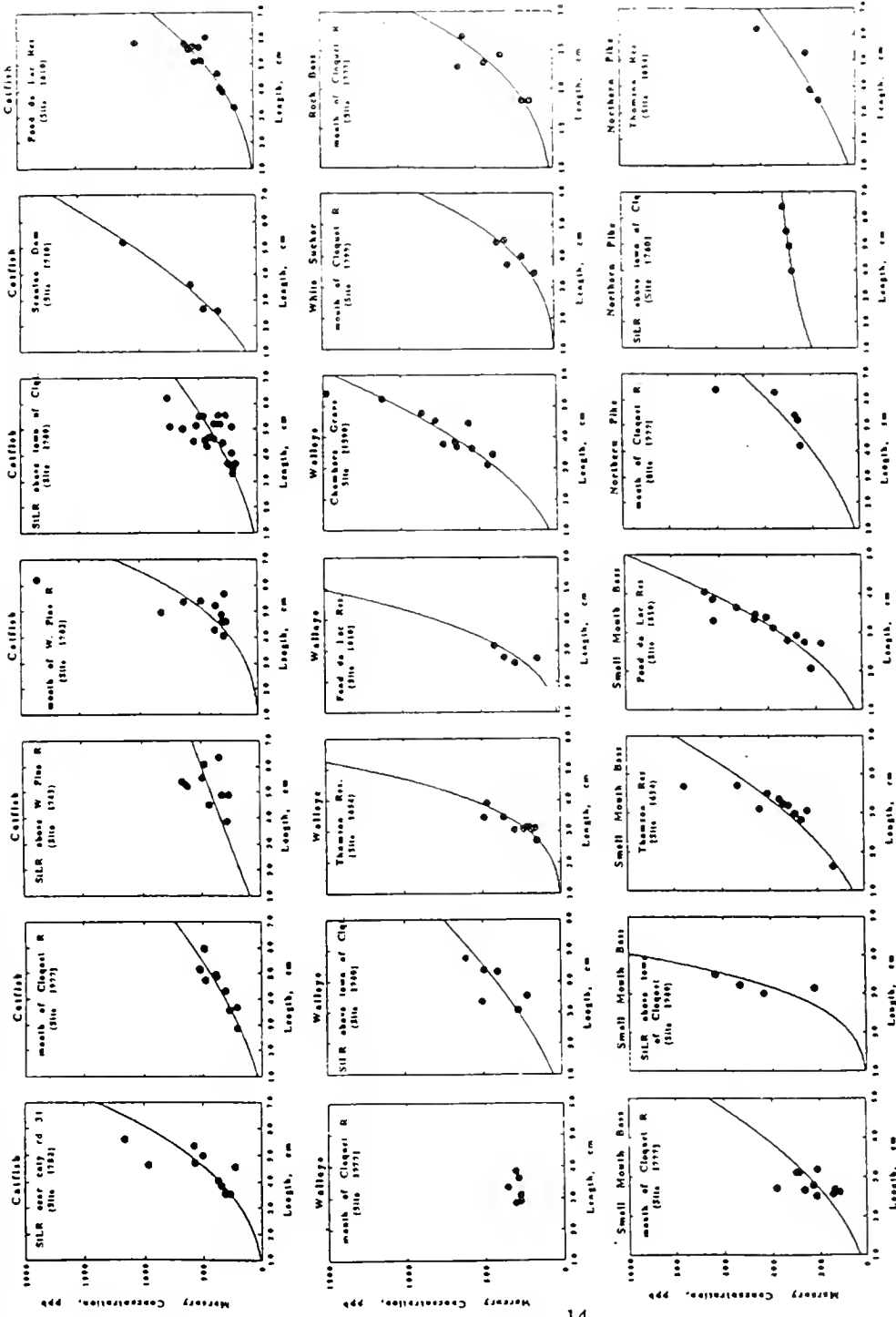


Figure 6. Site specific relationships between mercury concentrations and fish length for various species.

Table VI Fish Lengths Corresponding to various Consumption Advisory Levels (MDH, 1991)^a for Sites along the St. Louis River

water body	site #	species	fish length (inches) where indicated advisory is equaled			
			160 ppb	660 ppb	1000 ppb	2810 ppb
Chambers Grove	1590	walleye	< 12.2**	15.7	19.7	††
Fond du Lac Reservoir	1610	channel catfish	12.9*	24.6†	††	††
		sm. bass	8.2	16.2†	††	††
		walleye	9.4*	15.0†	††	††
Thomson Reservoir	1654	northern pike	13.7	> 24.5††	††	††
		sm. bass	7.8	17.6†	††	††
		walleye	11.0	16.5†	18.5†	††
Scanlon Dam	1710	channel catfish	< 10.2**	14.6	19.2	> 25.5††
StLR above town of Cloquet	1760	channel catfish	11.4*	26.6†	††	††
		northern pike	< 15.8**	> 25.3††	††	††
		sm. bass	9.8*	14.2†	15.9†	††
		walleye	< 12.1**	21.5†	††	††
mouth of White Pine River	1762	channel catfish	14.0*	22.5	25.9†	††
StLR above White Pine River	1763	channel catfish	< 15.2**	> 28.6††	††	††
mouth of Cloquet River	1777	channel catfish	10.3*	25.8†	††	††
		northern pike	13.8*	> 25.2††	††	††
		white sucker	13.8	> 17.7††	††	††
		rock bass	7.0*	10.8†	12.2†	††
		sm. bass	9.4*	> 15.9††	††	††
		walleye	< 10.0**	> 15.1††	††	††
StLR above cty rd.31	1782	channel catfish	11.3*	20.2	24.0†	††

^aadvisory categories:

(1) less than 160 ppb

(2) 160-660 ppb

(3) 660-2810 ppb

greater than 1000 ppb

General Population

Unrestricted

one meal per week

one meal per month

Higher Risk Population

one meal per week

one meal per month

no consumption

*extrapolated below actual range of fish sizes collected (up to 20% below smallest fish)

**below 20% extrapolation range; entries with "<" indicate length of smallest fish sampled

†extrapolated beyond actual range of fish sizes collected (up to 20% above largest fish)

††beyond 20% extrapolation range; entries with ">" indicate length of largest fish sampled

Mercury in Plankton. In some cases (e.g. sites 1590 and 1654) mercury in plankton data are extremely variable and depend highly on the plankton density in the water column (low densities yield high mercury concentrations). The highest consistent concentrations were found at site 1710 (Scanlon Dam) and coincide with the highest concentrations observed for mercury in fish.

Mercury in Sediment. The highest sediment concentrations were observed at site 1775 (St. Louis River at Hwy 2), 1780 (St. Louis River at Hwy 31), 2280 (mouth of Midway River at the Thomson Reservoir), 2720 (mouth of Artichoke River). These results indicate that 1) the Midway River may be draining an area that is significantly contaminated with mercury, 2) there may be several mercury source areas in the upper StLR contributing to the observed levels in fish, and 3) additional sediment samples above the Scanlon impoundment are needed to better identify potential upstream mercury sources.

Table VII. Statistical Summary of Data Relating to Water, Plankton, and Sediment Samples

parameter	n	min	max	mean	median
Hg in water (ng/L)	52	1	9	3	2
Hg in plankton (ppb)	28	48	4260	532	245
plankton density in water (mg/m ³)	31	0.1	65.9	15.2	6.8
Hg in sediment (ppb) ^a	13	15	97	41	30
% moisture in sediment	13	15.4	96.8	40.9	29.7

^aAnalyzed as a wet sample.

Summary and Conclusions

Mercury in Fish and Consumption Advisories. Mercury concentrations in fish show that most fish from the sites sampled can be categorized by MDH criteria as being restricted to one meal per week for the general population (Minnesota). For our sample group it appears that the channel catfish, redhorse sucker, and walleye are the highest in mercury while the black crappie and bluegill sunfish may be the lowest, though more data is necessary to confirm the latter.

Mercury Concentration in Fish vs Fish Length. The mercury concentrations in channel catfish, northern pike, white sucker, rock bass, smallmouth bass, and walleye taken from these St. Louis River sites follow a power relationship with fish length. More data is needed to define the mathematical relationship for black crappie, bluegill sunfish, and redhorse sucker.

Channel catfish taken from the Scanlon Dam were significantly higher in mercury than fish from all other sampling sites. Sites above the Scanlon impoundment have a mixture of fish with both high mercury levels, approaching those at the Scanlon dam, and levels that are significantly lower. This data suggests that one or more mercury source(s) exist somewhere within or upstream that stretch of the river.

Mercury in Water, Plankton, and Sediment. Mercury levels in water showed some sites were higher than average concentrations, possibly indicating watershed inputs. Mercury concentrations in plankton were highest at site 1710 (Scanlon Dam), the same site where the highest mercury levels in fish were observed. The mouth of the Midway River and three sites above the town of Cloquet showed the highest mercury contamination in sediment. More sediment analyses from the upstream areas of this study and beyond are needed to better identify potential mercury sources.

References

- Bodaly, R.A., R.E. Hecky, and R.J.P. Fudge. 1984. Increases in Fish Mercury Levels in Lakes Flooded by the Churchill River Diversion, Northern Manitoba. *Canadian Journal of Fisheries and Aquatic Sciences*. 41(4):682-691.
- Glass, G.E., Sorensen, J. A., Schmidt, K. W., and Rapp, G. R., Jr. 1990. New Source Identification of Mercury Contamination in the Great Lakes. *Environ. Sci. & Technol.* 24(7):1059-1069.
- Olson, G.F., Mount, D.I., and Snarski, V. M. 1975. Mercury Residues in Fathead Minnows, *Pimephales promelas* Rafinesque, Chronically Exposed to Methylmercury in Water. *Bullet. Environ. Contam. Tox.* 14(2):129-134.
- MDH. 1992. Minnesota Fish Consumption Advisory. Minnesota Department of Health, Minneapolis MN.
- StLR RAP. 1992. The St. Louis River System Remedial Action Plan - Stage One Report. Minnesota Pollution Control Agency, St. Paul MN.
- Sorensen, J.A., G.E. Glass, K.W. Schmidt, and G.R. Rapp, Jr. 1992a. Mercury Concentrations in Fish from the St. Louis River near the Fond du Lac Indian Reservation. Report to Fond du Lac Indian Reservation. Cloquet, MN.
- Sorensen, J.A., Glass, G. E., Schmidt, K. W., Huber, J. K., and Rapp, G. R., Jr.: 1990. Airborne Mercury Deposition and Watershed Characteristics in Relation to Mercury Concentrations in Water, Sediments, Plankton, and Fish of Eighty Northern Minnesota Lakes. *Environ. Sci. & Technol.* 24(11):1716-1727.
- USEPA 1983. Mercury Method 245.1 Revised 3/83. EPA-600/4-79-020.

Appendix A

St. Louis River (StLR) Watershed Sampling Site Descriptions

site	river stretch ^a	site description	sample type			
			fish	water	plankton	sediment
1590	1	Upper StLR Estuary at Chambers Grove	√	√	√	
1610	2	Fond du Lac Reservoir	√	√	√	
1651	3	Forbay Lake		√	√	
1654	4	Thomson Reservoir	√	√	√	
1710	5	Scanlon Dam Impoundment	√	√	√	
1740	6	StLR at MN highway 33 bridge	√	√	√	
1760	6	StLR above city of Cloquet (near Pine Is.)	√			
1762	6	mouth of White Pine River	√	√		√
1763	6	StLR 1/2 mile above White Pine River	√			
1775	6	StLR at Hwy 2		√		√
1777	6	mouth of Cloquet River	√			
1780	6	StLR at Hwy 31		√	√	√
1782	6	StLR 1/2 mile above St. Louis city rd 31	√			
1790	6	StLR near train tressel near Brookston	√			
1800	6	StLR 8 miles above Brookston	√	√		√
1802	6	StLR at Paupores	√			
1820	6	StLR at Gowan		√	√	
1860	6	StLR at Hwy 29		√	√	√
2280	4	mouth of Midway River		√		√
2432	6	Cloquet River below Hwy 7		√	√	√
2710	6	Stoney Brook at Hwy 31		√		√
2720	6	Artichoke River at Hwy 3		√		√
2830	6	Big Savanna River at Hwy 2		√		
2840	6	Floodwood River at Hwy 2		√		√
2850	6	Whiteface River at Hwy 226		√	√	√

^aRiver stretches are defined in terms of regions within which fish may migrate unimpeded by barriers (dams).

Appendix B

Summary of Mercury Measurements for 214 Fish Collected from the St. Louis River

Species	Site	FDLIR Code	Date collected	Date analyzed	Weight (lb-oz)	Length (in)	Age (yrs)	Hg Conc. ^a (ng/g)
black crappie	1777	B-7	08/29/90	05/01/91	0-8	9.5	4	130
black crappie	1740	C-1	06/28/91	01/08/92	0-4	7.9	3+	62
bluegill sunfish	1777	D-6	07/12/91	01/08/92	0-7	6.6	4	63
channel catfish	1760	7	10/03/91	12/20/91	5-4	24.4	9	765
channel catfish	1760	A-2	06/25/91	01/15/92	2-6	19.7	10+	634
channel catfish	1760	A-2	09/01/90	03/22/91	3-5	21.6	10+	492
channel catfish	1760	A-3	06/25/91	01/15/92	1-0	14.5	5+	179
channel catfish	1777	A-3	08/29/90	05/01/91	2-7	20.2	11	519
channel catfish	1760	A-4	06/25/91	01/24/92	0-10	13.0	5	204
channel catfish	1760	A-5	06/25/91	01/15/92	1-0	14.5	5	244
channel catfish	1760	A-6	06/25/91	01/15/92	0-12	14.2	6	232
channel catfish	1777	A-6	08/29/90	05/01/91	1-13	18.5	8	443
channel catfish	1777	A-6 ^b	08/29/90	05/01/91	1-13	18.5	8	516
channel catfish	1760	A-7	06/25/91	01/11/92	0-12	13.7	6	203
channel catfish	1760	A-7	08/01/90	03/01/91	2-0	17.8	9+	538
channel catfish	1760	A-8	06/25/91	01/11/92	1-12	17.1	8+	419
channel catfish	1760	A-8	08/21/90	03/01/91	2-0	18.4	8	387
channel catfish	1760	A-8 ^c	08/21/90	03/22/91	2-0	18.4	8	421
channel catfish	1777	A-9	08/29/90	05/01/91	1-4	17.0	7	309
channel catfish	1762	B-5	06/26/91	01/15/92	1-12	18.0	7	294
channel catfish	1762	B-5 ^b	06/26/91	01/15/92	1-12	18.0	7	313
channel catfish	1777	B-6	08/23/90	03/22/91	2-4	20.3	9	528
channel catfish	1760	B-8	08/01/90	03/01/91	3-7	20.5	7	367
channel catfish	1760	C-1	08/01/90	03/01/91	3-4	21.6	8	456
channel catfish	1760	C-3	08/01/90	03/01/91	1-4	16.1	6	218
channel catfish	1760	C-4	08/01/90	03/01/91	2-8	20.0	10	212
channel catfish	1760	C-5	08/01/90	03/01/91	3-4	20.5	12	312
channel catfish	1760	C-6	08/21/90	03/01/91	3-0	20.2	13	523
channel catfish	1760	C-6 ^c	08/21/90	03/22/91	3-0	20.2	13	510
channel catfish	1760	C-8	08/01/90	03/01/91	2-0	18.0	8	440
channel catfish	1760	C-9	08/01/90	03/01/91	2-0	18.2	7	368
channel catfish	1777	C-10	08/29/90	05/01/91	2-6	19.5	10	392
channel catfish	1760	D-1	08/01/90	03/01/91	1-8	17.5	6	289
channel catfish	1777	D-2	08/29/90	05/01/91	2-6	19.2	8	384
channel catfish	1777	D-3	08/25/90	03/15/91	1-0	14.4	5	210
channel catfish	1777	D-3 ^b	08/25/90	03/15/91	1-0	14.4	5	206
channel catfish	1777	D-4	08/25/90	03/15/91	0-12	14.0	6	275
channel catfish	1777	D-6	09/01/90	03/22/91	3-0	20.1	11	554
channel catfish	1777	D-6 ^b	09/01/90	03/22/91	3-0	20.1	11	491
channel catfish	1790	E-1	07/19/91	01/11/92	0-12	13.8	6+	439
channel catfish	1790	E-2	07/19/91	01/11/92	0-12	14.0	7	593
channel catfish	1777	E-3	09/01/90	03/01/91	0-7	11.2	4	204
channel catfish	1777	E-9	10/13/89	03/22/91	4-0	23.4	12	492
channel catfish	1760	E-10	09/01/90	03/22/91	3-6	21.8	16	327
channel catfish	1762	F-1	07/26/91	01/15/92	2-9	20.5		356
channel catfish	1762	F-2	07/26/91	01/15/92	1-10	18.1	6+	263
channel catfish	1760	F-2	08/01/90	03/01/91	2-8	20.0	9	740
channel catfish	1762	F-3	07/26/91	01/15/92	4-15	24.5		1860
channel catfish	1760	F-4	08/01/90	03/01/91	4-0	21.8	9	265
channel catfish	1762	F-7	07/26/91	01/15/92	3-8	22.3	11+	278
channel catfish	1762	F-12	07/26/91	01/15/92	2-3	19.4	10+	822
channel catfish	1762	F-15	07/26/91	01/15/92	2-12	21.2	11+	478

Species	Site	FDLIR Code	Date collected	Date analyzed	Weight (lb-oz)	Length (in)	Age (yrs)	Hg Conc. ^a (ng/g)
channel catfish	1762	F-18	07/26/91	01/15/92	2-9	21.1	9+	632
channel catfish	1762	F-18 ^b	07/26/91	01/15/92	2-9	21.1	9+	593
channel catfish	1762	F-19	07/26/91	01/15/92	2-9	19.1		309
channel catfish	1762	F-20	07/26/91	01/15/92	1-2	15.9	5+	287
channel catfish	1762	F-22	07/26/91	01/15/92	1-3	16.8		367
channel catfish	1782	G-1	08/01/91	01/11/92	3-4	22.0	10+	1161
channel catfish	1782	G-3	08/01/91	01/15/92	1-2	15.9	6+	363
channel catfish	1782	G-5	08/01/91	01/11/92	2-1	18.2	9	960
channel catfish	1782	G-7	08/01/91	01/15/92	3-2	21.0	10	576
channel catfish	1782	G-7 ^b	08/01/91	01/15/92	3-2	21.0	10	554
channel catfish	1782	G-8	08/01/91	01/15/92	1-14	17.9	6+	222
channel catfish	1782	G-9	08/01/91	01/15/92	2-4	18.5	8	567
channel catfish	1782	G-10	08/01/91	01/11/92	2-10	19.6	9	500
channel catfish	1782	G-12	08/01/91	01/15/92	0-13	14.0	6+	260
channel catfish	1782	G-13	08/01/91	01/11/92	0-11	13.9	6	304
channel catfish	1782	G-13 ^b	08/01/91	01/11/92	0-11	13.9	6	286
channel catfish	1782	G-14	08/01/91	01/11/92	0-14	15.2	5	339
channel catfish	1763	H-1	08/03/91	01/11/92	4-9	24.9	10+	349
channel catfish	1763	H-2	08/03/91	01/15/92	4-6	23.8	10+	472
channel catfish	1763	H-4	08/03/91	01/11/92	2-1	19.2	9+	267
channel catfish	1763	H-5	08/03/91	01/15/92	2-10	20.5	6+	613
channel catfish	1763	H-6	08/03/91	01/15/92	1-10	17.7	6+	430
channel catfish	1763	H-8	08/03/91	01/15/92	3-0	20.8	9+	628
channel catfish	1763	H-9	08/04/91	01/24/92	3-4	21.8	10	485
channel catfish	1763	H-12	08/03/91	01/15/92	2-1	19.1	9+	324
channel catfish	1763	H-13	08/03/91	01/15/92	3-0	21.2	9+	660
channel catfish	1763	H-14	08/03/91	01/11/92	1-2	15.2	8+	284
channel catfish	1763	H-14 ^b	08/03/91	01/11/92	1-2	15.2	8+	271
channel catfish	1800	J-1	08/13/91	01/24/92	4-15	24.4	10	993
channel catfish	1800	J-2	08/13/91	01/24/92	0-13	14.5	6	181
channel catfish	1802	K-1	08/14/91	01/11/92	1-12	16.1	4+	196
channel catfish	1802	K-2	08/14/91	01/11/92	3-2	21.1	8+	475
channel catfish	1610	T-3	08/28/91	01/08/92	0-12	13.1	2	152
channel catfish	1610	T-5	08/30/91	01/08/92	4-5	22.0	5+	543
channel catfish	1610	T-6	08/30/91	01/03/92	4-6	22.2	4	452
channel catfish	1610	T-6 ^b	08/30/91	01/03/92	4-6	22.2	4	541
channel catfish	1610	T-7	08/30/91	01/08/92	2-12	20.0	3	496
channel catfish	1610	T-8	08/30/91	01/08/92	1-4	16.0	3	282
channel catfish	1610	T-9	08/30/91	01/08/92	5-6	23.7	5	397
channel catfish	1610	T-10	08/30/91	01/08/92	4-12	23.0	7+	996
channel catfish	1610	T-11	08/30/91	01/08/92	3-0	20.2	5	440
channel catfish	1610	T-12	08/30/91	01/08/92	4-14	22.4	6	511
channel catfish	1610	T-13	08/30/91	01/03/92	4-12	22.8	5	583
channel catfish	1610	T-14	08/30/91	01/03/92	1-2	15.4	3	256
channel catfish	1610	T-15	08/30/91	01/08/92	2-2	18.3	5	301
channel catfish	1654	U-11	08/31/91	01/03/92	6-3	25.5	8	1088
channel catfish	1710	V-1	08/29/91	01/08/92	0-4	10.2	3	332
channel catfish	1710	V-1 ^b	08/29/91	01/08/92	0-4	10.2	3	298
channel catfish	1710	V-2	08/29/91	01/08/92	0-10	14.1		563
channel catfish	1710	V-3	08/29/91	01/08/92	0-4	10.4		455
channel catfish	1710	V-4	08/29/91	01/08/92	3-4	20.5		1131
channel catfish	1590	W-12	08/31/91	01/08/92	3-6	20.4	7	404
channel catfish	1590	W-13	08/31/91	01/08/92	3-2	21.1	8	858

Species	Site	FDLIR Code	Date collected	Date analyzed	Weight (lb-oz)	Length (in)	Age (yrs)	Hg Conc.* (ng/g)
northern pike	1760	5	10/03/91	12/20/91	3-0	21.6		297
northern pike	1760	6	10/03/91	12/20/91	0-14	15.8		279
northern pike	1762	B-4	06/26/91	12/20/91	1-0	16.9	4	344
northern pike	1762	B-6	06/26/91	01/03/92	6-13	29.3	8	444
northern pike	1777	D-1	07/12/91	12/20/91	2-4	21.2		268
northern pike	1777	D-4	07/12/91	12/20/91	2-4	20.5	5	258
northern pike	1760	F-3	08/01/90	03/01/91	4-8	25.3	3	314
northern pike	1760	F-7	08/21/90	03/01/91	1-12	19.5	9	284
northern pike	1760	F-7 ^b	08/21/90	03/01/91	1-12	19.5	9	280
northern pike	1760	F-7 ^c	08/21/90	03/22/91	1-12	19.5	9	289
northern pike	1777	F-9	07/31/90	03/22/91	1-0	16.5	3	250
northern pike	1777	I-1	08/09/91	01/24/92	3-11	25.2		597
northern pike	1777	I-2	08/09/91	01/24/92	3-8	24.7		351
northern pike	1610	T-4	08/28/91	12/20/91	3-0	24.2		425
northern pike	1610	T-31	08/30/91	12/20/91	3-7	23.7		377
northern pike	1610	T-31 ^b	08/30/91	12/20/91	3-7	23.7		429
northern pike	1610	T-32	08/30/91	12/20/91	3-7	24.1		640
northern pike	1654	U-12	08/31/91	12/20/91	1-8	20.7	3	211
northern pike	1654	U-13	08/31/91	12/20/91	0-9	13.7	2	158
northern pike	1654	U-22	08/31/91	12/20/91	0-13	15.2	2	196
northern pike	1654	U-22 ^b	08/31/91	12/20/91	0-13	15.2	2	200
northern pike	1654	U-28	08/30/91	12/20/91	3-0	24.5	4	416
n. redhorse sucker	1777	A-4	08/29/90	05/01/91	2-8	17.7	6	549
n. redhorse sucker	1777	A-5	08/29/90	05/01/91	2-8	18.0	6	318
n. redhorse sucker	1760	A-13	06/25/91	01/11/92	2-0	17.1		718
n. redhorse sucker	1760	A-14	06/25/91	01/11/92	1-2	13.8		324
n. redhorse sucker	1760	A-14 ^b	06/25/91	01/11/92	1-2	13.8		304
n. redhorse sucker	1777	B-9	08/29/90	05/01/91	3-0	18.0	6	375
white sucker	1760	A-10	06/25/91	01/11/92	2-6	17.6		312
white sucker	1760	A-11	06/25/91	01/11/92	2-8	17.3		276
white sucker	1777	C-2	09/28/89	03/22/91	2-0	17.5	5	366
white sucker	1760	C-7	08/21/90	03/01/91	2-4	17.3	8	278
white sucker	1760	C-7 ^c	08/21/90	03/22/91	2-4	17.3	8	278
white sucker	1777	D-8	08/25/90	03/15/91	2-0	15.7	5	204
white sucker	1777	E-4	08/25/90	03/15/91	1-12	17.7	5	317
white sucker	1777	E-5	08/25/90	03/15/91	1-4	13.7	4	124
white sucker	1777	F-8	09/28/89	03/22/91	1-6	14.7	5	299
rock bass	1760	A-9	06/25/91	01/11/92	0-3	6.0	7	130
rock bass	1760	A-10	08/21/90	03/01/91	0-4	7.0	4	161
rock bass	1760	A-10 ^c	08/21/90	03/22/91	0-4	7.0	4	138
rock bass	1760	A-12	06/25/91	01/11/92	0-12	9.0	9	509
rock bass	1777	B-3	09/01/90	03/22/91	0-12	9.6	5	334
rock bass	1777	D-9	08/24/90	03/22/91	0-12	9.0	3	608
rock bass	1777	D-10	08/25/90	03/15/91	0-6	7.3	5	199
rock bass	1777	E-6	09/01/90	03/22/91	0-12	9.2	6	442
rock bass	1777	E-7	09/01/90	03/22/91	1-0	10.6	7	585
rock bass	1777	E-7 ^b	09/01/90	03/22/91	1-0	10.6	7	568
rock bass	1777	G-2	08/29/90	05/01/91	0-6	7.3	3	149
smallmouth bass	1760	8	10/03/91	12/20/91	1-4	12.7		533
smallmouth bass	1760	9	10/03/91	12/20/91	1-6	13.8		636
smallmouth bass	1760	A-1	07/31/90	03/22/91	1-4	12.4	4	219
smallmouth bass	1777	B-1	09/01/90	03/22/91	1-2	12.3		290
smallmouth bass	1777	B-2	07/31/90	03/22/91	1-6	12.6	4	210

Species	Site	FDLIR Code	Date collected	Date analyzed	Weight (lb-oz)	Length (in)	Age (yrs)	Hg Conc. ^a (ng/g)
smallmouth bass	1777	B-10	08/29/90	05/01/91	0-12	11.0	3	226
smallmouth bass	1777	D-5	07/12/91	01/08/92	0-10	10.2	3	143
smallmouth bass	1777	D-7	08/25/90	03/15/91	0-10	10.3	3	117
smallmouth bass	1777	E-2	08/25/90	03/15/91	1-1	12.3	4	300
smallmouth bass	1777	E-8	08/25/90	03/15/91	0-10	10.5	3	267
smallmouth bass	1777	F-5	08/29/90	03/22/91	0-10	10.0	3	200
smallmouth bass	1777	F-5 ^b	08/29/90	03/22/91	0-10	10.0	3	228
smallmouth bass	1777	F-5 ^b	08/29/90	03/22/91	0-10	10.0	3	215
smallmouth bass	1760	F-6	08/21/90	03/01/91	1-0	11.8	4	429
smallmouth bass	1760	F-6 ^c	08/21/90	03/22/91	1-0	11.8	4	433
smallmouth bass	1777	F-10	08/29/90	05/01/91	0-12	10.6	3	136
smallmouth bass	1777	G-1	08/29/90	03/22/91	0-12	10.7	3	410
smallmouth bass	1777	G-1 ^b	08/29/90	03/22/91	0-12	10.7	3	354
smallmouth bass	1610	T-18	08/30/91	01/08/92	1-11	14.4		526
smallmouth bass	1610	T-19	08/30/91	01/08/92	1-12	15.1		629
smallmouth bass	1610	T-19 ^b	08/30/91	01/08/92	1-12	15.1		619
smallmouth bass	1610	T-20	08/30/91	01/03/92	1-6	13.4		404
smallmouth bass	1610	T-21	08/30/91	01/03/92	1-4	13.0		621
smallmouth bass	1610	T-22	08/30/91	01/08/92	0-11	10.8		246
smallmouth bass	1610	T-23	08/30/91	01/03/92	1-8	13.7		448
smallmouth bass	1610	T-24	08/30/91	01/03/92	1-0	12.3		373
smallmouth bass	1610	T-25	08/30/91	01/03/92	1-5	13.2		451
smallmouth bass	1610	T-26	08/30/91	01/03/92	0-11	10.7		174
smallmouth bass	1610	T-27	08/30/91	01/03/92	2-4	15.9		662
smallmouth bass	1610	T-28	08/30/91	01/03/92	0-14	11.5		280
smallmouth bass	1610	T-28 ^b	08/30/91	01/03/92	0-14	11.5		276
smallmouth bass	1610	T-29	08/30/91	01/03/92	0-5	8.2		220
smallmouth bass	1610	T-30	08/30/91	01/03/92	1-0	11.0		313
smallmouth bass	1654	U-1	08/28/91	12/20/91	1-12	14.6	4	532
smallmouth bass	1654	U-2	08/28/91	12/20/91	1-14	14.5		758
smallmouth bass	1654	U-3	08/28/91	12/20/91	1-12	13.8	4	408
smallmouth bass	1654	U-14	08/31/91	12/20/91	1-14	14.7	6	774
smallmouth bass	1654	U-15	08/31/91	01/03/92	1-3	12.2	5	438
smallmouth bass	1654	U-16	08/31/91	01/03/92	1-4	12.7	5	338
smallmouth bass	1654	U-17	08/31/91	01/03/92	0-3	6.4	2	134
smallmouth bass	1654	U-18	08/31/91	12/20/91	1-0	12.0		242
smallmouth bass	1654	U-19	08/31/91	01/03/92	0-13	11.1	4	264
smallmouth bass	1654	U-19 ^b	08/31/91	01/03/92	0-13	11.1	4	239
smallmouth bass	1654	U-20	08/31/91	01/03/92	1-6	13.2		358
smallmouth bass	1654	U-21	08/31/91	12/20/91	0-14	11.7	4	289
smallmouth bass	1654	U-21 ^b	08/31/91	12/20/91	0-14	11.7	4	294
smallmouth bass	1654	U-27	08/30/91	12/20/91	1-4	12.5	4	321
smallmouth bass	1590	W-14	08/31/91	01/08/92	0-13	10.5		268
walleye	1760	1	10/03/91	11/27/91	1-14	17.0	3	403
walleye	1760	2	10/03/91	11/27/91	1-14	17.2	3	493
walleye	1760	3	10/03/91	11/27/91	2-4	18.7	4	609
walleye	1760	4	10/03/91	11/27/91	0-12	13.2	3	505
walleye	1760	4 ^b	10/03/91	11/27/91	0-12	13.2	3	545
walleye	1760	A-1	06/25/91	11/27/91	0-9	12.1	2+	274
walleye	1762	B-1	06/26/91	11/27/91	0-8	11.9	3	362
walleye	1762	B-2	06/26/91	11/27/91	0-6	11.0	2	589
walleye	1762	B-3	06/26/91	11/27/91	0-8	12.1	5	353
walleye	1760	B-4	08/21/90	03/01/91	0-14	13.9	4	204
walleye	1760	B-4 ^b	08/21/90	03/01/91	0-14	13.9	4	216
walleye	1760	B-4 ^c	08/21/90	03/22/91	0-14	13.9	4	237
walleye	1777	B-5	07/31/90	03/22/91	0-7	11.4	2	274

Species	Site	FDLIR Code	Date collected	Date analyzed	Weight (lb-oz)	Length (in)	Age (yrs)	Hg Conc. ^a (ng/g)
walleye	1777	D-2	07/12/91	11/27/91	0-9	12.2	4	272
walleye	1777	D-3	07/12/91	11/27/91	0-8	11.2	3	305
walleye	1777	D-3 ^b	07/12/91	11/27/91	0-8	11.2	3	333
walleye	1777	D-5	08/24/90	03/22/91	1-6	15.1	3	303
walleye	1777	E-1	08/25/90	03/15/91	1-0	14.3	3	285
walleye	1777	F-1	07/31/90	03/22/91	0-12	13.2	3	348
walleye	1777	F-1 ^b	07/31/90	03/22/91	0-12	13.2	3	365
walleye	1610	T-1	08/28/91	10/29/91	0-5	10.2	2+	278
walleye	1610	T-1 ^b	08/28/91	10/29/91	0-5	10.2	2+	268
walleye	1610	T-2	08/29/91	10/29/91	0-5	11.0	2	349
walleye	1610	T-16	08/30/91	10/29/91	0-6	10.8	2	136
walleye	1610	T-17	08/30/91	10/29/91	0-10	12.4	2	412
walleye	1654	U-4	08/28/91	10/29/91	0-6	10.6	3	150
walleye	1654	U-5	08/28/91	10/29/91	0-10	12.3	3	203
walleye	1654	U-6	08/28/91	10/29/91	1-0	15.4	4	465
walleye	1654	U-7	08/28/91	10/29/91	0-9	12.0	2	230
walleye	1654	U-8	08/28/91	10/29/91	0-9	11.9	3	291
walleye	1654	U-9	08/28/91	10/29/91	0-13	13.5	2	358
walleye	1654	U-10	08/28/91	10/29/91	0-8	12.3	3	211
walleye	1654	U-10 ^b	08/28/91	10/29/91	0-8	12.3	3	240
walleye	1654	U-23	08/31/91	10/29/91	0-10	12.2	3	163
walleye	1654	U-24	08/31/91	10/29/91	0-12	13.5	3	488
walleye	1654	U-25	08/31/91	10/29/91	0-9	12.3	2	198
walleye	1654	U-26	08/31/91	10/29/91	0-8	11.9	2	188
walleye	1590	W-1	08/31/91	11/21/91	1-0	14.5	3+	641
walleye	1590	W-2	08/31/91	11/21/91	0-14	14.2	3	540
walleye	1590	W-3	08/31/91	11/21/91	1-14	17.5	4	566
walleye	1590	W-4	08/31/91	11/21/91	2-5	18.8	4	864
walleye	1590	W-5	08/31/91	11/21/91	1-14	17.8	3	780
walleye	1590	W-6	08/31/91	11/21/91	1-2	15.1	3+	654
walleye	1590	W-6 ^b	08/31/91	11/21/91	1-2	15.1	3+	648
walleye	1590	W-7	08/31/91	11/27/91	1-6	14.9	3	727
walleye	1590	W-8	08/31/91	11/27/91	0-9	12.2	3	443
walleye	1590	W-9	08/31/91	11/27/91	3-13	21.3	6	1486
walleye	1590	W-10	08/31/91	11/27/91	0-12	13.5	3	411
walleye	1590	W-10 ^b	08/31/91	11/27/91	0-12	13.5	3	416
walleye	1590	W-11	08/31/91	11/27/91	3-7	20.5	6	1120
walleye	1590	W-11 ^b	08/31/91	11/27/91	3-7	20.5	6	1164

^aAdvisory Categories of Minnesota Health Department :

category 1: less than 160 ppb no restriction

category 2: 160 to 660 ppb one meal per week

category 3: greater than 660 ppb one meal per month except for high risk individuals - eat none for breast feeding and pregnant women, women who may become pregnant in the next several years, and children under age six.

^bDuplicate analysis from same fillet.

^cReplicate analysis using different fillet from same fish.

Appendix C

Mercury in Water, Zooplankton, and Sediment

Site Name I.D. #	Collection Date Year Day	Water Hg Conc. (ng/L)	Plankton		% Water Content	Sediment	
			Hg Conc. ^a (ppb)	Density ^b (mg/m ³)		Hg Conc. ^a (ng/g) Wet ^c	Dry ^c
StLR at Chambers Grove 1590	10/26/91	< 1	†	0.1			
	10/26/91	< 1	4260† (4050)†	0.4			
	6/22/92	3	< 134	4.7			
	6/22/92	3	136 (145)	7.8			
Fond du Lac Reservoir 1610	10/26/91	2	217	6.8			
	10/26/91	2	228	5.4			
	6/22/92	1	< 78.3	17.1			
	6/22/92	3	342	4.7			
Forbay Lake 1651	6/22/92	2	152	12.4			
	6/22/92	9	273	15.5			
Thomson Reservoir 1654	10/26/91	2	†	0.3			
	10/26/91	2 (2)	2930	10.8			
	6/22/92	2	289	65.9			
	6/22/92	3	201	62.0			
StLR above Scanlon Dam 1710	10/26/91	3	808	6.1			
	10/26/91	3	860	1.4			
	6/22/92	3	636	10.8			
	6/22/92	2	626	54.3			
StLR Cloquet at Hwy 33 1740	6/30/92	4	784	3.1			
	6/30/92	3	103	4.7			
White Pine R. at mouth 1762	10/31/91	< 2			35.3 (49.7)	16.8 (25.8)	14.7 (23.5)
	10/31/91	< 2					
StLR at Hwy 2 1775	10/31/91	< 2			45.4	49.0	42.7
	10/31/91	< 2					
StLR at Hwy 31 1780	10/31/91	< 2			58.6	56.5	59.0 (62.8)
	10/31/91	6					
	6/30/92	3	318	6.2			
	6/30/92	5	< 48.2	6.2			
StLR above Brookston 1800	10/31/91				47.3	24.7	29.5
StLR at Gowan 1820	6/29/92	6	77.9	41.9			
	6/29/92	4	< 385	1.5			
StLR at Hwy 29 1860	10/31/91	< 2			25.8	29.7 (29.2)	18.6
	10/31/91	< 3			27.0	39.8 (28.4)	29.4
	10/31/91	< 2					
	6/29/92	< 1	95.8	12.4			
	6/29/92	4	262	3.1			
Midway R., Thomson Res 2280	10/31/91	< 2			34.6	86.6	72.4
	10/31/91	< 2					
Cloquet R. below Hwy 7 2432	10/31/91	< 2			39.5	25.2	26.8
	10/31/91	< 2 (< 2)			24.2	15.4	14.9
	10/31/91	< 2					
	6/30/92	5 (4)	312	1.5			
	6/30/92	3	124	9.3			
Stoney Brook at Hwy 31 2710	10/31/91	5			35.4	21.6	25.1
	10/31/91	4					

Site Name I.D. #	Collection Date		Water Hg Conc. (ng/L)	Plankton		Sediment		
	Year	Day		Hg Conc. ^a (ppb)	Density ^b (mg/m ³)	% Water Content	Hg Conc. ^a (ng/g)	
							Wet ^c	Dry ^c
Aruchoke R. at Hwy 3 2720	10/31/91		< 2 (< 2)			79.4	96.8	114
	10/31/91		< 2					
Big Savanna R. at Hwy 2 2830	10/31/91		4					
	10/31/91		4					
Floodwood R. at Hwy 2 2840	10/31/91		< 2			33.6	47.4	19.3
	10/31/91		< 2					
Whiteface R. at Hwy 226 2850	6/29/92		4	127	20.1	43.1	16.8	19.0 (20.2)
	6/29/92		7	84.4	26.4			

^aConcentrations are expressed on a dry weight basis. Multiple values reported for the same date are field replicates. Values given in parentheses are laboratory duplicates.

^bPlankton dry weight density in the water column.

^cSediments were analyzed both wet and dry, all values but reported on dry weight basis.

† Value is either unuseable (not reported) or has high uncertainty due to small mass of zooplankton collected.

Fond du Lac Reservation
Natural Resource Program
105 University Road
Cloquet, MN 55720
(218) 879-4593 ext.62

TO: U.S Environmental Protection Agency
Great Lakes National Program Office
77 West Jackson Boulevard
Chicago, IL 60604

FROM: Larry Schwarzkopf
Program Manager
Fond du Lac Natural Resource Program

DATE: December 8, 1992

RE: Demonstration Project for Sediment Contaminant
Mitigation

The Fond du Lac Natural Resources Program in cooperation with the University of Minnesota-Duluth, the University of Wisconsin-Superior, and the Environmental Research Laboratory-Duluth proposes the Demonstration Project for the Sediment Contaminant Mitigation to the Great Lakes National Program Office.

The St. Louis River and Lake Superior continues to be an important aquatic resource of the Fond du Lac Band of Lake Superior Chippewa. The continuing problem of toxic contaminants which prevents the safe consumption by our band members and the general public needs to be addressed. We have conducted cooperative research with UMD and the EPA/ERL-Duluth to quantify mercury concentrations in the fish, plankton, sediments, and water on the St. Louis River watershed. In addition to our current proposal we are mailing a copy of our September 1992 report, Mercury Concentrations in Fish, Plankton, and Water from the St. Louis River Watershed Including Reservoir Lakes. In order to remedy this situation we feel that research is needed to find an efficient means to remediate the toxic sediments to prevent uptake of mercury into the aquatic food chain. This innovative approach to remediating toxic sediments could be replicated in similar situations in other Areas of Concern in the Great Lakes.

Demonstration Project Proposal for Sediment Contaminant Mitigation

Principle investigators: University of Minnesota -Duluth. J. Sorensen 218-525-7423
and G. Rapp, Jr., and
Fond du Lac Indian Reservation - L. Schwarzkopf

The objective of this proposed project is to demonstrate and evaluate the effectiveness and applicability of various methods of reducing sediment contaminant caused residue levels in fish and other biota. This work will be carried out within a series of enclosed areas at one or more known sediment contaminated sites in the St. Louis River and Estuary located in high value habitat areas and/or near stream inputs.

Sediments that have accumulated behind the reservoir dams contain high amounts of various contaminants as a result of past industrial practices/discharges within the St. Louis River watershed. Figure 1 shows mercury concentrations as a function of depth in a sediment core taken from the Thomson Reservoir where the 300 cm total core depth represents a sediment accumulation since 1907. The large peak represents mercury impacts during the 1950's and early 1960's.

Although contaminant concentrations in sediment are significant, other contaminant sources must also be considered. A comparison of mercury in water concentrations for various locations along the St. Louis River Estuary and tributaries (Figure 2) reveals the existence of watershed mercury sources. In addition, mercury concentrations in fish as a function of location (Figure 3) reveals mercury contamination problems from known sediment hot spots.

The enclosed areas would be rectangular (20ft x 40ft), bordered with walls of snow fencing covered with reinforced plastic sheeting on three sides and natural shoreline on the fourth side. Each enclosed area would confine (or be stocked with) local benthic eating young fish at the start of the field season and analyzed (along with other biota) at the start, middle, and end of the field season for condition, growth, and levels of contaminants such as PCBs, PAHs, mercury, and other factors when appropriate. The effectiveness of each mitigative test will be determined by comparing fish condition and contaminant concentrations in treated vs untreated enclosed areas (in addition to fish from adjacent areas outside the enclosed areas). Each residue reduction method being tested would be run in duplicate, and therefore a block of 6 adjacent enclosed areas, (4 treatments and 2 controls) will accommodate 2 simultaneous test conditions.

The mitigation strategies selected for demonstration must be cost effective and practicable to implement. Among mitigation strategies to be demonstrated are 1) sediment surface migration barriers such as covering sediments with clean or cleaned sediments from the same water body, 2) addition of contaminant binding substrates such as solid pellet absorbants, encapsulators, or mesh of similar properties, and 3) in-place treatment to remove surface sediment fractions (e.g. organic carbon) that are highest in contaminants. Because some tests (e.g. sediment covering) may mitigate some contaminants more effectively than others, simultaneous measurements and assessments regarding PCBs, PAHs, and mercury would also be made when applicable.

Shoreline enclosed areas like those described above are currently being used in Minnesota by the University of Minnesota-Duluth researchers as a tool for mercury mitigation studies on Crane/Sand Point Lakes and at Indian Point on the St. Louis River. Another UMD project is also working on sediment contaminant processing techniques that would be demonstrated in the enclosed areas on the St. Louis River Estuary.

This proposed project would be a joint effort conducted by staff of the University of Minnesota-Duluth and the Fond du Lac Natural Resources Department and Community College and is estimated to cost \$175,000 for Year 1 and \$125,000 for Year 2 to demonstrate and assess the three treatment strategies that are judged to be the most cost effective and practicable.

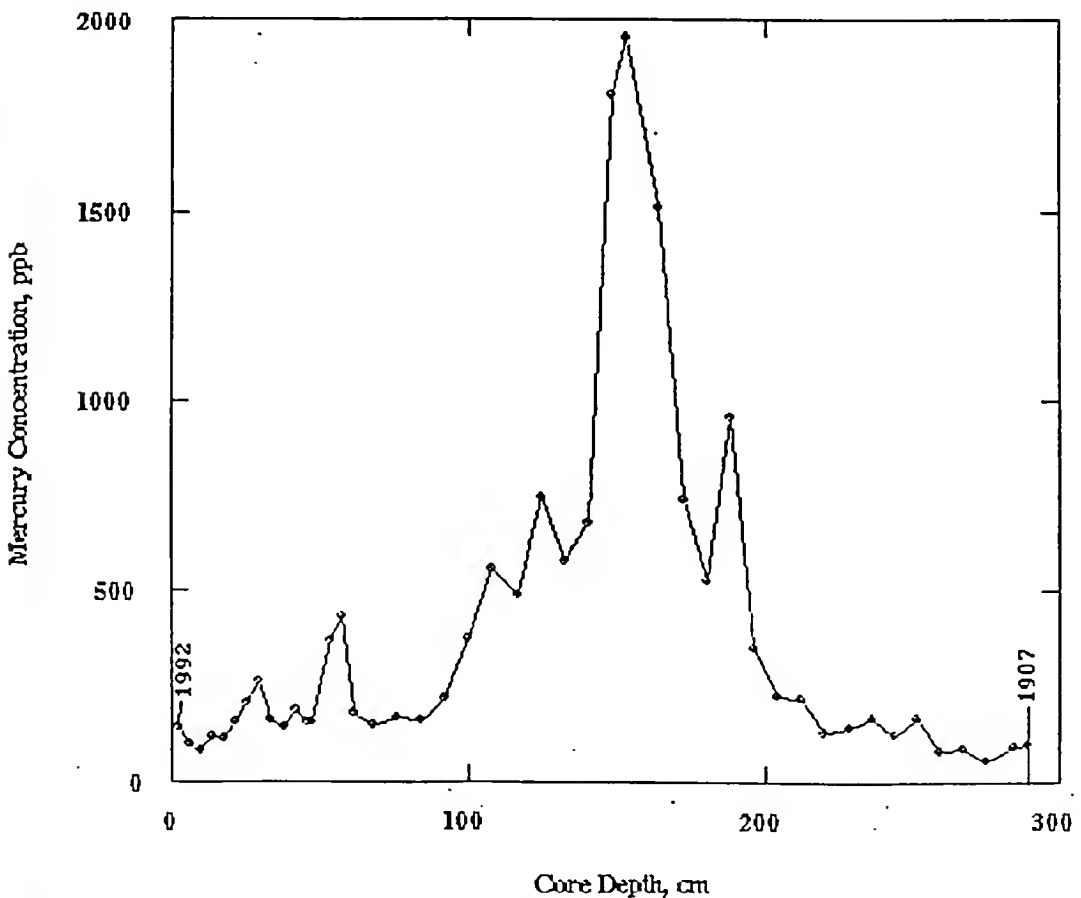


Figure 1. Mercury concentrations (dry weight basis) at various depths in a sediment core taken from the Thomson Reservoir in 1992 (J. Sorensen, unpublished data: do not cite, copy, or quote).

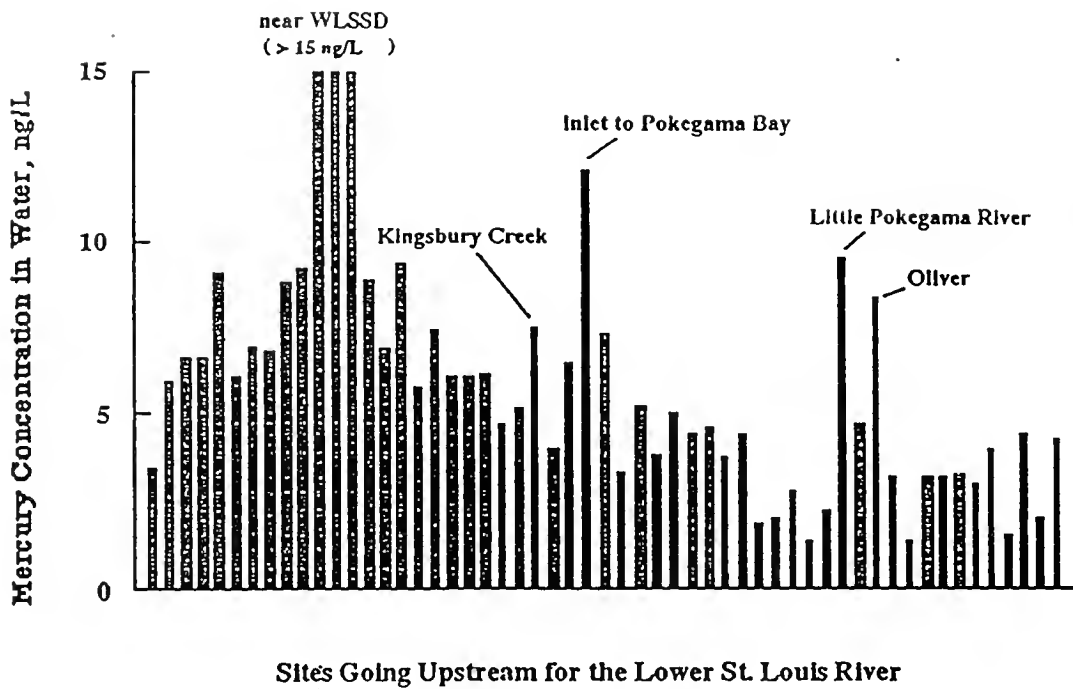


Figure 2. Mercury concentrations in water as a function of sampling sites going upstream for the lower St. Louis River. Grey bars represent St. Louis River samples while black bars represent tributaries to the St. Louis River (J. Sorensen, unpublished data: do not cite, copy, or quote).

12-8-92

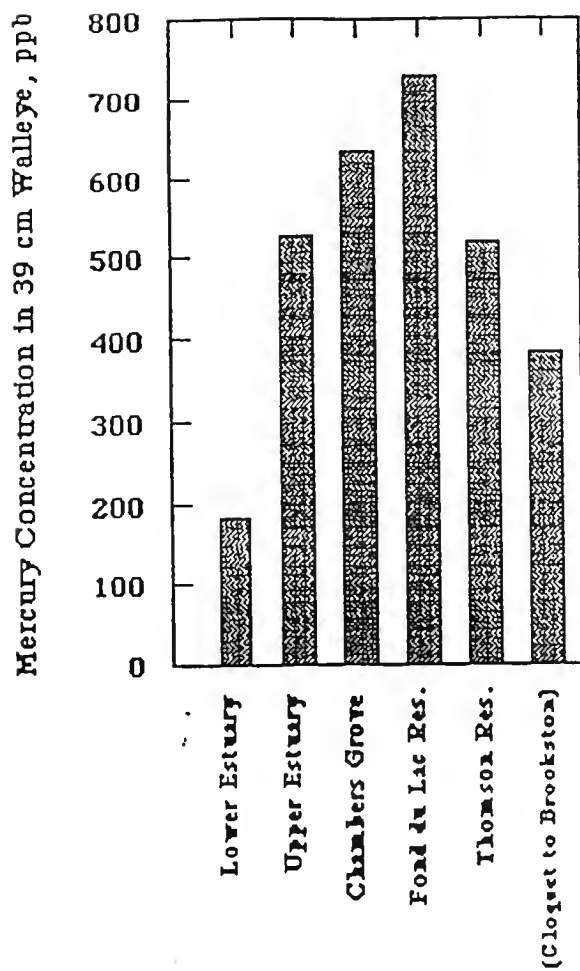


Figure 3. Mercury concentrations in 39 cm walleye within the St. Louis River Watershed. Calculated from 1991 data (Sorensen et al.; FDL report, 1992).



Memorandum

To: David Cowgill, EPA - Great Lakes National Program
Office, Chicago

From: Larry Schwarzkopf, Fond du Lac Natural Resource
Manager

Date: January 28, 1993

Re: Demonstration Project for Sediment Contaminant
Mitigation

The Fond du Lac Natural Resource Program in cooperation with the University of Minnesota-Duluth has submitted the proposal, Demonstration Project for Sediment Contaminant Mitigation, to the Great Lakes National Program Office of the Environmental Protection Agency. A copy of the original proposal is attached. At this time I would like to propose some modifications of our original study design that would focus our objectives and provide a more efficient study. The original proposal would investigate on site methods to remediate contaminated sediments on the St. Louis River reservoirs and estuary. The basic objectives would remain, however we would concentrate our efforts on mercury and PCB, and would test only for some specific PAH's and organic compounds, such as pyrene, anthracene, flouranthene, and bi-phenyl. A means to decrease the cost of PCB analysis is also being considered to decrease the study budget.

The project could be designed as a three year study, which would give us an additional sampling season to analyze biotic uptake of contaminants, and additional mitigation strategies could be tested with the same number of enclosures. Another benefit of this change is that it would allow time to test alternative binding agents. We are planning to conduct a computer search for additional binding compounds which would have similar properties for binding mercury or PCB (ie. QSAR Model). Promising compounds will be tested in the enclosures for their effectiveness in binding contaminants.

The three mitigation strategies mentioned in the attached original proposal would remain basically the same. There was a comment regarding the third strategy, as to whether it would involve dredging. This is stated in the proposal as: "3) in-place treatment to remove surface sediment fractions (e.g. organic carbon) that are highest in contaminants." The method would involve new techniques and equipment that is currently being developed to remove fine particulates and/or organic fractions, which are commonly associated with mercury and PCB. After the highly contaminated fractions

are removed or treated the cleaner sediments could be returned to the site. Sediment removal with specialized equipment to minimize resuspension of toxic sediments has already been developed, and could be incorporated into this new technology when full-scale remediation is implemented. This would prevent the resuspension of sediments that is associated with the typical means of dredging.

The first strategy mentioned in the report would involve testing treated particles and mesh which would bind the contaminants. These binding agents and their carrier could be left in place or could be removed after they have become a toxic sync. The use of a polymer mesh may be useful in stabilizing sediments in areas which would otherwise be scoured by river currents.

Another approach which might prevent biotic uptake would be to inject binding agents into the deeper sediments. In many areas these underlying sediments have higher levels of contaminants than the overlying sediments of recent origin. The data on mercury levels of fish from these areas show that active biotic uptake is still occurring. I am mailing a copy of our October 1992 report, Mercury Concentrations in Fish, Plankton, and Water from the St. Louis River Watershed Including the Reservoir Lakes. This report clearly shows the increased levels of mercury in fish from areas where high levels of mercury in the sediments remain or other factors are contributing to increased mercury methylation.

The original cost estimates for the study could be scaled down, and we would request that recommendations on total or yearly project grant levels be provided to us. If you have any additional questions regarding this proposal please contact me at (218-879-4593), or John Sorenson at (218-525-7423).



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