S. HRG. 108–121

STATUS OF TRIBAL FISH AND WILDLIFE MANAGEMENT PROGRAMS

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

ON

STATUS OF TRIBAL FISH AND WILDLIFE MANAGEMENT PROGRAMS ACROSS INDIAN COUNTRY

JUNE 3, 2003
WASHINGTON, DC

U.S. GOVERNMENT PRINTING OFFICE

87–608 PDF WASHINGTON : 2003

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON INDIAN AFFAIRS

BEN NIGHTHORSE CAMPBELL, Colorado, *Chairman*
DANIEL K. INOUYE, Hawaii, *Vice Chairman*

JOHN McCAIN, Arizona,
PETE V. DOMENICI, New Mexico
CRAIG THOMAS, Wyoming
ORRIN G. HATCH, Utah
JAMES M. INHOFE, Oklahoma
GORDON SMITH, Oregon
LISA MURKOWSKI, Alaska

KENT CONRAD, North Dakota
HARRY REID, Nevada
DANIEL K. AKAKA, Hawaii
BYRON L. DORGAN, North Dakota
TIM JOHNSON, South Dakota
MARIA CANTWELL, Washington

PAUL MOOREHEAD, *Majority Staff Director/Chief Counsel*
PATRICIA M. ZELL, *Minority Staff Director/Chief Counsel*

CONTENTS

Page

Statements:

Brown-Schwalenberg, Patty, executive director, Chugach Regional Resources Commission 33
Cooley, Jon, interim executive director, Southwest Tribal Fisheries Commission 27
Frank, Jr., Bill, chairman, Northwest Indian Fisheries Commission 2
Harris, Tom, president, and CEO, Alaska Village Initiatives, Inc. 36
Inouye, Hon. Daniel K., U.S. Senator from Hawaii, vice chairman, Committee on Indian Affairs 1
Jackson, Gordon, director, Business and Sustainable Development Central Council, Tlingit and Haida Indians of Alaska 30
Johnstone, Ed, Quinault Indian Nation 2
Kelly, Bob, Nooksack Tribe 2
Matt, Clayton, executive director, Tribal Council, Confederated Salish and Kootenai Tribes of the Flathead Nation 15
Myers, Millard J., "Sonny", executive director, 1854 Authority 25
New Breast, Ira, executive director, Native American Fish and Wildlife Society 17
Patt, Jr., Olney, executive director, Columbia River Inter-Tribal Fish Commission 9
Seyler, Warren, chairman, Upper Columbia United Tribes 12
Williams, Terry, Tulalip Tribes 3
Zorn, James E., Policy Analyst, Great Lakes Indian Fish and Wildlife Commission 22

APPENDIX

Prepared statements:

Aitken, Sr., Gary, tribal chairman, Kootenai Tribe of Idaho 44
Barnet, John, chairman, Cowlitz Indian Tribe 180
Brigham, N. Kathryn, member, board of trustees, Confederated Tribes of the Umatilla Indian Reservation 50
Brown-Schwalenberg, Patty 53
Cantwell, Hon. Maria, U.S. Senator from Washington 43
Confederated Tribes of the Warm Springs Reservation of Oregon 181
Cooley, Jon 58
Frank, Jr., Bill (with attachments) 67
Harris, Tom 169
Jackson, Gordon 78
Matt, Clayton 81
Myers, Millard J., "Sonny" (with letter) 87
New Breast, Ira 93
Patt, Jr., Olney 98
Peacock, Robert B., chairman, Fond du Lac Band of Lake Superior Chippewa (with attachment) 101
Seyler, Warren 106
Spokane Tribe (with attachments) 109
Teeman, Albert, chairman, Burns Paiute Tribe 183
Upper Columbia United Tribes 189
Zorn, James E. (with attachments) 144

STATUS OF TRIBAL FISH AND WILDLIFE MANAGEMENT PROGRAMS

TUESDAY, JUNE 3, 2003

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m. in room 485, Russell Senate Building, Hon. Daniel K. Inouye (vice chairman of the committee) presiding.

Present: Senators Inouye and Murkowski.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator INOUYE. The Committee on Indian Affairs meets this morning to receive testimony on the status of tribal fish and wildlife management programs across Indian country.

Ten years ago, this committee worked with the leaders of Native America to develop legislation that would provide support for the efforts of tribal governments to preserve and protect fish and wildlife resources. Although that legislation was not enacted into law, the members of this committee are aware that tribal fish and wildlife management programs have experienced exponential growth in their capacities to protect the health and well-being of natural resources and the humans who rely on these resources.

Although it is widely recognized that tribal governments and intertribal fish and wildlife management organizations have been among the most effective stewards of natural resources, both on tribal lands and off, today it is more than ever clear that in many areas of Indian country, tribal governments are on the cutting edge of new technological advances that are assuring enhanced protections of fish and wildlife and plant resources.

So we look forward to the testimony that the committee will receive, and I am pleased to call upon one of the great Indian leaders of our time, my dear friend Bill Frank, Jr., who happens to be the chairman of the Northwest Indian Fisheries Commission, but he will be speaking for Indian country this morning.

Chairman Frank, you are always welcome here, sir.

STATEMENT OF BILL FRANK, JR., CHAIRMAN, NORTHWEST INDIAN FISHERIES COMMISSION, ACCOMPANIED BY TERRY WILLIAMS, TULALIP TRIBES; BOB KELLY, NOOKSACK TRIBE; AND ED JOHNSTONE, QUINAULT INDIAN NATION

Mr. FRANK. Good morning, Mr. Chairman. My name is Billy Frank, chairman of the Northwest Indian Fish Commission. It is an honor to be here before you again telling our story about the salmon in the Northwest, plus all of our management throughout our nation where Indian people are involved—the tribes.

Today, we are here to support our Indian tribal fish and wildlife bill. For the sake of the salmon, the Pacific salmon throughout Alaska, the Pacific Ocean, the State of Washington, Oregon, California, all of our tributaries throughout the Northwest, we need this legislation. It would enhance all of the tribes throughout the Nation on all of our management, from the Great Lakes to the Southwest, and all of our country throughout the eastern seaboard.

The tribes have been managers of the resource for thousands of years, but over the last 30 years that I have been chairman and involved in the fishery in the Northwest and seeing what happens throughout our Nation, our tribes have pretty well taken a place in management throughout our country. They have respect within their own areas with the local governments, as well as the cities, the States, the counties, and the Federal Government.

We have models to show, and you are going to hear some of our stories in the next couple of days on what we have been doing throughout our country. In the Northwest, we have the tides twice a day. The tides come in and the tides go out. Senator, you have been on our water and you have seen our country, and you have seen all of our country throughout all of our nations, including our Native Alaskan people. You have visited our areas. We appreciate that. But our tides tell us how calm we are as Indian people and how patient we are. The tides come in and the tides go out.

And then our country throughout the Southwest and throughout our Plains country, they wait for the rains—the rains that look across the country that make everything come to life. These are just some of the things that the Indian tribes live with, and it is a rhythm of nature of our country. It is a very important part of our lives that the rhythm is there. It is a very important part of our lives that we continue that.

We are co-managers with the Federal Government, along with the States throughout our Nation, and that gives us a standing in the community that gives us respect. When you are managing the natural resources, whether it is on in-stream flows or water or our animals or our weather, our natural land, our lakes—whatever it might be—we can sit down and we can talk and we can find a balance with the community, with the State or the Federal Government.

In the Northwest, the Magnuson-Stevens Act takes us 200 miles out into the sea we manage as comanagers. Laws have been written into that act that the tribes will be at the table whenever there is a decision to be made on our resource. That is very good legislation that came from the U.S. Congress.

We, as Indian people throughout our Nation, have to come to the U.S. Congress to ask for our funding, to ask for help, to ask that

the United States continue its trust responsibility to protect our treaties and all of our way of life and our culture throughout our country. We have to come to Congress. We do every year, several times a year we come and we tell you what we are doing. We are responsible and accountable throughout the Nation, and we work together with the U.S. Congress, as well as the Federal Government and the States and the local governments.

People have a different view sometimes about Indian people. It is not a good view. It is a bad view. They think we are the boogeymen. That is getting better in my time. I am now 72 years old. I have been coming back to Congress for the past 30-some years and reporting. I have seen a big difference in our Nation. I have seen a very positive move in Indian tribes. I really feel good when I visit Indian tribes in their country throughout our Nation they are flourishing with life and education. Very positive things are happening in our communities.

I see our children growing. I see them being educated. We might have a lot of problems on our reservations, but we have an infrastructure to meet these problems now it is very important for all of us to have that strong infrastructure—the science, the policy and the legal issues, our court systems and all of that.

So we are moving to a place in time where our tribes are looking good, as I say. So in the next day or two, you are going to hear our negatives and our positives, but you are going to hear us tell the story of our lives and our culture and how we think of our natural world out here. We have to be part of the management of our country, the tribes. We have to be partners with the Federal Government, partners with the States, partners with the local governments, and partners with the cities and the communities and the volunteers.

If we can do that and have the backing of the U.S. Congress through legislation, we are going to be all right. We are going to be helpful in many, many ways.

Thank you.

[Prepared statement of Mr. Frank appears in appendix.]

Senator INOUYE. Thank you very much, Mr. Frank. It is always good to see you with us, Billy. I hope all is well with you.

Mr. FRANK. Thank you.

Senator INOUYE. And now may I call upon the representatives of the Tulalip Tribes, Terry Williams; of the Nooksack Tribe, Bob Kelly; and of the Quinault Indian Nation, Ed Johnstone.

Mr. Williams.

STATEMENT OF TERRY WILLIAMS, TULALIP TRIBES

Mr. WILLIAMS. Mr. Chairman, members of the committee, my name is Terry Williams from the Tulalip Tribes. With me is Bob Kelly from the Nooksack and Ed Johnstone from the Quinault. It is indeed a pleasure today to be able to be here, and to respond to the requests that you have made, the inquiries on the fish and wildlife in the Northwest.

We will be submitting written testimony, and the written testimony will more than likely be more direct and identify the issues surrounding our discussion. Since we only have a limited amount

of time, I will try to hit the highlights of what you will read in our testimony.

The Pacific Northwest management of fish and wildlife over the years more recently has been guided by Supreme Court decisions. With those decisions, they have given us some direction in terms of how we structure ourselves in the co-management process with the State of Washington and our behavior and management with the Federal agencies.

Currently, though, we are going well beyond the directives of the court, having to deal with other issues—issues such as shellfish management, groundfish, wildlife, hatcheries and hatchery reform, dealing with environmental issues; environmental issues including the Clean Water Act and responsibilities that we have in our management to observe not only the laws, but the importance of having clean water for all of our resources.

The tribes have clearly established themselves in the governmental role in this process. We have incorporated not only a new direction in management, but bringing in new technologies to help us deal with the problems that face us.

Some of the issues we have been working through over the last decade have been that of management within the Pacific Salmon Treaty under the treaty with the United States and Canada; participating in the Pacific Fisheries Management Council; participating with the Federal agencies and the State on Endangered Species Act issues; development of shellfish and groundfish co-management programs.

An example of what I just talked about are areas where we are lacking in terms of our ability, both in structure, in regulatory processes and in funding, is the groundfish, for example, with our coastal tribes from Quinault, Quileute, Hoh, Makah—those tribes that participate in ground fish are trying to continue and keep up with the Federal and State managers and trying to establish good management as we have with salmon, but without the resources.

Some of the activities include hiring of port samplers, setting up observers on the ships; management and enforcement issues; plan development—we have to have management plans for all of our fisheries, including the ability to develop regulations. That is quite an expensive and difficult and time-consuming process. We are trying to do that off of a shoestring budget, which has been difficult, to say the least.

Another example is that of the shellfish. Bob Kelly and I belong to tribes that are participating in the shellfish management, after the recent court decision reinstating the management obligations that we have always had, and that is to look after and manage those resources in a way that supports our culture and our economies for the long term.

In shellfish, we have to look at doing the management plans, the beach surveys. We have to deal with access issues with landowners, health and safety and things that hit the market, and enforcement, as in all other fisheries. These types of programs, again, are being developed by the tribes with limited budgets and limited support in terms of authorization and definitions in co-management. So we are looking for the ability to continue doing these types of programs in a way that is constructive.

And, as always, we develop our plans based on scientific approaches in developing our regulations. Part of the development we have looked at are the rules and guidelines based on the secretarial order that we participated in developing. Tribes are currently also developing recovery plans for salmon as well as other species.

In looking at what kind of technologies we have to provide information to us, we have a couple of programs dealing with databases that we rely on. One is the salmon and steelhead stock inventory that gives us an idea of the health of the species. The other is the salmon and steelhead habitat inventory assessments project that gives us the habitat information that the health of the species is based on. These are planning tools. We bring these planning tools into other processes such as the shared strategy process in Western Washington. That process is one that we helped to develop, bringing in tribal, Federal, State and local governments in salmon recovery.

Development of recovery plans is challenging, and many times, we are not in sync with the Federal agencies or State agencies in finding the balance that works for us. One of the concerns is that the Federal agencies such as the National Marine Fisheries Service is sometimes looking at the fisheries in a more stringent manner than they do at the habitat issues that produce those fish. So we are trying to set up ways of evaluating the differences in that balance, and demonstrating that our actions are significant in the management we take.

One of the things I think helps to point that out is with the coastal funds that are sent from Congress to the Northwest, to the States and to the tribes. In a recent assessment of the expenditure of those funds, it was clear that it was the tribes that were taking the lead role in looking at research and monitoring and developing an understanding of what is actually impacting these stocks and how to deal with that.

The tribes have built a strong direction in management, but as Billy said, we do not want to lose in our management what is near and dear to us, and that is our culture. As we look at all of these species, we are always reminded that our culture is based on the utilization of species of many different types, for spiritual and economic ways of life. We have tried to lead the way for Federal and State agencies by developing strong research and management principles to stabilize fish and wildlife populations, to stabilize our culture.

We have helped raise the standard of the management in the Northwest, and raise the standard for the future of our people. The treaties with the tribes created an obligation by the United States to assure the continuation of our culture and practices. Without specific actions to sustain these species in a way that allows us to utilize them, we are very concerned that our treaty rights will be eroded. Many species we used to utilize in our culture are now gone, and some are present in such low abundance that they cannot support tribal traditions.

We are seeking reinforcement of self-determination; of government-to-government processes, co-management programs, where we have adequate decisionmaking; adequate funding to implement

the programs that we have developed; and adequate environmental protection of the species that we are dependent upon.

We also need stronger tribal enforcement to enable us the ability for better management of our individual areas; and especially continued research. In looking at inventorying species that we utilize, currently even though we are highly engaged in the management of fish and wildlife, we are not prepared or can we even deal with evaluating or inventorying all of the species that are important to us in sustaining our people.

In summary, I think what I would like to say is that we are looking for an institutional process that brings authorization for statutory and regulatory programs that reinvigorate and support the tribes strongly. We appreciate the time that you have given us.

Thank you.

Senator INOUYE. I thank you very much, Mr. Williams.

Mr. Kelly.

Mr. KELLY. I am here to answer any questions you may have, Senator.

Senator INOUYE. Mr. Johnstone.

Mr. JOHNSTONE. The same.

Senator INOUYE. Mr. Williams spoke of the high-tech equipment that is available now to you that would determine whether the habitat of the stock is healthy. Can you tell me whether in the last 50 years, stocks have increased or diminished in your area of concern?

Mr. WILLIAMS. That is a difficult question to answer. The abundance of salmon has somewhat varied. If you look at what we have identified in the past as three of the more critical issues that we face, one is the fishery itself, looking coast-wide at Alaska, Canada, and the lower 48 and how we manage those, and through the Pacific Salmon Treaty, we have rearranged those fisheries to allow better escapements, and I think we are seeing that now. Another issue is the ocean conditions, and the survival rate of the juveniles and the adults in the ocean. The third is predominantly land use or habitat issues.

With the advent of the salmon treaty and the changes we have seen an increase of fisheries returning to our watersheds because of the lowered fisheries that are now generated by the two countries. We have seen some improvement in ocean conditions, which may be temporal, which has allowed some increases to our watershed. The land use issues, the environmental is slow, and it is one that is to us more significant in the ability to keep the populations at a sustainable rate for harvestable levels.

So I think in answering that, we have seen some improvements from our management, but I think for the long term, we are not there yet. We still have a significant way to go in looking at the environmental problems that we are going to need to resolve.

Senator INOUYE. Does anyone want to add something?

Mr. JOHNSTONE. I think in the oceans, for us, the groundfish issues out in the ocean are an emerging fishery for us. The tools that we are developing are tools that are to be developed. The comment that I would have on behalf of the coastal tribes and the Quinault Indian Nation is we know certain things about the science, but we need the ability to be an active participant in this

process. We are working with the Federal agencies to try to get on the same funding level of the funding streams as States, for instance. It is very difficult for tribes, some of the money that does exist that passes through is not easily accessible by the tribes. So we need to develop those tools. We are working hand in hand with the science, but we are really stretched. As Terry said earlier, we are basically taking our basic fish management dollars through *United States* v. *Washington* and making them stretch. There have not been any funds available to any great degree to really assist us in development of our fish management on the coast in these groundfish fisheries.

Mr. KELLY. I am from the Nooksack Tribe. In the Nooksack basin, our recovery efforts are focused on chinook salmon. For the past 20 years, the two tribes within the basin have not harvested on those stocks for over 20 years. The positive side to that is that local governments have now stepped up because of VSA and are working with the local tribes to try to turn that around. The tribes have basically provided a leadership role in that they provide the glue that allows the local governments, the State agencies, as well as the Federal agencies to all sit down at the table to try to come up with solutions.

So I think if you look at some of the hatchery stocks, they have sustained at harvestable levels. Some have not, so it really depends where you take your snapshot.

Mr. FRANK. Senator, we talk about our tribes in our areas, but we are talking about the tribes throughout the Nation. We have reservations. We are not going anywhere. We can't go anywhere. That is our management area. We have use of the custom fishing areas or hunting areas throughout our country. We cannot travel any further than that. Along the Pacific Ocean, as Ed was just saying, we have designated areas. We do not go to California. We do not go to Oregon. We stay in that designated area that our treaty has, the boundary of our treaty that goes out into the ocean, whereas other fishermen come up into our areas and take fish and leave—other non-Indian fisheries.

So we have to manage our areas, and we do. That is what we are talking about. We need that capability of managing and working with other fishermen, as well as the States throughout our country.

Senator INOUYE. Of the fish harvested, about what percentage would be for personal consumption or tribal consumption, and what percent for commercial consumption?

Mr. WILLIAMS. That is a tough one. I would need to go back. Each tribe is individual, of course, based on population and area, but by and large the commercial activities in the past have been the predominant of the catch. More recently, because of the low abundance of salmon available, it would be hard to estimate right now, but I would guess that the consumption side is a much higher percentage now because people are keeping what they can for food resources, rather than selling. Market conditions have had some effect on that as well.

If I could, though, I wanted to mention one other thing—your question about the new technologies. It occurred to me that another thing that might be important to answer in that is, with the tribes

in the State of Washington, when it came to looking at the decline of the salmon, we initiated in the State the first watershed planning process that the State eventually adopted. We also initiated the development of watershed assessment methodology that not only the State has developed now, but the Federal Government through the U.S. Forest Services uses the same methodology.

We also developed the fisheries models programs that established the abundance and management of our stocks, to the point that we were told that because of those models, that is what helped secure the United States–Canada treaty when that was signed in 1985, because we had the data in the way to document the impacts.

Since then in all of our management, we have been on the cutting edge of developing the new technologies and instruments for management that are guiding us now in all of our management.

Senator INOUYE. Does the treaty say anything about who is responsible for research?

Mr. WILLIAMS. No; not specifically.

Senator INOUYE. Do you have any assistance from the U.S. Fish and Wildlife Service or NOAA?

Mr. WILLIAMS. In some cases, yes. We work pretty closely with National Marine Fisheries Service and NOAA on a lot of the research projects, and actually receive grants in some cases. Fish and Wildlife, we do some work with them and grants as well, but I would guess there is probably right now more from NOAA.

Senator INOUYE. Do you think you have enough research to back up your enterprise?

Mr. WILLIAMS. Definitely not. That was what I was saying at the end of my talk. In terms of the research and inventories, there is still a lot of work to be done to be able to, again, identify what it takes to sustain a culture by utilizing these species. We just do not have that information.

Senator INOUYE. Who do you think has the responsibility of conducting such research?

Mr. WILLIAMS. My direct response would be the United States. As we look at the United States and its many arms, we have National Marine Fisheries Service, NOAA, U.S. Fish and Wildlife Service, Army Corps, Agriculture, U.S. Forest Service. There are so many different aspects of the impacts that it takes a broad array of Federal agencies to support getting that information that is necessary.

Senator INOUYE. Your management of fishery resources is carried out under a government-to-government relationship based upon a treaty. Have there been violations of this treaty?

Mr. WILLIAMS. We have certainly had violations I think even today. The violations are not as blatant as they were in the past. What we are finding now is a lot of it comes down to choices in allocations of species. To our tribes, our belief is that the treaties, as the Constitution states, the treaties are supreme law of the land. To us, it means that we are a first priority. In many cases with the Federal agencies, we are not the first priority. Many other areas have become, like in the State of Washington, with the agencies negotiating habitat conservation plans. Forestry and agriculture, and then development have become more of a priority than

the tribes, which to us puts us at risk, and a risk that we should not have to bear.

Senator INOUYE. I am embarrassed to tell you this, but I have not seen those treaties. Do you have copies of those treaties so that the committee and staff can study these treaties?

Mr. WILLIAMS. We do not have them with us in person, but we can certainly get those to you, the ones that are important to us.

Senator INOUYE. We would appreciate that.

Mr. WILLIAMS. They are also on line. We can give you the addresses of how to access that.

Senator INOUYE. Because in order to better determine the role that the U.S. Government should assume or has promised to assume, we would like to see what the treaty says.

Mr. WILLIAMS. Certainly, as all of us in Indian country have grown up and gone into the different types of professions that we all do, our parents and our ancestors have taught us to look at those treaties closely. We do understand them, and we hope that we can help articulate our perspective on those with you.

Senator INOUYE. Gentlemen, I thank you all very much. If we may, we would like to send questions to you of a more complicated nature once we read your treaties.

Mr. WILLIAMS. We would be pleased to work with you.

Senator INOUYE. Thank you very much.

Our next panel consists of the executive director of the Columbia River Inter-Tribal Fish Commission of Portland, Olney Patt, Jr.; chairman of the Upper Columbia River United Tribes, Spokane, WA, Warren Seyler.

Welcome, Mr. Patt.

STATEMENT OF OLNEY PATT, JR., EXECUTIVE DIRECTOR, COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION

Mr. PATT. Mr. Chairman, Mr. Vice Chairman, members of the committee, my name is Olney Patt, Jr. I am the executive director of the Columbia River Inter-Tribal Fish Commission, serving its members the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes and Bands of the Yakama Nation, and the Nez Perce Tribe.

I wish to thank the committee for the opportunity to address you today. In January of this year, our Commission had the pleasure of hosting the Tribal Fisheries Co-management Symposium in Portland, OR. Many of the tribal organizations here today attended that gathering, as well as staff from this committee. We are pleased that this hearing is in large part inspired by and modeled upon the symposium.

I am here today to speak to you about our Commission's development, successes and challenges, and voice the member tribes' support for the development and introduction of legislation supporting Indian fish and wildlife management. The time has come.

One creature, more than any other, exemplifies the pride and perseverance of our people. We call him Wy-Kan-Ush. He is our brother salmon, and this bond, this sacred relationship between land, water, salmon and ourselves has unified, stabilized and hum-

bled the people, providing countless centuries of health, prosperity and well-being.

Holding onto this relationship has been a struggle, no less profound than the American struggle for civil rights, human dignity and equality. While the treaties contain noble words, alone they were not sufficient to govern those driven by land acquisition, hoarding of water rights, and an overall dominion over nature.

Since 1855 when our treaties were signed, the reserved rights therein have repeatedly been tested. The treaties were violated when a fish-wheel operator attempted to bar Indian fishermen from crossing his land, but the U.S. Supreme Court in 1905 and 1919 ruled in two cases that the Yakama fishermen had the right to cross land to access their fishing sites. The treaties were violated when the State of Washington said the Indian fishermen would have to obtain State licenses to exercise their treaty rights, but in 1942 the U.S. Supreme Court ruled the State could not require fishermen to pay license fees. The treaties were violated when the State of Washington insisted the treaties reserve no rights not enjoyed by non-treaty fishermen, and under the instruction of the State Attorney General Slade Gorton in defiance of a Federal court order, issued discriminatory fishing regulations. But the U.S. Supreme Court in 1978 ruled the treaty language secured the tribes a right to harvest a share of each run that passes through tribal fishing areas.

Though the courts ruled in the tribes' favor, States continued to find ways to circumvent these rulings, while the population of salmon, steelhead, lamprey and sturgeon and the region's other resident and migratory fish species continued to decline. Tribal fishermen decided to take matters into their own hands, and tribal, State and Federal Government leaders took notice. Tribal elected leaders whose duties included protecting treaty fishing rights, recognized that court rulings were not the sole answer to implementing the treaties. A broader intergovernmental approach was needed to deal with the myriad negative impacts on salmon runs that the governments could address through rules, regulations and other legal processes.

There was a particular need to address mitigation for hydropower impacts on salmon and the general status of the runs which in the late 1970's were under study for endangered species status.

In response to these problems and under the authority of the newly passed Indian Self-Determination Act, the tribes resolved to form the Columbia River Inter-Tribal Fish Commission, to ensure a unified voice in the overall management of the fisheries resource. The Commission is comprised of the Fish and Wildlife Committees established by each governing body and acts by consensus.

In the years following the Commission's 1977 formation, the addition of biologists, hydrologists, attorneys, enforcement personnel and public information specialists have increased its collective capacity. These professionals help the Commission carryout its purpose by providing expert testimony, scientific analysis, and in general meaningful participation in the many governmental processes affecting treaty resources. The Commission and its staff have assisted in establishing on-reservation fisheries programs that implement on-the-ground salmon restoration efforts in Columbia tribu-

taries, including the Yakama, Umatilla, Clearwater, and Warm Springs Rivers.

These successful recovery programs, combined with the Commission's core research and analysis, as well as the centralized enforcement effort, put the tribes in a key fisheries management role that has grown and evolved during the past quarter century. Though the Federal district court in Oregon still retains jurisdiction over *United States.* v. *Oregon,* the crucial court case still guiding the basin's treaty fisheries, the tribes through the Commission and tribal fisheries programs participate in every intergovernmental process on the river affecting water quality, fisheries management, habitat protection and mitigation.

The Commission has initiated or participated in many local, national and international agreements to restore and recover salmon in the basin. They include the Pacific Salmon Treaty between the United States and Canada, ratified in 1985; the fish and wildlife provisions of the Regional Power Act of 1980, resulting in expenditures of more than $1 billion for salmon protection, mitigation and enhancement during the last 15 years; the 1996 Federal memorandum of understanding among relevant Federal agencies to coordinate salmon recovery; the Columbia River Fish Management Plan of 1988 that allocated salmon harvests among the tribes and the States of Oregon, Washington and Idaho; and the Columbia Basin Law Enforcement Coordinating Committee, initiated in the early 1980's.

Having a seat at the table has furnished the States and Federal Government with the tribal perspective on the salmon resource, but key decisions still need to be made on important factors responsible for salmon's decline in the basin. Though many hope that endangered species protection would assist the restoration effort, conflicting Federal mandates have limited the effectiveness of Endangered Species Act authority.

In addition, while the tribes have successfully used hatcheries as a tool to rebuild salmon runs, the controversial State and Federal practice of mass marking and the failure of meaningful conservation restricts our efforts. Furthermore, while the tribes have developed a well-regulated fishery, the years without commercial harvest have eroded the market for tribal salmon, especially in light of the proliferation of farm-raised salmon.

These and other challenges are what the Columbia basin's treaty fishing tribes are facing. But the tribes now have highly capable fisheries programs and an intergovernmental agency that can act under the authority of treaties, the supreme law of the land, to protect tribal sovereignty and resources. With this capacity and these challenges, I reiterate the time has come for a strengthened relationship with Congress through Indian fish and wildlife management legislation.

On behalf of our member tribes, I thank you again for this opportunity. The Commission's individual tribal members will provide additional materials for the record. We look forward to your questions.

[Prepared statement of Mr. Patt appears in appendix.]

Senator INOUYE. Mr. Seyler.

STATEMENT OF WARREN SEYLER, CHAIRMAN, UPPER COLUMBIA UNITED TRIBES

Mr. SEYLER. Thank you, Senator, chairman, honorable committee members. Thank you for the opportunity to provide a snapshot of the fish and wildlife management activities of the Upper Columbia United Tribes.

My name is Warren Seyler. I am tribal councilman for the Spokane Tribe of Indians, and chairman of the Upper Columbia United Tribes, this inter-tribal organization.

Also present with me is Gary Aitken, chairman of the Kootenai Tribe of Indians, who is in the audience, and his vice chairman of the UCUT Tribes. Also joining me today in the audience is Greg Abrahamson, the vice chairman of the Spokane Tribe of Indians.

The five member tribes of UCUT, as we are called, are the Coeur d'Alene Tribe of Idaho, the Colville Confederated Tribes, the Kalispel Tribe of Indians, the Kootenai Tribe of Idaho, and the Spokane Tribe of Indians.

Today, my presentation and what I would like to talk about, differs slightly from some of the other testimony; 40 years ago, with the building of many of the dams, our salmon was cut off from the up-river tribes. So our issues tend to be a little different. We manage and we look at resident fisheries, other parts of wildlife. Although we do have endangered species in the up-rivers, our issues tend to be a little bit different.

Historically, our tribes shared a vast area of aboriginal grounds, from the present-day western Montana to the Cascades of Washington, and from the Canadian border to Oregon. Today, we proudly retain management and input into many of the responsibilities over approximately 450 miles of waterways, which include approximately 40 interior lakes, 30 dams and reservoirs. All of this falls within the 14 million acres of our aboriginal territories of the combined tribes.

Our current tribal reservations are used to store the water for the BPA's two major dams, Chief Joseph and Grand Coulee. Grand Coulee, which is the largest hydropower facility in the United States, as you will see in the written testimony of the Spokane Tribe, there are many unresolved and uncompensated issues concerning the impact of the Grand Coulee Dam.

Today, those two reservoirs lie over the top of our reservations. This gives us many concerns regarding fish and wildlife and other issues. Every day as UCUT technical staff try to work within the region, they are asked to make many decisions. In these decisions, they include looking at the Endangered Species Act, the Northwest Power Act, the National Historic Preservation Act, the Clean Water Act. They deal with superfund sites, regional growth, and trying to develop a relationship with local utilities, counties and other governments, all within our diminishing financial resources. My staff definitely has its challenges. As shrinking funds continue, the need and demands on the staff are growing.

Impacts of hydropower facilities have been devastating to the up-river fish and wildlife resources. Both have been in drastic decline for several decades. As ocean-going salmon were cut off 40 years ago by Grand Coulee, a complete change to our way of life happened. Other issues that we have to deal with because of this

change is having some of the highest levels of diabetes in the country. We continue to strive to get these issues resolved so we can hopefully put fish back into our people's diets. Like I said, it is just not fish and wildlife, but it has impacted our elders and our culture.

Today, UCUT is trying to take a leadership role, and it is a proactive role, I believe, not trying to remain isolated within our management activities. We are going out and using personal tribal dollars and finding dollars wherever we can squeeze them from to interact with our neighbors, the counties, the country governments, public and private utilities, and the multiple Federal agencies. We are trying to be proactive because we feel that if we can give these other entities the knowledge that we have, they will understand our programs and the things that we are trying to accomplish, and build those working relationships to overcome some of the problems that we have seen over the last multiple years.

Our primary program funding is acquired through the Northwest Power Planning and Conservation Council, an interstate compact of the four northwestern States. Recommendations for program funding are proposed by the Columbia Basin Fish and Wildlife Authority, a body of 13 tribes, 4 States, 2 Federal fish and wildlife agencies. Over the years, UCUT tribes have I believe taken the forefront in trying to resolve some of the regional issues and bringing all these entities together. Today, we still struggle to do that.

Each of UCUT's five member tribes depends almost entirely on Federal funding to manage fish, wildlife and habitats. Rate-payer funding from Bonneville Power Administration is an obligation to mitigate for the impacts of the hydropower systems, but additional congressional appropriations are needed to address the many endangered species, the Clean Water Act, and the National Historic Preservation Act, and other Federal statutory responsibilities.

We implore this committee to be very assertive on our behalf to ensure the funds are there for us to continue our efforts in the fish and wildlife programs. We feel that the money is very well spent, just due to our innovative and striving needs that our technical staff do go through. As I said, we are taking a proactive and aggressive interaction to try to meet with public and county utilities.

As for UCUT itself, let me take this opportunity to raise the committee's awareness to our organization's great need. Considering the geographic area that I have described, our brother organizations, the Northwest Indian Fisheries and the Columbia River Inter-Tribal Fisheries, which have endangered species, they tend to get a lot of coverage and a lot of voice. Unfortunately for the resident fisheries of the Upper Columbia United Tribes, although we do have endangered species in the Kootenai region, the burbot and the white sturgeon, we tend to be overlooked many times because we do not have the name "salmon" attached to us.

So I guess our need is funding, because we operate the five tribes organization, and split between four tribes and the office itself on a budget of about $300,000. That is divided between the four. Compared to the other organizations around the country, we have two staff members that cover the four States, so I just look for review on this.

Before I conclude, I would like to draw the committee's attention to the written testimony of the Spokane Tribe. It focuses on what we have learned as a result of the BPA and the dealings that we have had with them for the last 15 years. We have seen the financial crisis that they have gone through. This is where many of our programs get funded. We have tried to analyze that and make recommendations, not just attacking, but making recommendations on how we feel this organization and the region can benefit from what we have seen and what we have learned, and trying to turn that around and make it a positive relationship so they can uphold the trust responsibility of the U.S. Government.

Again, I appreciate your attention and interest in the fish and wildlife programs in the Northwest, and take a look at the challenges that we face as we try to improve the fish and wildlife management that is in our area.

Thank you.

[Prepared statement of Mr. Seyler appears in appendix.]

Senator INOUYE. Thank you very much, Mr. Seyler.

Mr. Patt, I gather from your testimony that since the formation of your Commission, matters have improved and fishing rights have been protected. Would that be an accurate statement?

Mr. PATT. I believe it is an ongoing process. Whether or not it has improved, I would say that the status quo has been maintained.

Senator INOUYE. What sort of relationship do you have with the Upper Columbia tribes?

Mr. PATT. We interface with the Upper Columbia tribes in the Columbia Basin Fish and Wildlife Authority, and in the Power Act funding for anadramous, resident and wildlife management in the Columbia Basin.

Senator INOUYE. You spoke of States trying to circumvent court decisions and such. Are they still doing that?

Mr. PATT. I believe so, yes. It is an ongoing struggle to maintain those rights, as I stated. That started back with the fish-wheel operators in the Winans case, and to this day States attempt to require permits to for instance harvest lamprey at our usual and accustomed fishing sites at Willamette Falls on a tributary of the Columbia.

Senator INOUYE. Mr. Seyler, what percentage of tribal income would fishing consist of?

Mr. SEYLER. Specifically to the fish catch, it is very little. Most of the revenues come from the public coming to the many streams and lakes that we have filled. Between the UCUT tribes, we have four fish hatcheries. We plant throughout our area about 2.5 million fish into the lakes and Lake Roosevelt and the different areas. So tying the revenues to fish, it comes more from the public coming in and doing the fishery catching.

Senator INOUYE. Is that a major source of income for tribes?

Mr. SEYLER. It is growing. Lake Roosevelt, which is the largest body of water, it is about 160 miles of reservoir, there are about 1.5 million visitors to that one lake alone. So it is growing as far as fisheries, that the public is coming to that lake. The white sturgeon in other areas in the smaller streams up-river of the Upper Columbia is also growing. As the Coeur d'Alene Tribe and the

Kootenai Tribe develop their hatcheries in those areas, it is also growing within those counties.

Senator INOUYE. So you would say that in all areas, fishing has expanded?

Mr. SEYLER. I believe up and to the last couple of years where funding has been stymied to keep the programs going, yes. Unfortunately, what we have seen sometimes is the funding to keep the hatcheries open in the different areas is questionable at this time. Our concern is that in order to keep those hatcheries open and to keep the fish going into the lakes and streams, it is almost each year we find the need to find ways to retain our biologists and our wildlife managers, because they fear for their jobs so they are constantly looking because of lack of consistent funding. So turnover in management abilities within our staff is pretty high, which in turn relates to the number and quality of hatcheries and fish that go into the lakes.

Senator INOUYE. Gentlemen, I thank you.

Ms. Murkowski, do you have questions?

Senator MURKOWSKI. No questions, Mr. Chairman. Thank you.

Senator INOUYE. Thank you very much.

Mr. SEYLER. Thank you.

Mr. PATT. Thank you.

Senator INOUYE. Our next panel consists of Natural Resources Department of the Confederated Salish-Kootenai Tribes of Flathead Reservation, Clayton Matt; the executive director of the Native American Fish and Wildlife Society of Colorado, Ira New Breast. Gentlemen, welcome.

Mr. Matt.

STATEMENT OF CLAYTON MATT, EXECUTIVE DIRECTOR, TRIBAL COUNCIL, CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD NATION

Mr. MATT. Welcome and good morning. Thank you. Mr. Chairman, I am here on behalf of the Federated Salish and Kootenai Tribes. Our chairman, Fred Matt, had intended on being here. Thank you for allowing me to sit in his place this morning. As you are aware, there was a death in our community that he was informed of just prior to his getting on the plane yesterday. I learned of that upon arriving here, so thank you.

I am honored to provide testimony on the status of the Confederated Salish and Kootenai Tribes' fish and wildlife programs. I will be brief, because we have also submitted written testimony for the record.

With the help of Public Law 93–638 and other Federal support and resources, we have developed an extensive tribal infrastructure over the years. Our infrastructure not only includes the tribal Natural Resource Department, but a Forestry Department, Health Department, Lands Department, and other enterprises and committees including cultural resource committees. Today under the Natural Resource Department, we are responsible for all of the fish and wildlife management that was previously provided by the Bureau of Indian Affairs [BIA] and a majority of that formerly provided by the U.S. Fish and Wildlife Service.

We work cooperatively with Federal and State agencies through contracts and grants and other agreements to ensure our resources will be protected for seven generations to come. We believe no tribe does a better job than the Salish and Kootenai Tribes.

For the record, let me state a few examples, two of our better examples. The Confederated Salish and Kootenai Tribes was the first to designate a tribal wilderness area by setting aside 92,000 acres. In addition, within that area is a specially designated grizzly bear habitat, a program unique in this country, we believe. For 90 days every year, access to this area is limited even for tribal members. Confederated Salish and Kootenai Tribes has a long history of protecting the native bull trout and west slope cutthroat trout, especially from hazards resulting from the BIA's irrigation system located on the Flathead Reservation.

We went to court to protect stream flows for the fish and other aquatic wildlife. As a result, the BIA implements in-stream flows throughout the reservation. We believe that when we protect the grizzly bear and the bull trout, we protect them not just for the Federated Salish and Kootenai Tribes, but we protect them for all Americans.

As a result of another landmark court case, we protect the quality of water in Flathead Lake, the largest natural freshwater lake west of the Mississippi. We protect it for the purposes of fish, wildlife and other recreation activities. The Salish and Kootenai Tribes Tribal-State Fishing and Hunting Agreement that resolved 12 year of litigation is viewed as a model in many ways for others in this Nation. Our late chairman, Mickey Pablo, and the former Governor, Mark Racicot, hailed this agreement as significant when they said:

> This agreement has shown that by working together, we can continue to enjoy this magnificent place we call the Flathead Reservation.

In addition to fish and wildlife programs, the Natural Resource Department manages other programs that benefit the fish and wildlife. For example, we are proud to operate an air quality program to help ensure a class-one air designation and a water quality program that regulates water quality according to high tribal water quality standards. We also operate a water management program that measures tribal water resources throughout the reservation.

Finally, for us the next logical step for our tribes in fish and wildlife program management is our proposal to manage the National Bison Range complex through a self-governance agreement with the U.S. Fish and Wildlife Service in the Department of the Interior. Since title IV was enacted in 1994 that authorized tribes to enter into agreements for management of non-BIA programs, we have been actively pursuing the management of the Bison Range. The National Bison Range exceeds the criteria in the law that allows us to negotiate for its management. Criteria requires at least one historic cultural or geographic connection. We are connected to the National Bison Range by all three criteria.

The National Bison Range is located in the heart of the reservation, on land originally reserved for our tribes by the Hell Gate Treaty. There are significant cultural sites on the Range, and the bison herd is descended from a herd originally raised by tribal members Charles Allard and Michael Pablo.

We are beginning negotiations next week and our goal is to have an agreement signed and forwarded to this committee by July 2003. We urge your support.

Thank you again for this opportunity. I would be happy to answer any questions after this, even now or subsequent to this hearing.

[Prepared statement of Mr. Matt appears in appendix.]

Senator INOUYE. Thank you very much, Mr. Matt.

I now recognize Mr. New Breast.

STATEMENT OF IRA NEW BREAST, EXECUTIVE DIRECTOR, NATIVE AMERICAN FISH AND WILDLIFE SOCIETY

Mr. NEW BREAST. Good morning, Senator. Thank you for hearing us here today.

My name is Ira New Breast, the executive director of the Native American Fish and Wildlife Society. I am also an enrolled member of the Blackfeet Tribe, neighbors to the Salish and Kootenai.

I am here today to speak of and to support development of the Native American Fish and Wildlife Management Act. What we would like to present to the committee here today is just a little background on the Society. We are a 21-year-old organization that was established by tribal fisheries and wildlife biologists, law enforcement officers, leaders, planners and administrators and fish and wildlife technicians.

Throughout that time, we have had the opportunity to hear many of the issues that surround Indian country in regards to fish and wildlife. During that time, through our intrinsic relationship with the various members of the tribes and tribal fish and wildlife programs throughout the country, we have been able to reflect on many of the issues that they face today and in the past. So we are here today to highlight some of those issues.

Frequently, the tribes of course speak of the Federal trust responsibility. This is something that is a legal duty on the part of the United States to protect Indian land and resources, fulfill treaty, congressional agreement and executive order obligations, and carry out mandates of Federal and judicial law for the benefit of American Indians and Alaska Natives. This is no less than the international and domestic duties that the United States faces.

Congress' highest trade exemplifies the good American conscience. Tribes rely on your honest willingness to champion and bond your actions to the edicts of this land, but also to rest your fortitude on the words of good intent. In this era of expanding international leadership and responsibilities for the country, what better way to build international confidence than by demonstrating excellence in the overall treatment of indigenous domestic sovereigns? In the face of mounting energy and resource use and to address solutions, express an example of the best commitment to the environment by enacting this legislation, which ensures quality standards and the integrity of management for present and future resource needs.

Indian country's interest in the environment is embodied, inherent and evident. Our fellow Americans dearly share this interest in their own values.

Protection of the trust resources is the cornerstone of the Indian trust responsibility. Typically, that is met through the Self-Determination Education Assistance Act of 1993. Tribes typically utilize that avenue in order to gain their funding and to raise their capacity of management programs for their fish and wildlife offices. Within the last 5 years, this funding has shrunk 20 percent. So we look to the development of this legislation to help offset and renew and reinvigorate tribal efforts to try and manage their own resources.

Some of the compelling difficulties of the tribes as they struggle to develop and sustain their own wildlife programs have to do with the wide assortment of Federal conservation programs which largely fail to include tribes as eligible to participate. Two shining examples is the Federal aid program, commonly known as the Pittman-Robertson, Dingell-Johnson and Wallop-Breaux programs. The proceeds from those excise taxes are approximately $450 million annually to the States, territories, and District of Columbia. Native American populations, Indian land masses and Indian water bodies are used to inflate formula factors that decide allocations, and Native Americans pay the taxes. Taxation without representation plays a role here.

Tribes understand the burden that States face in trying to manage their fish and wildlife resources, tribes understand this. Equity at the cost of the resource is not our strategy or intent. Rather, we call attention to the unfair injustice and await our trusted leaders resolve. In addition, as an example, the Endangered Species Act, section six, is absent of language affording tribes the means or capacity to manage their resident endangered species or species of concern. Over 30 ESA animal species and numerous plant species fall within the jurisdictions of the tribe. Current Federal agency resources fall short of filling the management gap need and more than often play an obstructive compliance role in economic development activities of poverty-stressed tribes. The proposed legislation would offset these shortfalls and ensure the integrity of the resource designed for protection and management.

Another important issue that our members speak of again and again is the encroachment of States on the jurisdictions of tribes in all areas of government activity, which also includes fish and wildlife authority. The tribes look to you, the Congress, to preserve and fairly protect our interests. The factors leading to State infringement on tribal lands and interests are many. At the core is a misled understanding of the funding process and allocations, in addition to a long history of misunderstanding and subjugation of Indian culture and society, and a failure to embrace and acknowledge the special trust commitment made by this country's great forefathers and their contemporaries.

It is erroneous for State leaders and State civil employees to assume that their attempt to have controlling authority over Indian lands will bring about solutions that will satisfy State citizenry, the State taxpayers. Any new burden of authority for the States on Indian lands will be paid for by the State residents in taxes. States easily overlook the special relationship Native Americans have with the law of the land. Congress, your constituents, know that

their State governments are leading them down this one-way endless financial road of commitment.

It is in the American people's interest to protect Native American and Alaska Native interests from States' unfair encroachment. One demonstrated method is to enact the Native American Fish and Wildlife Management Act and ensure tribes' capacity to manage the resource for the benefit of the environment and all American people.

Federal Indian lands reservations comprise about 55 million or 56 million acres, a number in-between there. Alaska Native lands comprise another 45 million acres. Ceded usual and accustomed areas comprise another 38 million lands in the United States. That amounts to the fifth largest State in the United States.

Indian tribes function as distinct and unique governmental, political, social and cultural entities operating on a government-to-government basis nationally and internationally. The language describing a treaty, congressional legislation, agreements, executive orders, Supreme Court statutes is unique to each tribe and molds the governing nature of each individual tribe's distinctive system of governance and authority. The contemporary culture of each tribe is autonomous today as it was in the past, distinctive and independent.

Indian reservation lands are diverse in habitat and represent many of the fish and wildlife species that naturally occur in the United States. Many species listed within the Endangered Species Act and many species of special concern are present throughout Indian country. The various habitats that support the game populations are extensive and persistent in a pristine state throughout most of Indian country.

Stressed economies at poverty levels have had the effect of safeguarding the habitat against development and destruction. As a result, an extensive fauna presence can be found throughout Indian lands.

One role of the proposed legislation is to further encourage the establishment and continuation of fish and wildlife codes and programs. Of the 557 federally recognized tribes, from the whole spectrum there are tribes that do not have fish and wildlife programs, to tribes such as the Salish and Kootenai that have outstanding programs. Under the act, this measure of legislation would look to fill that gap in equity among Indian country, of needy tribes that dearly want and wish to emplace programs of fish and wildlife management for the benefit of their people in the future, but are unable to for a host of economic and political and obviously funding reasons. We look to this measure to try and shore up that end of the sector of Indian country in regards to fish and wildlife.

Among the challenges tribes face, they must contend with two common misconceptions. One is that tribes are federally funded throughout their needs, and the other is that Indian casinos serve every tribe and their needs. This is not true. Tribal fish and wildlife management needs are straightforward. Fundamentally, they are a combination of capable personnel supported by sufficient resource capital, driven by a clear objective and purpose that encourages the affected public and governing body to embrace and sup-

port the best interests of all current and future aspects of the fish and wildlife resource.

The tribes' needs are many, from training to education to marketing services, internally and externally. There are miscellaneous needs, simple gasoline and maintenance, bullet-proof vests; 37 tribes border international borders, but yet are not looked upon to be incorporated within the homeland security system. Many of our areas have game wardens out there in these areas, and they are the only line of defense, yet they are untrained and they are unlooked for to support and participate equitably in the homeland defense schemes that are being proposed.

A comprehensive fish and wildlife data inventory and survey of biodiversity and human resources in Indian country is a crucial need to assess and measure achievements in target areas for maximum effect. In addition, the Inter-Tribal Bison Coop has asked me to mention programs that facilitate Indian bison conservation and management is dearly needed. Tribes see buffalo as a fundamental wild resource basic to contemporary existence and among the cumulative fishery and wildlife needs of tribes.

The Native American Fish and Wildlife Management Act is a long-awaited measure that will conscript funding and impart legal processes to tribes as they realize development and sustainable fish and wildlife conservation for the benefit of the resource and the benefit of Indian country and the United States.

Tribes rely on the strength of Congress to exercise legislative authority to ensure natural resource interests and to protect tribes from unjust exterior pressures and eliminate disparities. Where do we go if you cannot prevail for us? Much of our hope and ways of life to enjoy our natural destinies dutifully rest with this body. Thank you, Senator.

[Prepared statement of Mr. New Breast appears in appendix.]

Senator INOUYE. Thank you very much, Mr. New Breast, because I think your testimony will be very helpful if the committee decides to proceed with the bill that we failed to pass the last time. We are now looking at a successor bill, and the testimony that has been presented here will be very helpful.

As a matter of curiosity, Mr. Matt, are you in the grizzly and bison business?

Mr. MATT. We are trying to get into the bison business, yes.

Senator INOUYE. How many grizzlies are there in your tribal area?

Mr. MATT. It changes from year to year. They have a wide range of area, and could range anywhere from 1 dozen to 15 or 20 in any given moment.

Senator INOUYE. Are they on the endangered list?

Mr. MATT. They are listed, yes.

Senator INOUYE. And what of the bison herd?

Mr. MATT. Our bison herd—well, the bison herd is healthy. The bison herd that is on the Flathead, of course, is on the National Bison Range currently managed by the U.S. Fish and Wildlife Service. As I mentioned at the end of my remarks, we are just beginning to enter into negotiations with the Fish and Wildlife Service hopefully to manage the Bison Range in the near future.

Senator INOUYE. You manage that, but you also market that do you not?

Mr. MATT. Excuse me, no, we do not manage the National Bison Range, and no, we do not market bison. We do not have a bison herd at Flathead. We would like to be able to manage the National Bison Range and are very excited about the opportunity to negotiate with the Fish and Wildlife Service to do so. We are beginning negotiations next weekend and hope to have a settlement with them very soon.

Senator INOUYE. What is the potential outcome of your negotiations?

Mr. MATT. The potential is great. I think it we are always very optimistic about these opportunities. We tried to do this a few years ago. It fell through. I think a number of people have mentioned a lot of the difficulties that many tribes have in trying to deal with these issues, these organizations. I think Ira mentioned the political misconceptions. Certainly, there are political misconceptions about tribal management issues at Flathead, and those tend to get overwhelming for people at times. But we have a new year, a new opportunity for us. We are taking a fresh approach, and we have some people that we are negotiating with that are very interested in seeing this succeed, and we are interested in seeing this succeed. Certainly, we have the capability of seeing this through, so we would like to be able to do that.

Senator INOUYE. Have you experienced some of the problems that Mr. New Breast cited?

Mr. MATT. Probably. We do not border Canada for example, but in terms of when he was mentioning bullet-proof vests, I think while we should not need them, I think we see those kinds of issues as issues we deal with both on-reservation and regionally throughout our aboriginal territory because there is always conflict in our area, simply because of the misconceptions and the misperceptions and the historical relationships between the community and the tribal people and tribal governments, cities, counties and the State. So some of that does exist today, but we are working very hard to try to overcome that, and I think probably one of the best ways we can overcome that is to continue to get your support, this committee's support, congressional support for developing many of the programs that we talked about. If we can continue to do that, lay a solid foundation for the future, we can have something to turn over to our kids and our grandkids.

Senator INOUYE. Senator Murkowski.

Senator MURKOWSKI. Mr. New Breast, your comment about homeland security, when I was up in Alaska this week, I heard the same comment or a similar comment about the tribes not being involved with the homeland security efforts. I would ask you if you have a specific message that we could deliver to Secretary Ridge?

Mr. NEW BREAST. Typically, what I understand is being proposed is that the homeland security dollars will go out to the FEMA offices within the State. So it is another case where tribes are mandated to go through the State in order to receive their Federal funding, which is not a scenario that tribes like to be entered into. From State to State, they experience different results. Some States may have very complicated application processes that is difficult for

a tribe to meet. Other States are working very closely with their tribes to facilitate and help them in their needs as they approach the State for those type of funds.

Senator INOUYE. Thank you very much, gentlemen.

Mr. NEW BREAST. Thank you, Senator.

Mr. MATT. Thank you.

Senator INOUYE. Before we proceed, I have a statement for the record submitted by Senator Maria Cantwell. Senator Cantwell regrets that she cannot be with us today. Without objection, the statement will be made part of the record.

[Referenced document appears in appendix.]

Senator INOUYE. Our next panel consists of the following: Policy Analyst, Great Lakes Fish and Wildlife Commission, James E. Zorn; the executive director of the 1854 Authority of Duluth, Minnesota, Millard J. "Sonny" Myers; and Jon Cooley, interim executive director, Southwest Tribal Fisheries Commission.

Welcome, gentlemen.

Mr. Zorn, may we begin with you.

STATEMENT OF JAMES E. ZORN, POLICY ANALYST, GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION

Mr. ZORN. Good morning, Mr. Chairman, members of the committee. On behalf of our 11-member Ojibwe Tribes in the Lake Superior Region, northern Wisconsin, the U.P. of Michigan, and northeastern part of Minnesota, thank you for allowing us to be here today.

On a personal note, if I may wish my daughter Rachel a happy 15th birthday today. I would like to do that on the record. I will see you tonight, Rachel.

We have submitted rather extensive written testimony to help provide part of the record that the committee might use in helping to talk to the other members of Congress about tribal natural resource programs. So we will let that stand.

Today, what we would like to do is just highlight a few of the themes that we think you will hear today, and that are illustrated by the types of programs that we and our member tribes do with regard to their treaty rights, which really as you heard from other witnesses, are intended to sustain the rhythm of nature, the rhythm of a people, of a culture; to sustain a people through the exercise of sovereign authority and prerogatives in the area of natural resource harvest regulation and management.

After all, for our member tribes, as we try to show in our written testimony, ecological sustainability equals Ojibwe sustainability. The ties to nature are just that close. Virtually all of the resources in the ceded territory are used in one part of Ojibwe life, in one way or another, whether it is for a naming ceremony; whether it is for medicine; whether it is to eat; perhaps a little economic gain; certainly in religion and culture.

So one of the themes that we would like to highlight today is that there is just more than fish and wildlife involved. The hearing today is on the status of fish and wildlife programs. At least in our area and for our member tribes, wild plants also are very important. Let's look at wild rice for example. An important part of the Ojibwe migration story as you move from east to west is that "you

shall continue to move until you find the food that grows on the water." That is wild rice in our region for our member tribes. It is important as a food source, important as a cultural resource. In many ways, just as you hear reference to the salmon people, the Ojibwe in many respects are wild rice people.

Wild rice is ecologically important. Many species, in particular the migratory water fowl that fly from Canada down to the Gulf of Mexico, rely on wild rice for their diet. So wild rice illustrates that when we talk about tribal programs, it is more than fish and wildlife. It is a wide range of plants for medicinal purposes, religious purpose, food sources and so on.

The other thing about wild rice that is intriguing is that it illustrates traditional regulatory systems within at least the Ojibwe culture, and we are confident that is the case throughout the country. Wild rice was regulated through the years within Ojibwe society by rice chiefs. They were the ones who would say to the people:

> The rice is ripe, go ahead, you may harvest it today; no, not today; it is not ripe yet; let's wait a couple of days.

Interestingly enough, that system has been codified now as part of a treaty rights litigation in northern Wisconsin. The lakes that are jointly regulated by the State of Wisconsin and the Ojibwe Tribes in northern Wisconsin will not open until there is agreement between the rice chiefs and the State authorities that it is time to open those lakes. So there has been influence there in that system.

The other interesting part about wild rice is that the State of Wisconsin looked to the tribes to define what the State harvest regulations should be, particularly the harvest methods. The State was discovering that the non–Indian harvesters were using any method to knock down the rice into the canoes and they were wrecking the plants, and you were not getting the harvest and you were not re-seeding. So the State literally adopted into State statutes the tribal harvest method and the traditional regulations that the tribes had in place for generations.

This helps illustrate, Senator, you asked the question before about scientific study and scientific knowledge. Our member tribes take great pride in the traditional ecological knowledge of the people, of the elders, that has been passed down from generation to generation; that knowledge that has listened to the rhythm of nature; the stories that talk about when it is okay to harvest; how if you harvest in the proper way, that resource will be there year after year, generation after generation, to sustain the people and to sustain the other parts of the ecosystem. So wild plants are important to the tribes in the Great Lakes region.

The other aspect we would like to highlight would be the relationship between human health and traditional food diets. Obesity, diabetes, I think we have all heard about these, the health problems in Indian country. There are a number of studies that have been undertaken and that are underway at medical colleges and elsewhere in the United States and Canada that demonstrate the relationship between improved health and greater reliance on more traditional foods such as wild rice, fish and so on.

One of the problems that we run into, and we want to highlight one of the aspects of our program for you today, is that the fish have become contaminated, for example, with mercury and other

contaminants. Rather than issuing a fish consumption advisory that says "you should not eat fish because it is not good for you," we want to try and help members find the fish that have low concentrations of contaminants or no concentration of contaminants, so that they know what they can eat in what amount. Because as you know, the consumption patterns of tribal members are different than the non-Indian angler.

When we look at our fish consumption patterns for our tribal members, they peak in the spring when the fish are running, and they peak again in the fall as fish are running. The consumption advisories issued by States, for example, do not take into account that consumption pattern. They are based upon perhaps somebody like me and my family, a few fish a week you might catch; you might eat a meal or two here or there, but it is not as much a part of my diet as it would be for tribal members.

What we have done, and we have used our BIA funds to leverage other funds from Health and Human Services and EPA, we have helped produce these types of color-coded maps. We go sample the fish; we find out the mercury content in those filets of fish; we classify the lakes, and if Secretary Ridge would excuse us, we came up with the color-coding first, orange for the hot lakes and so on. We categorize it lakes for women of child-bearing years and children, and then for us older guys and women who are not going to have kids anymore. The concentrations matter differently for those segments of the population.

We give these maps to tribal members to help them make informed decisions about how they can keep fish as part of a healthy diet, rather than to say the fish are so polluted, do not eat them. We are working hard to try and keep air pollution from emitting mercury into the air and then into the ecosystem. We cannot do it all, but we can help people find healthy fish.

So this is an aspect of our work that we could not do without BIA dollars. It helps illustrate that we leverage other funding from other agencies to do that.

Finally, a couple of points, Senator Inouye, and this relates a lot to your experiences in Wisconsin back in the late 1980's, the social context and the partnership context. Much is often made about how the tribal rights and the tribes may not be compatible with State sovereignty and States' rights. I think as you saw in the preparation of the report, Casting Light Upon the Waters, in Wisconsin in the late 1980's, the State, the Federal Government and the tribes got together and said this just is not so; we can do it together.

In building upon that effort, most recently the United States Fish and Wildlife Service did a strategic plan for its fisheries program and brought together a series of partners under the Sport Fishing and Boating Partnership Council, and issued a report, America's Aquatic Resources Are In Crisis. One aspect of the report says, we cannot fix it without tribes; we need them; they are important partners.

So just as a reminder, it does work; tribal natural resource management is not incompatible with State sovereignty, as Justice O'Connor said in the *Minnesota* v. *Mille Lacs* case in 1999. But as a reminder this last spring, we did start seeing nails at boat landings, put out there so that when tribal fishers launched their boats,

they would get flat tires. We always have to be mindful that as tribes try to do the right thing, there are those out there who may want to stand in their way for reasons not related to the quality or legitimacy of the tribal programs.

Thank you for the opportunity to be here today, and we are happy to work with the committee and Congress in any way we can to help strengthen congressional support for these types of programs.

[Prepared statement of Mr. Zorn appears in appendix.]

Senator INOUYE. I thank you very much, Mr. Zorn.

May I recognize Mr. Myers.

STATEMENT OF MILLARD J. "SONNY" MYERS, EXECUTIVE DIRECTOR, 1854 AUTHORITY

Mr. MYERS. Good morning, Mr. Chairman, members of the committee. My name is Sonny Myers. I am the executive director of the 1854 Authority. We are an inter-tribal natural resource management organization which implements the off-reservation or ceded territory hunting, fishing and gathering rights of the Bois Forte and Grand Portage Bands of the Lake Superior Chippewa. This is in the territory ceded in the Treaty of 1854.

It is about 5 million acres of resource-rich land in northeastern Minnesota. It is also an area, that as my colleague here was saying, we are practically neighbors, rich in fish, wild game and also a lot of plants that have in the past and continues today to support a subsistence, although somewhat supplemental, but nonetheless subsistence lifestyle. It is also an area that contains significant history and significant links to the history and culture of the Chippewa in our neck of the woods. Basically, it is our home.

So I want to thank you for the opportunity to be here this morning, and take just a couple of moments to highlight a couple of the successes, and also provide insight to some of the challenges. We also have provided written testimony that goes into a little bit more detail.

Since we are dealing exclusively with non-reservation lands, cooperation with non-tribal agencies is a must. This is one of our ongoing struggles, but also avenues of success. So cooperation with the State, Federal and other agencies and protecting, preserving and enhancing these resources in northeastern Minnesota has been something we are continually active in.

One thing I would like to highlight, and you will hear over and over, is really recognition of the tribes' rightful place among the stakeholders in managing these resources on non-reservation lands. It is one of our challenges. Hopefully, it will be something that may come out of a potential Indian Fish and Wildlife Act.

But successes have been made. A prime example is we are in the second year of a multi-year moose study where we have collared 60 moose. This is actually a highly valued food source of the Bands, as well as other folks in Minnesota. We will be tracking these animals in an effort to gain a better understanding of their biology, specifically their mortality. This project is a cooperation between the Minnesota Department of Natural Resources, the U.S. Geological Survey, and the Fond du Lac Band who is also a signatory to the 1854 Treaty. The results of this project will definitely benefit

all, both Indian and non–Indian alike, so we think it is a prime example of the cooperation that is going on up in our neck of the woods.

Another shining example has been the BIA Circle of Flight Program, which provides for wetland and waterfall enhancement projects to tribes in the Great Lakes region. I would like to note that with these funds we have been able to develop multiple partnerships. The tribes have been able to take about $6.7 million of these funds over the history of this program and leverage an additional $18 million with other partnering agencies. These partners are not only governmental agencies, but also private organizations such as Ducks Unlimited. In one of our projects, we had an investor who was a private individual who invested in a project in memory of her husband's love for wildlife. So there are multiple, multiple partnerships that have come out of this Circle of Flight Program.

Unfortunately, this funding has found its way to the cutting block. It was slated for cutting in 2003, but was successfully restored after some pretty aggressive action by the tribes. It is again slated for elimination in 2004, and I would like to take this opportunity to urge Congress to make this program permanent. It is a real great beneficial program where the dollars actually do hit the water, and not a lot of bureaucratic money is spent in that process, or I should say administrative costs are minimal. If I can provide any further information about this program, I would be more than happy to do so.

And finally, our program is funded through the Bureau of Indian Affairs by a 638 contract, and obviously we could always use more to do more. But we have more of an immediate concern which is we have been in existence about 15 years and we are slowly but surely feeling the affects of funding that has remained relatively stable, which we are happy with, we are not complaining about that, and we have always tried to be content with that, but at the same time expenses have increased. We have had to deal with these accordingly. Because we are so small, we have nine full-time employees, and three of them are administrative, two biological and four conservation officers. A loss of even one position can have a significant impact.

For example, when my predecessor testified before this committee 10 years ago, we employed five conservation officers to patrol that five million acres. There is a lot of land out there. Today we have four, and with the recent significant increases the last couple of years, which are no news to everybody, but insurance, you name it, it has gone up. We may soon be faced with further cutbacks.

So I would like to close by stating our appreciation to Congress for consistently earmarking funds for the 1854 Authority in the Interior Appropriations. These are the lifeblood of the Authority. We strongly believe great things are being accomplished up in the Great Lakes region, and with continued funding and support of Congress we can continue to move in that positive direction to hopefully establish the tribes as legitimate stakeholders in the management of resources in the 1854 Treaty area, as well as other treaty areas.

Thank you for your time.

[Prepared statement of Mr. Myers appears in appendix.]

Senator INOUYE. Thank you very much, Mr. Myers.

Mr. Cooley.

STATEMENT OF JON COOLEY, INTERIM EXECUTIVE DIRECTOR, SOUTHWEST TRIBAL FISHERIES COMMISSION

Mr. COOLEY. Good morning, Mr. Chairman, members of the committee. My name is Jon Cooley and I am the executive director of the Southwest Tribal Fisheries Commission, which represents tribes located in New Mexico, Arizona, Utah, Colorado, Nevada, and Southern California.

I appreciate the opportunity to present remarks on tribal fish and wildlife issues affecting our member tribes, and I respectfully request that my oral remarks and my written testimony be entered into the record.

Senator INOUYE. I can assure all witnesses that your prepared statements are all part of the record.

Mr. COOLEY. Thank you.

Indian reservations in the Southwest contain a unique diversity of landscapes and accompanying resource management challenges requiring tribes in the region to exercise stewardship over large expanses of lands, fish, wildlife and other resources. These tribal lands embrace the full spectrum of ecosystems and habitats the present opportunities in terms of sustaining tribal communities and developing compatible resource and recreation-based economies, while also conveying tremendous responsibilities and challenges in providing for the sustainable management and conservation of these diverse resources.

Our member tribes depend in part on fish and wildlife resources to sustain their cultures, economies and associated resource conservation programs. Our tribes desire to pursue sustainable economic development opportunities that support tribal economies and conservation programs. Southwest tribal lands have tremendous potential for economic development, yet our tribes continue to face significant unmet needs and struggle with building and funding fish and wildlife management capacity.

It is particularly frustrating to tribes in the area that while the Department of the Interior has spent hundreds of millions of dollars in recent years on improving Indian trust, very little of that money has flowed directly into tribal resource management programs or related economic development initiatives. This is a sad irony, given that tribal lands and resources comprise over 90 percent of the Indian trust corpus.

Despite the Department of the Interior's lack of emphasis on these issues, many of our member tribes have developed and rely upon economies that are natural resource and recreation-based, with tribal recreational programs evolving into important components of their social fabric and economic viability.

Equally important, tribal recreation economies provide valuable revenue that generates local employment and enable some tribes to partially fund conservation programs. By employing their own management and regulatory structures, our tribes have demonstrated the ability to build sound management programs that

have become important contributors to the development of regional economies and resource conservation efforts.

For instance, our tribes have developed successful world-class big-game hunting programs and quality recreational fisheries. This generates public recreation and economic benefits extending well beyond tribal boundaries. On the conservation front, our tribes also play instrumental roles in successful native fish recovery and habitat restoration programs in the region.

Despite these advances, the majority of tribal fish and wildlife programs continue to struggle with developing the biological and management capacities needed to adequately sustain these diverse resources. Moreover in recent years, the U.S. Fish and Wildlife Service policies have shifted away from tribal assistance programs in favor of the Endangered Species Act and related preservation priorities. This has gradually deteriorated tribal recreational fishing programs and the national fish hatchery facilities upon which they depend. For decades, the national fish hatcheries system has sustained both cold and warm water fisheries on tribal lands and have productively served tribes in developing their respective recreational fishing enterprises and conservation programs.

This cornerstone hatchery infrastructure includes facilities built on tribal lands like the Mescalero National Fish Hatchery located on the Mescalero Apache Reservation in New Mexico, and the Alchesay-Williams Creek National Fish Hatchery complex located on the Fort Apache Indian Reservation in Arizona.

Prior to its November 2000 closure, the Mescalero National Fish Hatchery supported the recreational fishing programs of 17 tribes in New Mexico, Arizona, and Southern Colorado. The closing has had a devastating impact on the affected tribal fisheries programs. Moreover, we understand that the future operation of the Alchesay-Williams Creek complex, which presently provides catchable trout to 23 tribes in Arizona, New Mexico, and Southern Colorado, is in similar jeopardy of perhaps being closed.

The lack of emphasis by the U.S. Fish and Wildlife Service toward these facilities on tribal lands has fostered a negative relationship between the agency and many of our tribes. In fact, the closure of the Mescalero facility was a key factor in the establishment of our Commission.

Since its inception, the Commission has provided a forum for tribes to meet and discuss issues with both the U.S. Fish and Wildlife Service and the BIA. This has resulted in improved relations and mutual understanding with these Federal agencies.

In summary, our tribes organized and developed the Commission to confront the numerous fisheries challenges and to further develop initiatives that promote sustainable economic development and enhanced conservation capacity-building on tribal lands. Our immediate efforts include supporting the Mescalero Apache Tribe as it moves forward in securing renovation and operating funds needed to reopen its valuable cold water hatchery facility, and supporting Arizona's White Mountain Apache Tribe as it pursues renovation funding for the Alchesay-Williams Creek complex. Furthermore, the Commission supports member tribes in developing reliable funding mechanisms for fish and wildlife management pro-

grams which are fundamental to tribal sovereignty and self-determination.

To balance economic and conservation objectives, the Commission recognizes the value of building meaningful, well-coordinated partnerships with Federal, tribal, State, and local interests.

Mr. Chairman, this concludes my remarks. I thank you again for the opportunity to present this testimony, and on behalf of our member tribes, I invite the committee to the Southwest to enjoy some of the best recreational fishing in the country.

Thank you.

[Prepared statement of Mr. Cooley appears in appendix.]

Senator INOUYE. I thank you very much, Mr. Cooley.

Mr. Zorn, about 13 years ago I went to northern Wisconsin because I was told that that area was on the verge of bloody violence over the exercise of treaty fishing rights. There were people with shotguns shooting at tribal fishermen. I thought that all of this was resolved, but I gather that it still goes on.

Mr. ZORN. It still does go on, Senator, perhaps more subtly. I think the lesson has been learned about the civil disturbances at the boat landings and the presence of a lot of people there, but there are still ways that people who do not like the tribes and their treaty rights will express themselves, like through the nail at the boat landingss or through some verbal harassment around the lake. It is more isolated. This is more in East Central Minnesota where the rights were just recently affirmed. So the goal now is to nip that in the bud, and hopefully it will not happen like it did in Wisconsin. It is just a reminder that tribes need Congress to stand by them in recognition of their rights.

Senator INOUYE. On the Circle of Flight, Mr. Myers, how much was cut off?

Mr. MYERS. For 2003? I am not sure of the exact numbers. I believe we got $900,000 for 2003, but it was slated to be totally cut off for 2003, and then it was reinstated by Congress. A lot of tribes came and talked about the program, the real benefits of the program. It is on the chopping block again, to be eliminated completely.

Senator INOUYE. $900,000? Well, we will do our best to put it in there. I do not think that will bankrupt the country.

Mr. MYERS. I would just would like to add that it is a really good program. I can attest from working on the projects. Most of those dollars actually hit the water or the wetland or the wildlife or the waterfowl. There is very little administrative moneys used for that. The other benefit is, especially for those of us, well, I should say for all tribes, it allows us to be players in the stakeholder game out there in the natural resource management game. So it is a great program.

Senator INOUYE. I am very interested in your national hatcheries program. Will you sit with members of my staff to give us a better understanding of the hatcheries program? What is the amount of Federal funds that was involved in that?

Mr. COOLEY. In the case of the Mescalero Hatchery in New Mexico, it was a U.S. Fish and Wildlife Service hatchery, and I believe the operating funds that they relied upon annually to run that facility was right around $300,000 or $350,000 a year. That includes

staff and operating funds. In the case of Alchesay-Williams Creek, keep in mind in the written testimony you will see that it consists of a complex of two hatcheries, and those combined facilities I believe receive about $800,000 a year to run the entire complex of the two hatchery facilities.

Senator INOUYE. Did the Inks Dam, Williams Creek, Willow Beach, did they also receive Federal funds?

Mr. COOLEY. Right. Inks Dam and all of those hatcheries that you have listed are all within the Fish and Wildlife Service National Fish Hatchery system.

Senator INOUYE. They were all cut out?

Mr. COOLEY. No; Inks Dam is still running, although there has been discussion about its future as far as producing warm water species. Willow Beach is located in Arizona. It is also a national fish hatchery within the National Fish Hatchery system. Its issues are more in terms of converting what previously had been recreational fish production, namely rainbow trout in particular. They are moving more and more through time into native fish production, and thereby cutting off some of the sport fish supply.

Senator INOUYE. To revive the Mescalero and the Alchesay-Williams would be about $900,000?

Mr. COOLEY. Combined?

Senator INOUYE. Yes.

Mr. COOLEY. A little bit more, I think. Alchesay-Williams Creek is still an open facility. Their problems is that it is a deteriorating facility. I think it is 80 years old, probably, and they do need some renovation money to keep it. Plus, the drought in Arizona has been affecting its production as well. In the case of Mescalero, it is a matter of reopening the facility in its entirety.

Senator INOUYE. Mr. Myers, will you sit with the staff to discuss the Circle of Flight, and Mr. Cooley, the fisheries?

Mr. COOLEY. I would be happy to.

Senator INOUYE. We will see what we can do.

Mr. MYERS. Thank you.

Senator INOUYE. I thank you all very much.

Senator MURKOWSKI. Thank you, Mr. Chairman, for giving me the privilege to introduce the last panel here this morning, a group of fellow Alaskans. First we have Gordon Jackson, the director of the Business and Sustainable Development Central Council of the Tlingit and Haida Indians of Alaska, from Juneau. We also have Patty Brown-Schwalenberg from the Chugach Regional Resource Commission out of Anchorage, AK; and also Tom Harris, president and CEO of Alaska Village Initiatives, Inc., from Anchorage.

Gentlemen, ladies, welcome.

Mr. Jackson, if you would like to begin the panel here this morning, we would appreciate your comments. Thank you for coming all the way.

STATEMENT OF GORDON JACKSON, DIRECTOR, BUSINESS AND SUSTAINABLE DEVELOPMENT CENTRAL COUNCIL, TLINGIT AND HAIDA INDIANS OF ALASKA

Mr. JACKSON. Thank you very much. I am pleased to be here. Thank you very much for the opportunity to speak on behalf of the

Native people of Southeast Alaska regarding this important legislation you might be considering.

I represent the Southeast Alaska Inter-Tribal Fish and Wildlife Commission that includes most of the federally recognized tribes of Southeast Alaska. I serve as the manager of the Division of Business and Sustainable Development for the regional tribal organization, the Central Council of Tlingit and Haida Indian Tribes of Alaska. We have over 26,000 members throughout the Pacific Northwest.

It is a rather interesting situation when you combine business and sustainable development. I think I will divert from my formal comments that I have submitted for the record, and just outline some of my suggestions that I have that can be useful to you.

Sustainable development, we are hopeful that over the next few months, the new governor will settle one of the issues relating to Alaska Native people, which is the settlement of the subsistence rights of Alaska Natives. He made that as a campaign promise, and we are looking forward to seeing a settlement of that. But within our Sustainable Development Division, we truly believe that management at the lowest common denominator to be the best system of management for subsistence rights for Alaska Natives. I say this in all honesty.

Many smaller communities in Southeast Alaska have been implementing such a system. In the community of Angoon, the only community in the Admiralty Island area in Southeast Alaska, had a real crisis last several years in one of their sockeye creeks. They were losing population in that creek, and that community took it upon themselves to look at it and say, we are not going to harvest any sockeye from that stream. So the community went hundreds of miles away to harvest the sockeye that was needed because they wanted to bring back the numbers so that they can in fact keep that population healthy, so that their subsistence way of life and protecting that wonderful species could be retained into the future. They did so, and they find over the last several years in following this that the stream is gaining health and has continued to do that.

In another community, the community of Kake basically working with the State and also the tribal government of Kake, the Organized Village of Kake, took it upon themselves in working with the State of Alaska to try to look at managing and making sure that the runs in Falls Creek about 30 miles to the west of Kake remained healthy. They did this together. I truly believe that one of the things that in the future relating to this could make the subsistence way of life a healthy system is that everyone sits together, the State, Federal Government, tribes and organizations, manage a way of life so that it is sustainable. I think there are all kinds of other models throughout Alaska that are working in relation to co-management.

I also say that in my position I deal with economic development. It is really rather interesting to note in my 57 years of life, I see a tremendous change in the economic system in Southeast Alaska. There are a lot of people that have addressed the issue of economic development. My dad was the president for the Organized Village of Kake for most of my life when I was growing up. The president handled the cannery within the community of Kake.

It is interesting to note in looking at the State of Alaska that people are always questioning whether there are tribes in the State of Alaska, and it is always fascinating for me to listen to constant debates relating to this. But there are tribes in Alaska. They have been there forever. Over 70 years ago, the Indian Reorganization Act of 1934 was extended to the State of Alaska in 1936. That has resulted in most of the Southeast Alaska communities organizing into Indian Reorganization Act corporations. All of the communities in Southeast Alaska became one, and many of them became real proud owners and participants in the economic development of the fisheries in Southeast Alaska.

These tribes and tribal organizations owned fish canneries throughout Southeast Alaska, and the communities of Kake, Klawock, Hydaberg, Angoon, Metlakatla, and Hoonah owned fish traps. They owned huge fishing fleets. They were real proud fishing fleets. They owned fish traps, like I said, and the canneries in most of these communities were very, very healthy economically. But with the declining fish runs in the 1950's, many of these communities began to lose money. The people who funded these operations, the BIA through loan programs, started to closely scrutinize these kinds of economic development-type projects. By the 1970's, most of these canneries left many of these smaller communities. Therefore, many of these smaller communities lost the huge fishing fleets.

I can give you some examples of the loss of some of these fishing fleets, and many of these fishing fleets are a direct result of not only the loss of processors, but also policies of the State of Alaska. Intentionally or unintentionally, the State of Alaska got rid of the fish traps and also included the limited entry fishing programs. With the loss of fish traps and processors, many of these tribal fishermen left the industry. I can tell you some of these statistics today, and I feel really, really sad.

In the community of Kake, when the limited entry fishing program first started, there were 27 permits in that community. Today, there are only eight really functional and very active permits. In the community of Angoon, they had 27 limited entry permits. They now have one active permit. In the community of Hoonah, who is a very, very proud member of the fishing fleet, had over 60. They began the operations with the Icy Straits fishing, which could have begun in late June, but we were stopped because of the policies of the State Department of Fish and Game, which basically saw a lot of the early runs over-harvested in the Icy Straits area. The community of Hoonah has suffered greatly because of the loss of this economic development-type activity.

Few native corporations in Southeast Alaska have taken it upon themselves to make this a part of their portfolio. One community in Southeast Alaska, the community of Kake, basically invested a lot of their activities into the fishing industry. As a result, they have taken it upon themselves to come up with value-added products development, and have begun to bring back hopefully the industry that has become part of the livelihood of many of these smaller communities over the last several years. It is coming back in that community, and hopefully over the next several years we will be able to provide some assistance and policies relating to this,

so that it could become part of the economic development activity of the whole communities.

But basically, Mr. Chairman, I appreciate your looking at these management-efficient wildlife activities. Like our brothers and sisters in the South 48, we fully support the activities relating to such an act. We truly believe that we can in fact as tribes and tribal organizations in Southeast Alaska, can in fact become real active partners in such an act. We have in fact become partners with many tribes and tribal organizations in the South 48. We got our model for the Inter-Tribal Fish and Wildlife Commission from the Columbia River Inter-Tribal Fish and Wildlife Commission. We thank them almost on a daily basis for giving us that model, because it brought us together in a unified voice to look at this one type of activity in Southeast Alaska. We truly believe that that is the way to go to address these kinds of policies and things like that. We endorse it fully.

Thank you very much for giving me the opportunity to comment relating to this. Thank you, Mr. Chairman.

[Prepared statement of Mr. Jackson appears in appendix.]

Senator MURKOWSKI. I will go ahead, and if you can give your testimony for us, Ms. Brown-Schwalenberg.

STATEMENT OF PATTY BROWN-SCHWALENBERG, EXECUTIVE DIRECTOR, CHUGACH REGIONAL RESOURCES COMMISSION

Ms. BROWN-SCHWALENBERG. Thank you.

My name is Patty Brown-Schwalenberg. I am the executive director of the Chugach Regional Resources Commission, more commonly known by its acronym CRRC. I would also like to thank the committee for the opportunity to testify, as well as Senator Murkowski and her staff for their support of our programs.

I would also like to take a moment to acknowledge the village chiefs and presidents of the Chugach region for whom I work, as well as the elders of my tribe, the Lac du Flambeau Band of Lake Superior Chippewa Indians for sharing their knowledge and wisdom of the resources with me that has allowed me to work in the area that I do, and that I have for the past 20 years.

The Chugach Regional Resources Commission is a non-profit Alaska Native group established in 1984 by the seven tribes in the Chugach region. I should first list the tribes as the Tatitlik IRA Council, the Chenega IRA Council, the Port Graham Village Council, the Nanwalek IRA Council, Native Village of Eyak, Qutekcak Native Tribe, and the Valdez Native Tribe. We are located in South–Central Alaska and Lower Cook Inlet and Prince William Sound.

CRCC was formed to collectively address the issues of mutual concern regarding the stewardship of the natural resources, subsistence, the environment, and to develop culturally appropriate economic projects that support the development and operation of, and promote the sustainable development of the natural resources. Over the past 19 years that this inter-tribal commission has been in existence, we have supported the development and operation of many natural resource projects and programs, and helped the communities provide meaningful employment opportunities, as well as

valuable services and products to the people and the State of Alaska.

I would just like to read into the record the statement of purpose so you can get a more holistic idea of what we do and why we are in existence, and that is to promote tribal management of the natural resources traditionally utilized in ways consistent with cultural traditions and values of the Chugach people; provide formal advocacy to assure that private, State and Federal land and resource management agencies will work cooperatively with the tribes to manage natural resources in ways consistent with the cultural traditions and values of the Chugach Tribes; to develop and enhance natural resource management education and training opportunities for Chugach tribal governments to improve the management capabilities of the tribes; and promote sustainable and economically sound natural resource development that will improve the well-being of the Chugach Tribes.

I agree with many of my colleagues and friends that have spoken before me that the physical, social, cultural, economic and spiritual importance of natural resources is just as important in Alaska. We do have a little bit different situation in that preserving and protecting the resources is vital to the people in Alaska. A lot of them do not have grocery stores where they can get store-bought food, but there is a much heavier reliance on the subsistence harvest for their life styles.

With that in mind, I just wanted to run down a few of the projects that CRCC has worked with the tribes to develop. First of all, the development of tribal natural resource programs needs of the communities has been an ongoing effort to help the tribes be more meaningfully involved in the natural resource management projects and decisions that affect the traditional use areas of the Chugach region. The Exxon-Valdez Oil Spill Trustee Council has a Gulf Ecosystem Monitoring Program that is just starting up, so the tribes need to have people in place to be more meaningfully involved in that effort.

The recently instituted Federal Subsistence Fisheries Management Projects occurring in traditional use areas requires, I believe, tribal participation, as well as potential co-management of the outer-continental shelf fisheries. We have also been working on developing tribal natural resource management plans for each of the tribes, in association with the Geographic Information System mapping of traditional use areas, the harvest areas where the species are located in different times of the year, and that kind of thing.

Another region-wide effort is we have been working, spearheaded by the Tatitlek IRA Council is a vocational technical level of curriculum for natural resource management based on the traditional philosophies and management strategies of tribes. The partners in that effort are University of Alaska, the Anchorage School District, U.S. Forest Service, U.S. Fish and Wildlife Service, Alaska Department of Fish and Game, Native American Fish and Wildlife Society, the tribes in the Chugach region, Chugach MUTE, which is the native nonprofit, and Chugach Alaska, the regional for-profit ANCSA corporation. We have a three-year grant to institute that program, so we are hoping after three years we will have that complete and instituted.

In 1990, CRRC provided the program village council with funding and technical expertise to start a hatchery program. They are currently expecting about 300,000 adult pink salmon to return this year, which will fill the hatchery to capacity. This is a brand new hatchery that was recently built to replace one that was destroyed by fire in 1998. The unique situation with this hatchery is that we worked with the village corporation and the tribal government to build a hatchery-cannery facility, so that the fish are released in virtually the same place where the cannery is. The buildings are connected, so the fish come basically right back to the cannery, so there is virtually very little transportation costs involved in that project.

We also have a cooperative project with the Nanwalek IRA Council. They started a program with our assistance to bring back the sockeye salmon in their lake system, which was a resource shared by both Port Graham and Nanwalek. They are four miles apart. So the eggs are taken in Nanwalek, shipped to Port Graham where they are hatched and reared to a smolt size; returned back to Nanwalek where they are put in the lake system where they are reared until they are released in October or November, and then they return. That project has produced over 220,000 adult sockeye salmon that have returned to the English Bay River and associated fisheries since 1990. As a result of that program, it has allowed the first commercial and subsistence harvest of sockeye to occur in 11 years, and that was several years ago when that happened. So that was a pretty neat thing.

In the mariculture arena, the Tatitlek Mariculture Project is an oyster farm that they are operating down there. They have operated since 1992. They get their seed from the Qutekcak Native Tribe who we have helped develop a tribal shellfish hatchery, which I will speak to in a moment. The Tatitlek project in addition to doing the natural resource program in the GRS and things I spoke about previously, their operation markets 200 dozen to 300 dozen oysters a week. It is on its way to becoming a profitable and thriving tribal business. This project employs five tribal members. In a village of 100 people, that is putting food on the tables of five families, so it is a huge impact.

Like I said, they got their oyster seed from the Qutekcak shellfish hatchery. This hatchery started in a small pilot lab, basically, several years ago. Two of the tribal members were trying to do something with littleneck clams, and it turned out they actually were the first in the country to produce littleneck clams in a hatchery successfully. So we built upon that success story, and they now are in a state-of-the-art hatchery and they are spawning, hatching and rearing littleneck clams, Pacific oysters, cockles and geoducks for sale to shellfish farms in Alaska and elsewhere. They also are participating in the Shellfish Restoration Project that we started about eight years ago to restore shellfish beds in the coastal areas around the villages. That was funded originally through the Exxon–Valdez Trustee Council as a pilot project, and now it is currently running on its own, where the clam seed are planted on the beaches in the villages, and then harvested three years later basically for subsistence purposes.

That is just an overview of some of the programs that we assist the tribes in working on. We get our base funding from the BIA. It has been $350,000 a year ever since we have been in existence, and like the Circle of Flight Program, we were zeroed out of the budget in 2003 and zeroed out again in 2004. Our funding was reinstated for 2003 with a minor cut, so we are working with Senator Murkowski, Senator Stevens, and Congressman Young to try and get our funding reinstated.

Even in the State of Alaska, there is approximately $2 million of BIA funding that goes toward natural resources, compared to some of the commissions in the lower 48 whose budgets are probably a lot larger than that. There is a real need in Alaska for tribal natural resource funding. It is very slim, but we manage to do a lot with the small amount of money that we have.

The programs that I highlighted are only in the Chugach region, and there are a lot of tribes in Alaska that have tribal natural resource programs and are doing a lot of neat things. They not only provide employment opportunities, but sound scientific data to assist the State and Federal management agencies in their management efforts for the benefit of all users.

I appreciate the opportunity to present this information, and I would be happy to answer any questions at the appropriate time. Thank you.

[Prepared statement of Ms. Brown-Schwalenberg appears in appendix.]

Senator MURKOWSKI. Thank you.

And now Tom Harris. Welcome.

STATEMENT OF TOM HARRIS, PRESIDENT AND CEO, ALASKA VILLAGE INITIATIVES, INC.

Mr. HARRIS. Thank you. We appreciate the opportunity to testify. On behalf of Alaska Village Initiatives and its statewide memberships, our officers, directors and staff, we thank you for this opportunity.

Alaska Village Initiatives, sometimes known as AVI, is Alaska's oldest and largest statewide community development corporation, and one of the few remaining CDCs nationwide. We were created in 1968 by President Johnson's War on Poverty. Our mission is to improve the economic well-being of America's rural communities in Alaska. Our membership and our board are composed of 95 percent Alaska Native tribes and ANCSA Corporations representing some of America's largest aboriginal communities still subsisting on our ancestral lands.

I am a member of the Taantakwaan Teikweidee or Bear Clan of the Tongass Tribe of the Ketchikan area. With us is the chair of our Village Wildlife Conservation Consortium, Katherine Andersen, and Dr. Bruce Borup, formerly the head of the Business Department for Alaska Pacific University, and recently the new CEO of Cape Fox Corporation, an ANCSA Village Corporation in Saxman.

Our mission today is to share with you one critical issue affecting Alaska Native tribes and corporations in the management of Alaskan wildlife and wildlife habitat. From an Alaska Native perspective, Alaska's wildlife habitat populations are facing the greatest survival challenge in our history. We as Alaska Natives need your

help. At no time in Alaska's history has the demand been greater for wildlife and wildlife habitat. This demand comes from predation, from recreational hunting and fishing, viewing, and from subsistence as our primary economy in rural Alaska. The greatest new pressure is from tourism, which has doubled in the last seven years and is positioned to double again in the next seven years as more Americans reach for retirement and their wildlife experience in Alaska. Alaska's wildlife habitat is not prepared for this demand, with decreasing wildlife populations on public and private lands.

In spite of the fact that the Alaska Native Claims Settlement Act is now more than 30 years old, there is as of yet no comprehensive Statewide plan either with a State or Federal agency on effective and cooperative management of wildlife habitat of nearly 40 million acres of native corporation land. In spite of the availability of modern technology to track urban criminals and record them, the same technology that can be used to track and record wildlife from altitudes as high as 2,000 feet, no one truly knows to this date what the wildlife census in Alaska is.

As a result of our reliance on unaudited, unverifiable wildlife census figures throughout Alaska, we have had endless discrepancies and debates spanning decades over falling harvest levels and who is to blame. Environmentalists blame hunting, oil, mining and timber industries. Hunters blame rural residents and Alaska Native subsistence users. Hunters and subsistence users blame predators that are the favored species of environmentalists, and soon we are beginning the whole process over again.

Alaska has millions of acres of dead and dying forests that are now over-mature and disease-ridden with bark beetle. Without occasional forest fires or prescribed burns to promote new growth, there is less food for wildlife. Without food, the current ecosystem may collapse. As a comparison, the Scandinavian nations of Norway, Sweden and Finland have less habitat acreage than Alaska does, yet they produce 26 times Alaska's current capacity. This is done through a higher quality and quantity of feed for the moose; a higher productive habitat.

At this moment in time, the State is struggling to meet this need, both as agencies and native corporations. As an example, one fish and game officer oversees an area the size of California, and he has no administrative support. Despite having one of the leading wildlife harvest management systems in the country, Alaska's production level struggles, producing on a per-acre basis less productive habitat than any other State in the Union. We rank 50th. In fact, based on 2001 records, it appears that four times more grazing wildlife was harvested within 100 miles of where we sit today here in Washington, DC than was harvest in all of Alaska's 365 million acres.

As demand to increase access to Alaska's wildlife habitat grows, so does this paradox of the image the world has of Alaska as the last frontier and America's last, best hope for the protection of wildlife and wildlife habitat. Remote areas such as the Upper Kuskokwim have seen as much as a 97-percent reduction in moose population in the last couple of decades. The Alaska Department of Fish and Game estimates the replacement costs for that 800-pound moose in winter's protein to a native community or a rural

resident at $3 to $5 a pound, representing a $2,400 to $4,000 impact for a person with per capita income of just $13,000 annually. This forces those individuals to place a greater reliance on food stamps and depleted subsistence salmon harvests.

However, there is hope. There is good news. That hope and good news is that we now know that our lower 49 sister States have had more successful wildlife production due to an economic resource tool that not only helped them restore their wildlife habitat, but also enabled them to access tourism in a sustainable and ecologically stable manner. Until very recently, this funding was not available to Alaska. That economic resource tool is the USDA Natural Resource Conservation Service which provides funding nationwide to private landowners for the purpose of conserving and restoring wildlife habitat on privately owned lands. USDA also conducts the Natural Resource Inventory, which provides data that USDA utilizes to plan its funding to those landowners in 2001. This funding program provided $350 million for this purpose.

However, there are challenges. The 1997 Natural Resource Inventory specifically omits or excludes all Federal lands and Alaska. Alaska is the only State to be so excluded, and only recently began receiving a small amount of money. USDA provided $523,000 to Alaska landowners in 2001, or 0.15 percent of the national budget. In comparison, 1 lower 49 State received over $19 million, or more than 5 percent of the national budget. Only Rhode Island received less funding than Alaska did. However, on a per-acre basis, Alaska received only 2 percent of what Rhode Island received. We know, having discussed this with them, that the local USDA directors are aware of this disparity and are doing what little they can to address this obvious inequity.

The Natural Resource Inventory has been conducted every five years since 1982, but in the past 20 years no correction of Alaska's omission has been proposed or planned. We hope that the visit here with you today will help spur that correction. Alaska Village Initiatives respectfully requests rapid action by this committee and USDA on behalf of Alaska's wildlife habitat to help Alaskans and Alaskan communities recover as a State to better prepare for the increasing demand for our fellow Americans who are coming to participate on an ever-increasing level to see Alaska's wildlife heritage.

Alaska Village Initiatives is an economic tool created by this Congress to serve our citizens and our country in this small way. It has been our duty and our joy to serve in this capacity for more than 35 years. It is our hope that in providing this testimony, we have been of service here today. Our members and our board as aboriginal tribes and native corporations have been taught to care for the land as for each other. However, the growing demand for access to this resource is beyond our humble abilities to care for without further incurring damage to the habitat.

Economic hardship has forced many native allotment owners to sell out, and we are seeing signs today that thousands of acres of ANCSA land are moving towards sale to the highest bidder. Our tribes and our corporations cordially welcome visitors. However, demand is now so great that we now are asking for help. As Americans, we do not want to be ashamed by having to turn away our

own citizens, for we as Alaska Natives and American Natives understand what it is to be turned away.

Alaska's habitat is indeed America's national treasure, whether it is in a national park or on private lands. This is America's challenge on how best to provide protection of and access to Alaska's premier wildlife habitat in a way that is safe and sane. This Congress saw fit to protect the resources on private lands in the lower 49, as their habitats were impacted by increased visitation. We respectfully request that Alaska now be included as a full participant in the protection of wildlife habitat on private lands as provided to all other States.

We thank you for your kind attention to this matter. If we at AVI can be of any assistance, please call on us. On behalf of our tribes and our members, Gunaalcheesh, Quyana, Anabasi, Howa, and thank you.

[Prepared statement of Mr. Harris appears in appendix.]

Senator MURKOWSKI. Thank you all. I appreciate your testimony this afternoon.

Mr. Chairman, I am more than a few minutes late for my next meeting, so I am going to have to excuse myself. But Mr. Harris, I would hope that my office would be able to work with you and the Alaska Village Initiatives to ensure that as we attempt to survey what it is that we have, that Alaska gets the appropriate level of funding. It is quite apparent from looking at the preparation that you have done for this hearing that there have been some inequities over the years. I am not quite certain why or how. Let's get beyond that and just correct it.

Mr. HARRIS. Yes, ma'am.

Senator MURKOWSKI. I don't know, perhaps I misunderstood or was not quite clear, but Ms. Brown-Schwalenberg, I thought you said that at least at Chugach there was some mapping of the wildlife resources that are around. So is it kind of on a sporadic unofficial basis, and that has been our problem? We do not have a verifiable source that we can look to?

Mr. HARRIS. That is absolutely the case. We are tracking wildlife today the same way we did at statehood. Someone gets in a plane, flies it 500 feet above the ground, looks out a window and tries to count the animals that they fly over the forest. There is a formula that they use to extrapolate, but that formula does not take into consideration the increased demand and the impacts of habitat degradation. So we are proposing that the new technology of heat-sensor cameras can do a much better job at 2,000 feet, and provide a permanent record that is verifiable.

Senator MURKOWSKI. I thought your comments about essentially the ability to hunt around the DC area, you have got greater ability to bag an animal up here than you would in Alaska. Sometimes I think our animals manage us rather than the reverse. I am not suggesting that we need to get out and farm everything, but we should probably do a better job with what we have. As you point out, first we need to know what it is that we have.

Mr. HARRIS. Yes, ma'am.

Senator MURKOWSKI. So I appreciate the comments of all members of the panel that I have been able to sit in on.

Mr. Chairman, thank you.

Senator INOUYE. Thank you very much.

Mr. Jackson, you presented a rather dismal picture of some of the conditions, canneries closing, fishing fleets disappearing and such. And you pointed out that the stock has diminished. How is it now? Have the fish come back?

Mr. JACKSON. Mr. Chairman, we have so much salmon we do not know what to do with them. The one creek that I was talking about was a subsistence creek, Kanalku on Admiralty Island. The stocks of sockeye salmon had diminished, but overall the runs of pink, chum, silver, we are expecting record runs this year.

Senator INOUYE. And nobody wants to get back there?

Mr. JACKSON. Pardon me?

Senator INOUYE. You said that canneries closed.

Mr. JACKSON. The canneries have been moving back from rural, smaller communities for the last 30 years. The canneries located in the smaller communities, largely native communities, all of them have closed since 1970. The bigger processors basically moved to larger communities like Petersburg and other locations where the labor and transportation costs are lower. So many of these fishermen have to run many, many miles to sell their products. So largely native fishermen have gotten out of the business, not only because of the length of time that you have to run to sell your catch, but also the prices and a whole number of other factors that are just tremendous.

The fact is also that we have a huge competition from farmed salmon. Farmed salmon has brought down the price of salmon largely down to the bottom. I remember in 1989 when I was a commercial person, and when I was a teacher, we were selling to fish buyers at 80 cents per pound for humpies, pink salmon. Last year, they were being bought for five cents a pound, which is really a huge drop in a little over 10 years. So the price and the market conditions have changed substantially.

Senator INOUYE. What is the solution?

Mr. JACKSON. The solution basically is to continue the strategy and continue within the system, that the market in the wild salmon, which I believe is the best in the whole world. Wild salmon tastes great. I truly believe that in the future, the marketing systems will show that wild salmon tastes the best and is the most healthy. I think that any discussion of any kind of bill relating to this that you are considering should include marketing-type activity, because one of the biggest problems relating to marketing the wild salmon is the cost. I am pretty sure that everybody from the Pacific Northwest will tell you exactly what I am telling you.

Senator INOUYE. Ms. Brown-Schwalenberg, your problem, what should we do? Restore the hatcheries?

Ms. BROWN-SCHWALENBERG. I am sorry?

Senator INOUYE. You spoke of your hatcheries closing up because of a lack of funds.

Ms. BROWN-SCHWALENBERG. Yes.

Senator INOUYE. Would restoration help?

Ms. BROWN-SCHWALENBERG. Of the fishery?

Senator INOUYE. The hatcheries.

Ms. BROWN-SCHWALENBERG. Yes; right now, the Port Graham hatchery operates. We get $350,000 from the BIA. They get a ma-

jority of that. They get a big share of that funding, and then the rest they try to get through other grants just to keep it operating. So that has always been a problem. The work that they have done has been of great benefit to the community, but the problem is keeping it going.

Senator INOUYE. Will you get a hold of the staff people and discuss this matter with them?

Ms. BROWN-SCHWALENBERG. Certainly.

Senator INOUYE. Because we are just on the beginning of the cycle on appropriations, and that would be helpful.

Mr. Harris, needless to say, your stats were rather depressing. What can we do?

Mr. HARRIS. As mentioned, while this is an item that directly impacts Native Americans, specifically rural Alaskans in some of the poorest areas in the Nation, there is opportunity. We have a wonderful economy of tourism. However, the communities are not prepared for that. I am also the director of the Cape Fox Corporation. There, we welcome industrial tourists. We step off the cruise ships. We welcome 60,000 tourists through our village of 500 people. However, we are unique. That cannot happen in a village in remote Alaska. That tourism market, it is much different. It is a market that caters to an individual looking for a more remote experience. That market is strong today and growing stronger year by year. However, the villages are not prepared for that.

As you know, subsistence is a huge issue in these communities. Through the generous guidance and assistance from Senator Ted Stevens, Alaska Village Initiatives has been promoting private land wildlife management on models in the lower 48. We have been very encouraged by those models because they do two things. They produce abundant wildlife, as we have seen here, that occurs here now within 50 miles and 100 miles of where we sit. That abundant wildlife takes care of the subsistence needs. It also produces a surplus that attracts the high-end tourist.

So the community has a choice. It can take care of its needs, and we encourage it to do so, first having the tribe work with the corporation to develop a subsistence program, and then pursue the economy with the surplus, as we have seen with the wonderful success of the Apache White Mountain Program. They are a stellar program, and we have been having visits with them and modeling our efforts after similar programs throughout the West.

So one of the things that we are missing is the 20 years that, actually almost 25 years now, that NRCS has been funding these programs in the lower 49 States. It is just now beginning at a very small trickle. It needs to be accelerated for Alaska, and these landowners need to have the resources necessary to rebuild that stock.

When we look at Alaska, it is not over-predation; it is not overhunting; and it is not even harsh winters. There is not enough food. Without food, the cycle of life cannot be complete. This wildlife needs that food, and over-mature forests cannot produce that. We need a healthy forest.

Senator INOUYE. How is your caribou stock?

Mr. HARRIS. The caribou stock is doing well. I have to say that it is 32,300 that were harvested in 2001. It is one of the very few programs that have a comprehensive management program. How-

ever, when you take into consideration the deer and the moose, and the moose being so critical to many areas, we harvest 7,000 moose. On less habitat, less acreage, 185,000 moose are being harvested in the Scandinavian countries.

Senator INOUYE. I ask that question because when the pipeline was built, and I supported the pipeline, many said that the caribou flock would be wiped out. It was not wiped out.

Mr. HARRIS. No; not by any means, because it is so well managed, it is a success story, but the caribou only live in certain areas, and that sustenance is not available to many areas of the State.

Senator INOUYE. Now they are telling us that it would be wiped out if ANWR is developed.

Mr. HARRIS. On a personal basis, Mr. Chairman, I have trouble believing that, especially considering the numbers that we see growing within 100 miles of where we sit. The issue is managing the wildlife life cycle in a way that provides them food, water and shelter. It is obvious from the success of this program in the lower 48 that that has been met for those species. We do not have that right now in Alaska. As you know, the South Central Alaska is besieged in spruce bark beetle-killed timber. That represents a tremendous fire hazard, but they are called dead standing for a reason. They stay dead-standing for a long time, and we have two billion board feet of dead-standing white spruce in the middle of the Yukon, where our elders tell us that there is no life. Sunlight cannot get through there. Until they burn down, they is certainly not going to be timber harvested. They need to burn down to promote new growth.

Senator INOUYE. I thank you all very much for your patience. It has been an eye-opener for me. It just reminded me that I better go back to Indian country again.

Mr. HARRIS. Welcome.

Senator INOUYE. It has been a long time since I have been to the Arctic Circle. It has been a long time since I have been back to northern Wisconsin. Do I have to take a bullet-proof vest to go to northern Wisconsin? [Laughter.]

Thank you very much.

[Whereupon, at 12:30 p.m. the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR FROM WASHINGTON

Mr. Chairman and Mr. Vice Chairman, I would like to thank you for today's hearing on an issue that is vitally important to tribes in the Pacific Northwest and to the country as a whole.

In Washington State, Indian tribes are making significant contributions to improve the management of fish and wildlife resources and to help protect and recover Pacific salmon stocks.

Through the inter-tribal organizations represented here today, Washington State tribes are working as full partners with the State of Washington, Federal agencies and other stakeholders to promote salmon recovery and sound natural resource management.

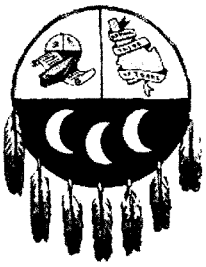
I would like to welcome Billy Frank of the Northwest Indian Fisheries Commission, Olney Patt, executive director, Columbia River Inter-Tribal Fish Commission and Warren Seyler, chairman, Upper Columbia United Tribes.

I would also like to congratulate Mr. Patt for his recent appointment to head the Columbia River Inter-Tribal Fish Commission. I look forward to working with you in your new capacity.

Mr. Chairman, through the leadership of these organizations, Washington state tribes have worked very hard to promote salmon recovery across the State.

The tribes and the region face very difficult challenges to manage tribal resources on tribal lands and to work with partners outside of reservation boundaries—to help manage salmon, shellfish, marine fisheries and other fish and wildlife species over the long-term.

Mr. Chairman, I look forward to working with you and Senator Inouye on these matters as the Committee considers legislative proposals to provide for greater Federal assistance to tribes to help fulfill our obligations to Indian tribes in the Northwest and across the country.



Kootenai Tribe of Idaho

P.O. Box 1269
Bonners Ferry, ID 83805
Ph# (208) 267-3519
Fax (208) 267-2960

June 3, 2003

The Hon. Ben Nighthorse Campbell, Chairman
The Hon. Daniel K. Inouye, Vice Chairman
Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, D.C. 20510

RE: Written Testimony of the Kootenai Tribe of Idaho before the Senate Indian Affairs Committee regarding Status of Tribal Fish and Wildlife Management Programs

Mr. Chairman and Members of the Committee:

The Kootenai Tribe of Idaho is honored to provide testimony on the status of its Fish and Wildlife Management Program. The Tribe would like to begin by giving a brief history of the Tribe and its reliance on fish and wildlife in the Kootenai River drainage and then provide an example of what many consider a success story for cooperative fish and wildlife management.

Bands of the Kootenai Tribe have inhabited portions of Idaho, Montana, Washington, British Columbia and Alberta since time immemorial. In 1855, the United States and the Kootenai, Salish and Flathead Tribes entered into the Treaty of Hell Gate, ceding the majority of the Kootenai territory and reserving to the Tribes the right to fish at their usual and accustomed places and hunt and gather on open and unclaimed lands. The Kootenai Tribe of Idaho has continuously exercised its treaty hunting and fishing rights within its aboriginal territory as recognized by the Indian Claims Commission, the State of Idaho in *State v. Coffee*, 97 Idaho 905 (S.C. Idaho 1976) and affirmed by the United States and the State of Montana.

The Tribe has relied on the many native fish and wildlife in the Kootenai River and in the Kootenai Valley for cultural and subsistence purposes. Tribal identity depends in substantial measure on protecting these resources. The preservation and enhancement of Tribal treaty and trust resources is not only the responsibility of its trustee, the United States, but also the Tribe's responsibility under the Treaty.

The Tribe has faced many hard choices relating to its resources. For example, during the early 1990's the Tribe faced the decision whether to continue to harvest white sturgeon, which at that time already were identified as demographically and biologically imperiled, or commit to developing cooperative inter-agency and international programs to restore these fish. The Tribe agreed to forgo harvest, and forged partnerships with the Idaho Department of Fish and Game, the British Columbia Ministry of Water, Land and Air Protection, the U.S. Fish and Wildlife Service, B.C. Hydro and fisheries scientists from around the Northwest for the improvement of the population's future in the Kootenai River. The Tribe now operates the primary hatchery working toward white sturgeon recovery.

The partnerships with United States and British Columbia agencies reinforced a belief held by the Tribe that restoration cannot occur without collaboration among all citizens. Treaty and trust resources are valued by the local communities and much more can be accomplished through cooperation.

Consistent with its belief in collaborative approaches and community involvement, the Tribe approached the City of Bonners Ferry and Boundary County about formation of an organization that would foster citizen participation. The Kootenai Valley Resource Initiative (KVRI) was the result.

The KVRI is empowered under a Joint Powers Agreement between the Tribe, the City of Bonners Ferry and Boundary County to restore and enhance the resources of the Kootenai Valley and foster community involvement. Its mission is to improve coordination, integration and implementation of existing local, state, federal and tribal programs to maintain, enhance and restore the social, cultural, economic and natural resources. The Initiative membership is comprised of the Tribe, private citizens and landowners, local governments, federal and state agencies, an environmental advocacy

group and representatives of business and industry in the area. Members are appointed jointly by the partners to the Joint Powers Agreement. The KVRI has become the primary forum for several issues and utilizes a number of subcommittees to work with the group as appropriate to accomplish the tasks at hand.

An example of the importance of the KVRI is the recovery plan for burbot, a native freshwater cod commonly referred to as ling. Burbot historically were abundant and provided an important subsistence fishery for members of the Tribe and were an important social, sport and commercial fishery for people in Idaho. The Tribe traditionally fished for ling during the fall and winter months using weirs constructed in tributaries of the Kootenai River. Burbot were considered the most important food source for the Tribe during this time of the year.

The burbot population in the Kootenai River has been considered for listing under the Endangered Species Act (ESA). Review of information collected during the last eight years by the Idaho Department of Fish and Game confirms the collapse of the lower Kootenai River burbot population downstream from Kootenai Falls. Habitat changes caused by Libby Dam include changes in the river hydrograph, particularly during the winter when burbot spawn, and changes in the river's temperatures and nutrient supply. Winter flows in the Kootenai River have increased 3-4 fold due to discharges for power production, mean winter water temperature has increased at least 3 degrees, and the productivity of the river has declined substantially due to Libby Dam. Other factors, such as loss of burbot tributary spawning habitat likely exacerbated their decline. Review of all available literature on lower Kootenai River burbot does not predict their recovery without planned, coordinated intervention.

Consistent with the Tribe's recognition of the interconnected nature of ecosystems and its commitment to collaborative restoration programs, the Tribe proposed, rather than listing, to develop with the U.S. Fish and Wildlife Service (USFWS) and additional committed stakeholders an integrated and innovative approach to recovery of lower Kootenai River burbot. To complement approaches pursued by the USFWS, the Tribe proposed a "pilot project" to develop, implement and evaluate a recovery strategy for lower Kootenai River burbot in lieu of formal listing. The approach received interest from

the KVRI and state and federal action agencies and active support from the Idaho Office of Species Conservation, U.S. Senators Craig and Crapo and U.S. Representative Butch Otter.

The KVRI advises the Tribe to ensure that elements necessary for burbot recovery are in the plan development process. This enables the Tribe to ensure recognition of its management authority with input from all sectors of the community affected by the plan.

Despite the successes the Tribe and KVRI have realized through the collaborative approach, the Tribe faces many challenges in management of its fish and wildlife. Such challenges include adequate funding and removing barriers to cooperation with federal agencies.

The main source of funding for the Tribe's work to restore the white sturgeon comes from the Bonneville Power Administration as part of BPA's obligations under the Northwest Power Act and the Endangered Species Act. The Tribe recognizes that the funding is becoming limited for a variety of reasons, including mismanagement by the Bonneville Power Administration, drought, California's failed attempt at deregulation and the Enron scandal. The Tribe, however, continues to be committed to restoration and recovery of all species and appreciates support from the Committee and all Members of Congress in ensuring that the Bonneville Power Administration meets its obligations under the Northwest Power Act and Endangered Species Act and works in coordination and collaboration with the region in doing so.

Rather than rely solely on the Bonneville Power Administration and ratepayer money for burbot recovery, the Tribe and the KVRI requested an appropriation through the Idaho Delegation for Fiscal Year 2003 for preparation (and future implementation) of a conservation plan, including meeting facilitation, limiting factors analysis (similar to adaptive environmental assessment process) and plan development. Thanks to vigorous and much appreciated support from Idaho's Congressional Delegation, that appropriation request was approved and will be coming to the Tribe through the Department of the Interior. The Tribe greatly appreciates the support from the Congress in granting this request that will help assure the recovery of an important species through a collaborative community approach.

The Tribe has again requested an appropriation from the Idaho Delegation for Fiscal Year 2004 for burbot restoration that it hopes will be approved. The uncertainty that comes from annual requests for appropriation, however, leads to uncertainty in species recovery. The uncertainty arising from unreliable funding sources not only harms fish and wildlife recovery can lead to strained or destroyed relationships between members of community involvement groups such as KVRI and the Tribal fish and wildlife managers.

Presently, Indian and non-Indian community members devote a lot of personal time and energy to reach a consensus based approach to species restoration. The Tribe fears that if, after all the hard work put into the KVRI, the plans cannot be implemented due to lack of funding, the community members will feel as if they wasted their time. While the Tribe hopes that most community members would recognize that the Tribe is not at fault for failing to implement the plan developed through their advice, the relationship between the Tribe and the community would be harmed and the collaborative effort rendered meaningless.

The Tribe respectfully requests the Committee to develop and implement legal authority in consultation with Tribes that would provide greater certainty and support for Tribal fish and wildlife managers. The Tribe envisions a process by which it can request recognition of its authority and receive multiple-year appropriations directly for implementation of its fish and wildlife management activities. This reliable source of funding for Tribal fish and wildlife management will go far in ensuring protection and enhancement of its treaty and trust resources.

The Tribe faces another challenge. It finds it difficult at times to obtain cooperation from the federal agencies in implementation of recommended actions. For example, the Tribe, along with other fish and wildlife management agencies and KVRI, requested experimental flows from the Army Corps of Engineers for the burbot plan. The response from the Army Corps of Engineers was that BPA denied the request based on an economic impact of $250,000 to hydropower revenues from Libby Dam. The Tribe, KVRI and other fish and wildlife agencies were disheartened by this response. Fortunately, the Tribe, KVRI and the community were able to preserve the collaborative

relationship and have recommitted to moving forward with burbot recovery despite the lack of cooperation from federal agencies.

There have been many attempts in the past to form a regional governance group that would include representation from the federal action agencies, as well the Tribes and states. Such a regional governance group that recognizes the authority of all fish and wildlife managers would allow Tribal requests, such as the request for experimental flows from the Tribe and KVRI, to carry sufficient weight that the Tribe would not be forced to merely accept what the action agency decided. Instead, the collaborative approach adopted by the Tribe and the KVRI could be extended to the rest of the Columbia River Basin and perhaps beyond.

The Tribe would like to conclude by thanking the Chairman and the Committee for the opportunity to showcase a portion of what the Tribe is accomplishing through fish and wildlife management. While the species have not been entirely recovered, the Tribe is confident that through collaborative efforts it can once again harvest sturgeon and burbot in numbers sufficient for its cultural and subsistence purposes and support a social, sport and commercial fishery for people in Idaho. The Tribe urges the Chairman and Committee to continue their hard work.

Sincerely yours,

Gary Aitken, Sr., Tribal Chairman
Kootenai Tribe of Idaho

GENERAL COUNCIL
and
BOARD OF TRUSTEES

CONFEDERATED TRIBES
of the
Umatilla Indian Reservation
73239 Confederated Way
P.O. Box 638
PENDLETON, OREGON 97801
Area code 541 Phone 276-3165 FAX 276-3095

June 3, 2003

The Honorable Ben Nighthorse Campbell, Chairman
The Honorable Daniel K. Inouye, Vice Chairman
Committee on Indian Affairs
United States Senate
838 Hart Senate Office Building
Washington, DC 20510
FAX: (202) 228-2589

Re: U.S. Senate Committee on Indian Affairs Hearing on the Status of Tribal Fish and Wildlife Management Programs, June 3, 2003

Dear Senators Campbell and Inouye:

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) would like to offer the following written testimony to supplement that provided to the Committee at its hearing referenced above.

The Cayuse, Umatilla and Walla Walla Tribes make up what is now the Confederated Tribes of the Umatilla Indian Reservation (CTUIR). We, along with many other tribes, "managed" fish and wildlife in the Pacific Northwest for tens of thousands of years. We did it successfully, in a manner that sustained the health, well-being, economy, culture, and religion of our people. We did it in a manner that sustained the health and viability of the fish and wildlife populations themselves.

The sharing of our responsibilities arose with the advent of increasing European settlement beginning about a century and half ago. Increasing non-Indian settlement coincided with—actually, caused—pronounced decreases in many fish and wildlife populations. Many wild salmon populations became extinct. Many more are now listed as endangered or threatened under the federal Endangered Species Act (ESA).

Increasing settlement also resulted in the erosion and marginalization of tribal management approaches. Now we must often struggle to have these approaches implemented. Sometimes we are successful; sometimes not.

Many complex factors have impacted tribal fish and wildlife management programs in the Pacific Northwest. There are now many participants in fish and wildlife management activities, including tribes, state and federal agencies, counties, cities, ports, utilities, irrigation and conservation districts, interest groups and others. Often these non-Indian participants have a variety of missions and functions, many of which are not necessarily consistent, or even compatible, with sound fish and wildlife management efforts.

We have met with a steady and ever-changing parade of state and federal officials over the years. We have seen them come and go. We have heard their many plans and promises. To our great disappointment, most of these plans have gone unfulfilled. Many of these promises have been broken.

The CTUIR has persisted, always seeking to work cooperatively with state and federal agencies, local communities and interest groups. This has been a hallmark of all of our fish and wildlife management activities. It was instrumental in our successful efforts to restore salmon to the Umatilla River after they had been extinct for over 70 years. Today we even have fishing seasons for both Indian and non-Indian fishermen.

Restoring salmon in the Umatilla River was based on a "four H" approach long before the federal government saw the light and began articulating that particular term. Because salmon were totally eradicated, we had to rely on hatcheries and supplementation, but we did so in a cautious, scientifically sound manner. We encouraged modifications to a small number of irrigation diversion dams to improve in-river habitat. We also supported and carried out an aggressive program of streamside and other habitat restoration projects. Finally, the welcome opportunity to harvest the fruits of our labor continues to be carefully monitored and regulated.

We would like to see such successes duplicated elsewhere. We are making progress in the neighboring Walla Walla River Basin, for example, using similar approaches. However, such successes are the sum of many parts—and one of them is money. Investment is crucial if we are to continue to advance in fish and wildlife management. Investment is also essential to protect the advances that we have already made.

Nearly one hundred and fifty years ago, my ancestors signed a treaty with the United States government—the Treaty of 1855. Other tribes of the Columbia River Basin also signed similar treaties. Those that did not are, like us, still the beneficiaries of the federal government's Trust Responsibility. Tribal members drew life and sustenance—food for our bodies and our souls—from Nch'i-Wana, "The Big River." We still do. We signed the treaties to protect and preserve our river, our fish, our people, and our way of life—in 1855, now, and forever.

The CTUIR still honors salmon as our ancestors did. We fish for salmon at Celilo and at our other usual and accustomed sites on the mainstem and in the tributaries, as we have done since time immemorial. Our salmon harvest never triggered any extinctions. We successfully safeguarded nature's bounty long before there was the possibility that others could "manage" the work of the Creator into oblivion.

In order to protect and restore salmon and other fish and wildlife, we have to work together—all of us, Indian and non-Indian alike. We all must recognize and respect each other's interests, even when they are different. We must give them their due consideration if we are to successfully negotiate resolutions to our complex resource management problems. We must listen to the scientists, and thoughtfully weigh their insight. We must listen to our elders, and learn from the wisdom they have gained. If we turn a deaf ear to either of them, the day may come when our children will listen to us, anxiously awaiting an answer to their question: "What did you do to save the salmon?" How will we reply?

Sincerely,

N. Kathryn Brigham

N. Kathryn Brigham
Member, Board of Trustees
Member, CTUIR Fish and Wildlife Committee
Commissioner, Columbia River Inter-Tribal Fish Commission

KB: DNR: cm/ah

Enclosures

TESTIMONY OF PATTY BROWN SCHWALENBERG
EXECUTIVE DIRECTOR OF THE
CHUGACH REGIONAL RESOURCES COMMISSION

June 3, 2003

My name is Patty Brown-Schwalenberg. I am the Executive Director of the Chugach Regional Resources Commission. I would like to thank the Committee for the opportunity to testify this morning. In addition, I would like to thank Senator Murkowski and her staff for their terrific support as we weave our way through the halls of Congress.

The Chugach Regional Resources Commission (CRRC) is a non-profit Alaska Native organization established in 1984 by the seven Tribes of the Chugach Region of Alaska, including the Tatitlek Village IRA Council, Chenega IRA Council, Port Graham Village Council, Nanwalek IRA Council, Native Village of Eyak, Qutekcak Native Tribe, and the Valdez Native Tribe. CRRC was formed to collectively address issues of mutual concern regarding stewardship of the natural resources, subsistence, the environment, and to develop culturally appropriate economic projects that promote the sustainable development of the natural resources. Over the past 19 years, CRRC has supported the development and operation of many natural resource projects and programs that have assisted these communities in providing meaningful employment opportunities as well as valuable services and products to the people of the State of Alaska. Our work is funded primarily with base funding through the Bureau of Indian Affairs and supplemented with other federal and state grants.

As many of my colleagues have or will testify, natural resources are critical to the economic and cultural stability and vitality of Native communities. The people of the Chugach Region, as well as in other parts of Indian Country, rely heavily on the natural resources and environment to sustain their traditional lifestyle and have developed strong working relationships with state and federal management agencies to ensure that these resources are available for future generations. Thus, it is appropriate for Congress to examine Tribal fish and wildlife programs to determine what more should be done to support and enhance these programs that are a vital component to the overall management scheme.

CRRC's purpose is to assist the seven member Tribes of the Prince William Sound and Lower Cook Inlet to 1) promote Tribal management of the natural resources, traditionally utilized by the Chugach Tribes, through the development of Tribal Natural Resource Management Programs, in ways consistent with their cultural traditions and values; 2) provide formal advocacy to assure that private, state, and federal land and resource management agencies will work cooperatively with the Tribes to manage natural resources in ways consistence with the cultural traditions and values of the Chugach Tribes; 3) develop and enhance natural resource management education and training opportunities for Chugach Tribal Governments to improve the management capabilities of the Tribes; and 4) promote sustainable and economically sound natural resource development that will improve the well being of the Chugach Tribes.

By carrying out its mission, CRRC has become an important community development tool supporting Tribal natural resource programs in the Chugach Region that are an integral part of the communities' social, political, economic, and cultural aspects of their daily lives. I would like to discuss a few examples of the successful and innovative programs in the Region that CRRC has worked with the Tribal Governments to develop and establish.

The most significant initiative CRRC is working on is the development of *Tribal Natural Resource Programs* in the region in an effort to be more meaningfully involved in the natural resource management projects and decisions that affect the Tribes' traditional subsistence lifestyle. Active participation by the Tribes in such current initiatives as the Exxon Valdez Trustee Council's Gulf Ecosystem Monitoring Program, the federal subsistence fisheries management projects occurring in traditional use areas, and the potential co-management of the Outer Continental Shelf fisheries is vital to the overall success of each of these programs. Along with the development of the natural resources programs is the development of Tribal natural resource management plans for each of the member Tribes, as well as accompanying traditional use area maps, developed through our Geographic Information System. We have also been working on developing a vocational technical level curriculum for natural resources management based on the traditional philosophies

and management strategies of Tribes. This training will enable the communities to be better prepared to participate in state and federal agency management efforts.

In 1990, CRRC provided the Port Graham Village Council with the funding, technical, and administrative expertise necessary to build a salmon hatchery program to rebuild the local pink salmon runs while providing economic opportunities for village residents. After the initial hatchery and cannery building was destroyed by fire in 1998, CRRC again assisted the village council and village corporation in securing the necessary funding to rebuild the hatchery and cannery complex. The new facility was completed in 2000, and the hatchery currently produces local stocks of pink and coho salmon and incubates sockeye salmon eggs for the nearby Native Village of Nanwalek. The hatchery is expecting about 300,000 adult pink salmon to return this year, which will be enough to fill it to capacity. Annual adult returns are expected to increase to about 3 million pink salmon beginning in 2004, and 100,000 to 200,000 sockeye salmon beginning in 2006.

CRRC also supports the Nanwalek Sockeye Enhancement Program. This program produces a Sockeye smolt stock to supplement wild production and help rebuild the depleted English Bay Sockeye run, which are a principal source of subsistence food and commercial fishing income for both the Nanwalek and Port Graham Villages. The Nanwalek IRA Council operates this program with administration and technical support coming from CRRC. It is the only program of its kind in the State of Alaska, in that it is a cooperative effort between two Native villages to return the sockeye salmon populations to a level where they can be safely harvested for both subsistence and commercial purposes. The heart of the project consists of collecting red salmon eggs in Nanwalek, flying them over to the hatchery in Port Graham where they are hatched, then returned to Nanwalek at smolt size, and reared in the English Bay Lake system where they are later released to migrate out to sea and return as adults. Rearing operations commenced in 1991 and have occurred annually since that time. We are proud to report that over two and a half million sockeye smolts have been released into the English Bay Lakes since the project's inception. This has produced over 220,000 adult sockeye salmon that have returned to the English Bay River and associated fisheries since 1990 and

has allowed the first commercial and subsistence harvest of sockeye salmon to occur in 11 years. It is a Tribal success story.

The Qutekcak Shellfish Hatchery in Seward is another major accomplishment for both Qutekcak Native Tribe and CRRC. The operation began in a small pilot hatchery with funding from CRRC and is now operating out of a new state-of-the-art facility, spawning, hatching, and rearing littleneck claims, Pacific oysters, cockles, and geoducks for sale to shellfish farms in Alaska and elsewhere. This is the only shellfish hatchery in the State of Alaska, and has the capacity to serve all shellfish farms in the State. We developed the program by relying on the traditional knowledge of tribal elders, which will now preserve the littleneck clams for future generations.

Related to this is the Tatitlek Mariculture Project, which has operated since 1992 with support from CRRC. This project utilizes seed provided by the Qutekcak Tribal Shellfish Hatchery, and produces some of the best oysters in the country. The operation markets 200-300 dozen oysters per week and is well on its way to becoming a profitable and thriving Tribal business and an important component to the local economy. This project employs 5 Tribal members, who in turn, are able to put food on the table for their families. In a small village of 102 people, this is a major economic impact.

This is just an overview of the natural resource programs in the Chugach Region. There are many other Tribes in the State of Alaska who operate natural resource programs that are taking a strong partnership role in the natural resource management decision-making process. Many of them provide not only employment opportunities, but sound scientific data to assist the state and federal management agencies in their management efforts for the benefit of all users.

All of these programs highlight the real economic, cultural and community development benefits that well-managed natural resources bring to Tribal communities. It is important as Congress examines the federal programs involving natural resources that Congress considers the

important and vital role that tribal programs fill and that you work to ensure that tribal programs are full partners at the table.

While Tribes view the wise and prudent stewardship of our natural resources as a critical priority, the fiscal support of the federal government to launch and maintain effective programs is vital to the continuing existence of these programs. Unfortunately, the President's budget requests for FY 2003 and FY 2004 have targeted our programs--not merely for cutbacks--but for elimination. We are grateful to our friends in Congress who worked to restore our funding last year and who are working to assist us again this year. However, the uncertainty created and the time, expense and travel involved to get the funding restored take their toll from year to year. We respectfully suggest that these programs be made part of the BIA's base funding and treated as the recurring programs we are.

Thank you for the opportunity to testify. I would be pleased to answer any questions the Committee regarding CRRC.

Written Testimony of the Southwest Tribal Fisheries Commission
Regarding the
"Status of Tribal Fish & Wildlife Programs"

Before the
United States Senate
Committee on Indian Affairs

Submitted by
Jon C. Cooley, Executive Director
June 3, 2004

INTRODUCTION

Mr. Chairman and Members of the Committee, on behalf of the Southwest Tribal Fisheries Commission (SWTFC) and member Tribes from New Mexico, Arizona, Colorado, Utah, Nevada and Southern California, I would like to thank you for the opportunity to submit written testimony regarding tribal fish and wildlife management and enhancement issues.

Our statement will address fisheries management matters facing southwest Tribes. The purpose of our testimony is to provide the Committee: 1) information on the recently organized SWTFC, its purpose, membership and background 2) an overview on the status of Indian fisheries programs in the Southwest, specifically as it relates to the role of recreational fisheries (and viable recreation-based economies) in building tribal conservation programs, and 3) a closing perspective on the prevailing need among tribes to build and fund fish and wildlife management capacity.

SWTFC PURPOSE, MEMBERSHIP & BACKGROUND

Purpose: SWTFC is a grassroots, non-profit organization formed in September 2002 to assist Tribes in the southwest United States develop and organize a comprehensive and collaborative approach to securing the futures of their respective fisheries management programs and support tribal capacity building. The SWTFC purpose is to mobilize Tribes to work in a coordinated and strategic fashion to secure and enhance tribal recreational fishing programs and to advance meaningful resource management projects and initiatives on tribal lands that strike a sustainable balance between economic development and stewardship of tribal fisheries resources. Major objectives of the SWTFC include: 1) supporting the professional development and sustainable funding of tribal fisheries resource management and conservation capabilities, 2) restoring and expanding Southwest tribal recreational fishing programs that promote sustainable economic development and sound fisheries conservation on tribal lands, and 3) advocate tribal initiatives and self-determination by building meaningful, well-coordinated partnerships with tribal, state, federal and local interests on issues of common concern.

Membership: Work on developing the SWTFC was initiated in September 2002 with a one-year funding contract with the Bureau of Indian Affairs (BIA). The recently established (April 2003) Charter and Articles of Incorporation of the SWTFC defines its membership as being "*...open to any Federally-recognized Indian Tribe located in the states of Colorado, New Mexico, Arizona, Utah, Nevada and Southern California that has an interest in advancing economic development and natural resource management capabilities within the region*", a geographic designation that is purposely consistent with the Southwest Region of the Native American Fish and Wildlife Society. Although the SWTFC's charter ultimately provides for a broader geographic tribal membership base, much of the effort and interest in developing the SWTFC, has been focused around Tribes in the four-corner-state region of the Southwest (Arizona, New Mexico, Colorado and Utah) where the threats and issues surrounding tribal recreational fishing programs (detailed in the following "Background" section) are immediate.

The SWTFC Articles provide for a one-Tribe, one-vote system among member-Tribes in governing the SWTFC, with each member-Tribe appointing a representative (Commissioner) to the Commission. A Board of Officers (President, Vice President, Secretary/Treasurer) has been duly elected from the body of member-Tribe Commissioners, and provides management oversight and direction to the SWTFC in accordance with its Articles of Incorporation and By-Laws. An Executive Director has been retained under the BIA base-funding arrangement and has assumed the lead in developing the organization and coordinating the preparation of a Southwest Tribal Fisheries Strategy and an Operating Budget.

I have been appointed as Executive Director. I am the former Director of the White Mountain Apache Tribe Tribal Fish and Wildlife Department, from which I have gained valuable and solid hands-on experience in managing tribal programs and in working with various government agencies and private interests.

SWTFC organizational and planning meetings held in the nine months since its inception have been attended by the following list of participating Tribes:

ARIZONA	NEW MEXICO	COLORADO/UTAH
Navajo Nation*	Mescalero Apache*	Southern Ute Tribe*
White Mountain Apache	Jicarilla Apache*	Ute Mountain Ute Tribe*
Hualapai Tribe	Pueblo of Sandia	Ute Tribe U&O (UT)*
Kaibab Paiute Tribe	Pueblo of Laguna	
San Carlos Apache	Pueblo of Cochiti	
Salt River Pima Maricopa	Pueblo of Acoma	
Gila River	Pueblo of Zuni	
Fort McDowell Yavapai Nation	Pueblo of Isleta	**Tribal resolutions supporting*
Hopi Tribe	Santa Clara Pueblo	*SWTFC membership (as of 5/1/03)*
Colorado River Indian Tribes	San Juan Pueblo	
	Tesuque Pueblo	
	Nambe Pueblo	

SWTFC's contract with the BIA further provides for the development of a strategic plan that includes completing an assessment of the various tribal programs and their respective fisheries needs and management priorities. This process will further aid in developing

specific management goals and objectives for the SWTFC as it develops its tribal membership and operational capacity.

SWTFC Background – Tribal Resource Management Challenges:
The southwest holds a unique diversity of landscapes and accompanying resource management challenges, with Tribes of the region exercising stewardship over large expanses of lands and fish and wildlife resources. Southwest Indian reservations typically reflect large, contiguous tracts of land, within which Tribes, to varying degrees, employ their own management and regulatory structures over fish and wildlife resources. For years, many of these Tribes have developed and are heavily reliant on their natural resources based economies. In particular, recreational fishing programs have matured into important components of tribal social fabric and economic viability. With Tribes being ineligible for long established federal-aid conservation funding programs authorized under the Pittman-Robertson, Dingell-Johnson, and Wallup/Breaux acts, tribal recreational programs have carried the heavy burden of generating revenues that enable these Tribes to fund important conservation work on their lands. In addition to providing high quality regional recreational fishing opportunities, southwest tribal resources and programs also play significant roles in regional conservation efforts, with a number of Tribes having been at the forefront in the development of successful native-fish conservation and recovery programs for species such as the Apache trout in Arizona, the Colorado River cutthroat trout in Utah, the Rio Grande cutthroat trout in New Mexico, and various desert fish species along the Colorado, Rio Grande and Gila & Salt River basins.

For over 60 years, the U.S. Fish and Wildlife Service (USFWS) has assisted southwest Tribes with their recreational and native fish management programs by operating fish hatcheries on tribal lands, rearing fish to stock tribal waters within the region, and providing technical assistance and funding to various tribal programs. Over this same period, a number of Tribes progressed in developing viable recreation-based enterprises that continue to create local employment and support tribal economies, and in some cases, even serving to partially fund tribal fish & wildlife conservation programs.

In developing these core tribal enterprises and conservation programs, southwest Tribes have relied upon the network of National Fish Hatcheries in the region, some located and operated on tribal lands, to support their fisheries programs. Congress has been extremely supportive of these programs and has directed USFWS to provide expert and technical assistance to the Tribes with the express goal of moving toward tribal control and management of the facilities located on tribal lands. Since 1988, Congress has explicitly urged the USFWS to contract, through the P.L. 93-638 process, existing fish rearing facilities and management programs to Tribes, when Tribes demonstrated their readiness for such transfers of administration.

Despite this history, USFWS Indian Assistance Programs have steadily declined in the past few decades as a result of shifts in USFWS policy and funding priorities that have occurred with the passage of the *Endangered Species Act* and related environmental mandates. A clear example of this shift is reflected in the November 2000 closure of the

Mescalero National Fish Hatchery located on the Mescalero Apache Reservation in New Mexico. Before its closure, the Mescalero facility supplied and supported recreational fishing programs for 17 Tribes in New Mexico, Arizona and Southern Colorado. Beyond the Mescalero example, USFWS budgeting and policy debates regarding the ongoing operation and maintenance of other existing National Fish Hatchery operations on tribal lands (namely, the Alchesay-Williams Creek NFH Complex on the Fort Apache Indian Reservation in Arizona) continue to persist, with further cuts to important hatchery facilities and related tribal programs remaining as threats to the ongoing development of tribal economies and conservation programs.

In response to these trends and associated risks, the affected Tribes established the SWTFC to develop and organize a more comprehensive and collaborative approach to secure the futures of their recreation economies and fisheries management programs; and to further build tribal capacity in managing all fisheries (recreational and native restoration) on tribal lands. In addition, the SWTFC seeks to expand regional fisheries by assisting southwest Tribes that have expressed interest and that have necessary resources to explore the feasibility of developing tribal aquaculture facilities and/or recreational fish rearing facilities while building effective regional "cooperatives" in the process. Accordingly, the mission of SWTFC is *"to advance Tribal self-determination and Tribal stewardship of fisheries resources through the professional development and support of Tribal resource management programs, and through supporting sustainable economic development on Southwestern Tribal lands by enhancing recreational fishing and public recreation opportunities."*

SOUTHWEST RECREATIONAL FISHERIES – Characteristics and Status

National Fish Hatchery Facilities Sustaining Tribal Fisheries Programs:
As noted earlier, southwest Tribes have recreational fishing programs that rely upon the network of NFH facilities in the region for both warm and cold-water fish stocks to support those programs. The relatively arid nature of the southwest United States combined with the prevalence of native fish species that, generally, do not serve as viable game fish, present conditions that require fish hatcheries to sustain recreational fishing programs. Furthermore, certain NFH facilities in the region also play critical roles in restoration and recovery efforts involving various native fish species, as reflected in the examples of the Apache trout, Bonytail chub, Razorback sucker and Gila trout.

As a result of the 2000 closure of the Mescalero NFH and prevailing drought conditions throughout the southwest that have adversely impacted production of other cold-water hatcheries (namely, the Alchesay-Williams Creek NFH in Arizona), the status of tribal recreational fisheries has been declining over the past few years. Tribes affiliated with the SWTFC have experienced across-the-board reductions in their allocation of cold-water fish stocks in recent years, while production and stocking of warm-water species (primarily Channel catfish and Largemouth bass) have been maintained at relatively consistent levels during this same period.

The following outlines the network of key USFWS National Fish Hatchery facilities in the southwest that raise and stock both cold and warm water fish species on tribal lands (including those NFH facilities not located on tribal lands):

NFH Facility	Hatchery Type/Fish	No. Tribes Served	Others Served	Status/Comments
Mescalero NFH – located on Mescalero Apache Reservation, NM	Cold Water/ Cutthroat, Rainbow and native Gila trout	NM – 14 AZ – 2 CO – 1	State of NM, Gila National Forest (NM), Tonto National Forest (AZ) – Gila trout	Facility closed - Tribe attempting reopen by securing underlying renovation and operational funding, through EDA and BIA, respectively.
Alchesay-Williams Creek NFH – located on Fort Apache Indian Reservation, AZ	Cold Water/ Brook, Rainbow, Brown, Cutthroat and native Apache trout	AZ – 7 NM – 14 CO – 2	U.S. Military Bases (various exotic trout), State of Arizona (Apache trout)	Complex of 2 separate hatchery operations experiencing reduced production levels due to drought conditions and deteriorating facilities.
Inks Dam NFH	Warm Water/ Channel catfish and Largemouth Bass	All Tribes having warm water, put-and-take fisheries	N/A	Hatchery production and distribution data not yet reviewed by SWTFC.
Willow Beach NFH (AZ)	Cold Water/ Rainbow Trout, and native Razorback sucker, Bonytail chub	Select tribes in NW Arizona	N/A	Hatchery production and distribution data not yet reviewed by SWTFC.
Jones Hole NFH (UT) and Uvalde NFH (TX)	Jones Hole – cold water Uvalde – warm water	Jones Hole – Utah Tribes Uvalde – NM, AZ, CO tribes	N/A	Hatchery production and distribution data not yet reviewed by SWTFC.

The Mescalero NFH facility (NM), when operational, raised and stocked catchable trout in reservoirs, impoundments and other cold water fisheries on the following southwest Indian reservations:

Mescalero Apache (NM)
Laguna Pueblo (NM)
San Ildefonso Pueblo (NM)
Nambe Pueblo (NM)
Acoma Pueblo (NM)
White Mountain Apache (AZ)
Isleta Pueblo (NM)
Jicarilla Apache (NM)
San Juan Pueblo (NM)
Santa Clara Pueblo (NM)
Tesuque Pueblo (NM)
Navajo Nation (AZ)
Jemez Pueblo (NM)
Picaris Pueblo (NM)
Zia Pueblo (NM)
Sandia Pueblo (NM)
Southern Ute Tribe (CO)

At its peak (1990), the Mescalero NFH produced and stocked approximately 500,000 catchable trout on tribal lands, with its average annual production in the years leading up to its closure being approximately 300,000 fish per year.

The Alchesay-Williams Creek NFH facility (AZ) raises and stocks catchable trout in reservoirs, impoundments and other cold-water fisheries on the following southwest Indian reservations. This list includes those recently added tribal programs that have

been provided limited stocks of sport fish as a result of the closure of the Mescalero NFH in 2000:

White Mountain Apache (AZ)	San Carlos Apache (AZ)	Navajo Nation (AZ)
Fort McDowell (AZ)	Hopi (AZ)	Kaibab/Paiute (AZ)
Salt River Pima Maricopa (AZ)	Mescalero Apache (NM)	Isleta Pueblo (NM)
Jemez Pueblo (NM)	Jicarilla Apache (NM)	Picaris Pueblo (NM)
San Ildefonso Pueblo (NM)	San Juan Pueblo (NM)	Zia Pueblo (NM)
Nambe Pueblo (NM)	Santa Clara Pueblo (NM)	Acoma Pueblo (NM)
Sandia Pueblo (NM)	Zuni Pueblo (NM)	Tesuque Pueblo (NM)
Southern Ute Tribe (CO)	Ute Mountain Ute Tribe (CO)	

At its peak (2000), the Alchesay-Williams Creek NFH Complex produced and stocked approximately 1.1 million catchable trout on tribal lands, with its average annual production in the years since this peak declining to approximately 800,000 fish per year due to drought impacts. Furthermore, these lower production levels are being parceled and spread among more tribes as a result of the Mescalero NFH closure.

Other NFH facilities that have contributed to tribal recreational fisheries programs but,]no specific data or information has been obtained for this report, include the **Uvalde NFH in Texas** (warm-water species) and the **Jones Hole NFH in Utah** (cold-water species). Both of these NFH sites produce sport fish that are stocked on tribal lands, while primarily serving other federal and state agency customers.

Southwest Game & Sport fish species: With a few exceptions, both cold and warm-water recreational fishing programs in the southwest are largely based and rely upon game-fish species that are not native species. This situation exists due to the general absence, or extremely limited availability and distribution of southwestern native fish species that provide high recreational and commercial value to support recreational fishing programs. Unlike those conditions found in the northwest United States with the various salmon species, or the Great Lakes region of the country with its walleye, Northern pike, Lake trout and other native sport fish species, southwest Tribes – like their State game and fish management counterparts in the southwest – have developed recreational programs and economies that revolve around game fish species that are raised in hatchery facilities.

Exceptions to this rule include the native Apache trout found in Arizona's White Mountain region and the native Colorado and Rio Grande cutthroat trout found in select waters in northern New Mexico and southern Colorado and Utah region. In all these cases, the natural distribution of these native fishes is limited to specific geographic areas within the southwest thereby limiting any potential recreational opportunities to those specific areas of the region. Furthermore, management efforts with these rare and isolated native species are typically geared toward limited recovery and restoration programs, further restricting their potential contribution to a more comprehensive regional recreational fishery.

The overwhelming majority of these non-native game fish species are stocked in man-made, artificial habitats on tribal lands in the southwest. The recreational fishing programs of Tribes affiliated with the SWTFC typically feature small reservoirs and impoundments that were originally constructed for multiple use water storage (irrigation, livestock, etc.). In some cases, the facilities have been fully dedicated to tribal recreational development. Tribes having high-elevation, mountainous reservoirs typically support year-round cold water fisheries dominated by the various trout species, while those having lower-elevation reservoirs in warmer and more arid climates typically support warm water fisheries (bass, catfish) – or manage fisheries that seasonally fluctuate between stockings of cold water species in fall and winter months, and warm water species in spring and summer months.

Southwest tribal fisheries management obligations, however, are by no means limited to addressing recreational programs alone. Many southwest Tribes hold lands that support natural watersheds and associated riparian and wetland habitats having a variety of native fish species. Tribal recreational fishing programs and management approaches have typically been modified and enhanced to accommodate these native fish restoration and recovery efforts, with SWTFC affiliated Tribes continuing to partner with the USFWS and other key agencies in advancing these management efforts. A successful and notable example of these efforts can be found in Arizona with the White Mountain Apache Tribe's Apache trout recovery program. The program has advanced to the point where this native trout species (reared in the Alchesay-Williams Creek NFH Complex) is being considered for de-listing under the *Endangered Species Act* and serves as an integral part of the Tribe's recreational fishing program.

BUILDING TRIBAL FISHERIES MANAGEMENT CAPACITY

In confronting these complex resource management challenges with the current complement of funding sources and management capabilities, southwest tribal fish and wildlife programs are overwhelmed. SWTFC Tribes have stewardship responsibilities over a diversity of resources that include a wide variety of species (both game and non-game) and habitats found on their diverse and expansive lands. In many cases, southwest Tribes are challenged with the obligation to administer balanced and scientifically sound management approaches that are not only sustainable relative to their natural resource and recreation-based economies, but that are additionally responsible to an increasing array of native species management concerns.

Southwest Tribes continue to struggle in developing and funding the management capacity needed to adequately address these diverse fish and wildlife resources. SWTFC Tribes have programs that vary widely, but all typically depend upon limited BIA funding and technical assistance programs, combined with USFWS assistance to address all tribal management needs. Again, these tribal needs continue to outpace existing management program capacities, regardless of where these capacities originate.

Furthermore, while SWTFC Tribes value their working relationships with the BIA, USFWS and other agencies, and desire to build on those partnership, the prevailing need

among these Tribes is to improve and enhance their own internal capabilities in managing tribal fish and wildlife resources. In facing these capacity-building challenges, SWTFC Tribes seek to develop reliable funding mechanisms for fish and wildlife management programs, which are fundamental to tribal sovereignty and self-determination. SWTFC Tribes desire to advance these capacity-building objectives, which include supporting the sustainable development of tribal recreation-based enterprises, including recreational fishing programs. While not fully addressing tribal needs, these recreational programs provide important sources of revenues that supplement tribal economies and local employment, and, in some cases, partially contribute to the development of tribal fish and wildlife conservation programs.

CONCLUSION

With these balanced economic and conservation principles in mind, the SWTFC and its member Tribes are working to develop meaningful partnerships with tribal, state, federal and local interests to pursue initiatives that promote sustainable economic development and enhance conservation capacity-building on tribal lands. Immediate efforts include: 1) supporting the Mescalero Apache Tribe as it moves forward with New Mexico State University and regional Tribes in securing renovation and operating funds needed to reopen its valuable cold-water hatchery facility; 2) supporting Arizona's White Mountain Apache Tribe as it pursues renovation funding for the Alchesay-Williams Creek Complex to restore/increase the production capabilities of the facility in meeting the needs of the 23 Tribes it currently serves, and 3) to work with the USFWS in securing the operations of other NFH facilities serving tribal warm and cold water recreational fishing programs (including Inks Dam NFH, Willow Beach NFH, Jones Hole NFH and Uvalde NFH). Other related efforts include assisting Tribes with the feasible development of tribal aquaculture and rearing facility networks or cooperatives that are targeted to address growing recreational and native fish management needs within the region.

The SWTFC has also served as a valuable vehicle to communicate with the BIA and USFWS on important fisheries issues impacting our member Tribes. Officials from these federal agencies have attended all of our meetings and have been particularly supportive and helpful to our efforts. Our Tribes have also benefited from this interaction and all agree that better communication, improved dialogue, mutual understanding and respect have resulted from our discussions in the past nine months.

With regard to other policy implications, SWTFC hopes that our work will be incorporated into the larger ongoing "trust reform" efforts within the Department of the Interior. SWTFC Tribes share the concern about the past and current trends in trust reform regarding assignment of priorities and distribution of funding for the Indian trust. Of the more than $700 million appropriated in recent years in the name of "trust," SWTFC Tribes are particularly frustrated by the fact that very little, if any, of this "new" money has flowed into tribal resources management programs. Most of this money has been spent on accountants (ironically, the now defunct Arthur Andersen Company), computer systems and systems designing, the efforts to conduct historical accounting on the trust fund accounts, and in other areas not associated directly with tribal programs.

This is ironic and sad given the vast land and resources on tribal lands that have been and continue to be ignored by the Department of the Interior. Through focused and strategic planning with our federal partners SWTFC hopes that we will be successful in elevating our resources needs within the larger "trust reform" debate.

We appreciate the Senate Committee on Indian Affairs' support in holding this hearing and for providing the SWTFC the opportunity to address the status of tribal fish and wildlife programs in the southwest. Thank you.

OPENING TRIBAL COMMENTS REGARDING TRIBAL FISH AND WILDLIFE MANAGEMENT

TO THE SENATE COMMITTEE ON INDIAN AFFAIRS

JUNE 3, 2003

WASHINGTON D.C.

By BILL FRANK, JR., CHAIRMAN,
NORTHWEST INDIAN FISHERIES COMMISSION

It is a great pleasure to appear before the Senate Committee on Indian Affairs today to present an overview perspective on Tribal Fish and Wildlife Management. I am honored to have been asked to speak to you on behalf of tribes across the country, all of which have long held traditions, beliefs and needs associated with a healthy environment and a vast variety of natural resources.

Wise natural resource management is very important to the Indian people. Now, as always, the tribes depend on these resources to sustain our economies, our cultures and our very existence. The Creator has provided these resources for these purposes, whether they be animal, plant, mineral or water.

Tribes know the bountifulness of these resources that existed in years past, and are keenly aware of their diminished status today. We are aware of the need for effective management to protect and restore these resources. And we hope Congress is aware that the ability of the tribes to continue traditional harvests of these resources is integral to that management, as well as to the federal government's trust responsibility to the tribes.

We work hard to sustain natural resources. Whether it's the salmon of the Pacific, the cedars and elk of my home land, the sea otters and caribou of Alaska, the bison of the great plains or the walleye, wild rice and sapwoods of the Great Lakes, tribes are good natural resource managers because we understand how important these living things are to all people, Indian and non-Indian, and we understand the meaning of the responsibility and accountability we all share in protecting them.

As people who have fought and sacrificed much to protect this country, we also realize that the bounds of the greatness of the United States are forever linked to the willingness of the nation to keep its word and abide by its own laws. Tribal rights are not a thing of the past, but a living

to keep its word and abide by its own laws. Tribal rights are not a thing of the past, but a living mandate in the doctrine that maintains this nation in the course of history. Tribes have rights because we have retained those rights under the dictates of our heritage and in the pages of the United States Constitution. Among these rights are full access to the traditional gifts of nature, the ability to live in dignity with our fellow man and the liberty to realize both the challenges and the benefits of our inheritance. We ask no exclusive quarter. We take no special accommodation. We do, however, demand the freedom to exercise our legacies and the wherewithal to exercise our inherent rights as people with legitimate, functioning governments, and with rights to self-determination. We will never recognize any court decision or presidential decree intended to deprive us of these things. Our government-to-government relationship is most directly with the Congress. That is the law of the nation. We turn to you to support our rights, our treaties and our existence.

For the sake of all tribes, for the sake of good national conscience and for the sake of all living things, we support the development of fish and wildlife legislation which would more fully embrace our view of tribal resource management on a government-to-government basis. This legislation has the potential of leading to a better understanding by all the citizens of the United States of tribal resource management. Because everyone, everywhere, depends on natural resources for happiness and survival—no matter who they are or what they do in their every day lives—we ask you to support our right to exist, as Indian people, with an inalienable right to the pursuit of life, liberty and happiness.

As you know, the tribes have endured a long history of being misunderstood by many non-Indian residents of this continent. It is a history of theft, repression and broken treaties. Unfortunately, it sometimes seems there has been little progress in turning the tide on this infection of the American spirit. But part of our message is that there has, in fact, been progress by tribes and tribal/non-tribal governmental partnerships across the country, earned with foresight and fortitude. These relationships do suffer occasional setbacks and they do require vigilance and congressional support to succeed. But succeed we will. Our achievements and signs of progress will constitute part of the message from the tribes you will hear over the next few days. We will share our hopes, and aspirations for continued progress. But we will also share our challenges, problems and limitations to our opportunities. We will, as always, be truthful with you, and hope that our honesty will continue to earn your respect and support.

All we ask for is that which is already ours—those rights and resources which we have always retained. We ask for due consideration in the face of expanding population, for the legal and financial means to pursue our natural destinies and for recognition of the sovereign status which has been formally recognized, but frequently ignored. We ask for an end to such ignorance and for your commitment toward that end. We ask for your support in helping us achieve our potential as Indian nations, forging forward at the commencement of the 21st century.

We appreciate the opportunity to share our thoughts with you over the next few days, and wish to express our heartfelt regard for Senators Campbell and Inouye, and others who have supported these hearings.

TESTIMONY TO THE UNITED STATES SENATE COMMITTEE ON INDIAN AFFAIRS

REGARDING THE STATUS OF TRIBAL FISH AND WILDLIFE MANAGEMENT PROGRAMS IN THE PACIFIC NORTHWEST

JUNE 3, 2003

Mr. Chairman, and members of the Committee, the Northwest Indian Fisheries Commission and member tribes take pleasure in submitting this testimony on the status of fish and wildlife management programs in the Pacific Northwest. As indicated by the introductory comments to today's hearing by NWIFC Chairman Billy Frank, Jr., the tribes of the Pacific Northwest have an extensive history of co-management with the State of Washington in natural resource management. We have proved that working together works. The fact is that the tribes have always been strong advocates of sitting down with other governments and entities in efforts to develop collective "win-win" solutions to common problems. This testimony will provide some background on this process, as well as comments on the reasons why it is the one logical approach to natural resource and environmental management. Since the U.S. v. Washington Decision of 1974, the primary focus of co-management in our region has been on our great salmon resource. But co-management is a process that can work with other resource management as well. This testimony will provide some particular focus on shellfish and groundfish management. We focus on these particular management areas because they present particular challenges right now due in large measure to the need for greater investment of time, energy and funding by both the state and federal government—but also because they, too, would benefit from greater emphasis on the principles of co-management.

INTRODUCTION/STATUS OF CO-MANAGEMENT

Co-management is a process based on principles of equality and partnership in the field of natural resource management. To work, it must have a good foundation of honesty, integrity and fair play. It is based on an understanding of history—not the biased history printed in school textbooks over the past century, but the full and complete history of this continent. When treaties were signed between Indian nations and the U.S., they were agreements that enabled newcomers to share land and resources with highly civilized people who had lived here for tens of thousands of years. The U.S. v. Washington (or Boldt) Decision was a reaffirmation of the fact that fish resources in the Pacific Northwest are to be shared equally between the citizens served by both tribal and non-tribal governments. The Boldt Decision does not stand alone. A number of other federal court decisions, including the 1979 U.S. Supreme Court decision confirming the Boldt Decision, have also confirmed and reaffirmed these facts. The short version of this story is that fish resources do not belong to any of the governments exclusively, but "in common" with each other. It's a relationship that serves non-Indians more than it does Indians, because the tribes have depended on these resources for their sustenance, culture and economies from time immemorial and the United States has existed on this continent for a relatively short period of time. If the tribes had been conquered outright by the U.S., it might have been different, but in making treaties with the tribes, specific agreements were made—including, among other things, reserved rights to fish, hunt and gather. The treaties, described as the "supreme law of the land" in the

U.S. Constitution, still stand today as contracts between the tribes the U.S., and they shall be valid as long as the rivers run. The government-to-government relationship created by the treaties is specifically a relationship between the tribes and Congress. That is why it is very important for the members of Congress to understand the trust relationship that exists between them and the tribes.

Judge Boldt spelled out that a system of co-management would be developed which would acknowledge equal roles in natural resource management and provide an accountable process of collaboration. In the Puget Sound region, this led to the development of such far-reaching things as the Puget Sound Management Plan and the Pacific Salmon Treaty. This, in concert with federal and international processes, i.e., the Pacific Fisheries Management Council and the Pacific Salmon Treaty, has guided fisheries management in the Northwest ever since.

Co-management has also provided the impetus for other cooperative processes through the years, such as the Timber-Fish-Wildlife Agreement (Forests and Fish), which has provided a level of progressive cooperation between the tribes, other governments, the timber industry and other entities which would not otherwise exist. That relationship recently led to the development of the Coalition for Salmon Funding, co-chaired by NWIFC Executive Director Jim Anderson, Washington Forest Protection Association Executive Director Bill Wilkerson and City of Seattle Deputy Mayor Tim Ceis. Participants in that coalition consist of tribal, state and local government representatives as well as environmental organizations, non-tribal fishing groups, fishing industry entities and citizens' organizations. Co-management also led to the development of the Centennial Accord (a state/tribal accord to work collaboratively on a variety of issues), the Millenium Agreement (between the state's Governor and Attorney General and the tribes) and other processes. The process even led to the development of the Chelan Agreement which provided a possible mechanism for resolving the highly contentious water quantity issue (although the business and agriculture caucuses ultimately turned their back on the process in favor of the pursuit of legislative options).

Tribal natural resource managers are working hard and making progress in many respects in overall natural resource management. Informed people realize that the tribes are, in fact, the leaders in natural resource management in our region. While that is in some ways gratifying, tribes continue to be strong proponents of co-management, a process that has served the Northwest well through the years and one that is prescribed by case law. Unfortunately, the current economic recession has resulted in a state deficit of approximately $2.8 billion as well as rising unemployment rates. This, coupled with a lack of political will, has resulted in continued cutbacks in state investments in natural resources, ranging from research and monitoring of environmental impacts to enforcement of pertinent regulations. This tendency has continued to expand over the past several years, and placed severe strain on the government-to-government relationship between the state and tribes as well as the ability of the tribes to continue to fill in where the state's efforts in natural resource management come up short.

It is now clear that the state's rollback in natural resource management standards, e.g., enforcement of environmental laws, is part and parcel to its efforts to entice and accommodate business development. While the tribes can certainly relate to the need for the encouragement of expanded business to overcome hard financial times, we fear that the state as well as federal government's tendency to turn a blind eye to the wise environmental stewardship is, in fact, short-sighted. Impacts on culture, public health and the long-term economy far outweigh the benefits.

It is critical to the economy to retain a high quality of life, e.g., healthy streams, abundant salmon and other natural resources, in order to have progress in the important tourism and recreation industries. It is also important to recognize the significance of these factors in alluring clean new businesses which include natural beauty and a healthy environment at the top of their "want list" when searching for new locations. The connection between tribal, commercial and recreational harvest of fish, game and vegetation is also evident. Moreover, it is important to understand the connection of a healthy eco-

system to the health of people. All of these things clearly substantiate the economic need for ongoing interest and investment in good natural resource management.

From a cultural perspective, the tribes consider it absolutely necessary to respect, protect and restore fish, wildlife and other natural resources in the Pacific Northwest. From a health perspective, we assert that salmon and other natural resources and their habitat must be protected and restored, because the health and well-being of tribal and non-tribal people alike will most assuredly suffer in an unhealthy environment. We also assert that the federal trust responsibility, and treaty-protected rights, equate to a need for Congress and the other branches of federal government to support tribal natural resource management programs, and state programs. All of our governments must face hard choices in times of want. No one is more familiar with that fact than the tribes. But we must never turn a blind eye to the big picture. If we shirk our environmental responsibilities, we are betraying our present and future citizens. We have been saying these things to the governments of the State of Washington and the United States consistently and persistently, but our words have often fallen on deaf ears. Witness the fact, for example, that harvest and hatcheries get the preponderance of attention in salmon recovery efforts—yet these practices have been tended to most conscientiously. We voluntarily curtailed our fishing by 80-90 percent fifteen years ago and hatchery reform has made very significant progress.

We want co-management to work because it is the one and only effective approach to natural resource management. But the state has to keep up, and so do the federal agencies. The tribes have great capacity, in terms of technical/policy and legal people and skills. We have long-term heritage and understanding that takes a back seat to no one in this land. And we are enthusiastic about bringing our hearts and resources to the table at both the state and federal levels to build and support the team effort and cooperative spirit needed for us to find win-win solutions to the many problems we have in common. Our testimony to this committee on June 4 will address these issues more specifically.

We applaud the funding that has been provided through the federal government to enable us to work in this arena (PL 93.638 and other sources, e.g., the US Fish and Wildlife Service and NOAA Fisheries). We need more, to be certain. But our track record clearly shows that federal investments in tribal natural resource management gets results. We put the funding to work in ways that make progress in habitat restoration, natural resource management programs ranging from harvest management to enhancement, as well as meaningful research.

We support the development of fish and wildlife legislation which would more fully embrace our view of tribal resource management on a government-to-government basis. If such legislation is approved, with our suggestions, tribal natural resource related rights and responsibilities will be supported and clarified and should lead to a better understanding by all the citizens in the United States of tribal resource management.

GROUNDFISH

Now to focus on existing needs and funding necessary to enable coastal treaty Indian tribes to manage and restore critically depressed groundfish stocks off the Washington coast. Groundfish stocks have declined sharply in recent years, resulting in harvest restrictions that threaten the cultural, spiritual and economic vitality of coastal treaty Indian tribes. The current decline in groundfish populations threatens the very fabric of tribal coastal communities. These tribes include the Quileute, Makah, Hoh, and the Quinault Indian Nation. The tribes have a basic governmental duty to conserve and protect their treaty-reserved resources, and federal law requires them to be full participants in federal ocean fishery management processes.

Treaty-reserved fishing rights upheld by the courts in U.S. v. Washington (1974), and incorporated in subsequent management plans to protect tribes' rights to fish, established the tribes as co-managers of the resource. This fishing right is generally described as the opportunity to fish in common, which has been

interpreted as the right to take up to 50 percent of the harvestable surplus of fish in their usual and accustomed grounds and stations. In addition to U.S. v. Washington, case citations include Washington v. Washington State Commercial Passenger Fishing Vessel Association (1979), Makah v. Brown and United States v. Washington (Order on Five Motions Relating to Treaty Halibut Fishing 1993).

The tribal fisheries harvest several species of groundfish covered by the Pacific Fishery Management Council (PFMC) groundfish fishery management plan. Over the past decade, through the PFMC process, the coastal treaty tribes have obtained an allocation or quota for their groundfish fisheries. But groundfish along the entire West Coast have been in sharp decline in recent years. In particular, the abundance status of several species of rockfish (yelloweye, bacaccio, canary) have led to severe management restrictions for both commercial and recreational fisheries. The situation has become so critical that the incidental mortality of yelloweye rockfish associated with fisheries targeting other species, such as halibut, may exceed the projected annual total allowable take for yelloweye.

Tribal, state, and federal fishery managers currently are discussing ways to restructure West Coast groundfish fisheries to address concerns over the status of yelloweye rockfish. Although this species has declined coastwide, recent catch data from Washington fisheries indicate that the yelloweye rockfish decline off the outer coast is not as severe as the declines being observed in Oregon and California waters. The ability to shape a regional response in concert with regional abundance is constrained by lack of data caused by the existing structuring of stock assessment surveys. Consequently, the management responses under consideration for the tribes' usual and accustomed fishing areas are being driven by stock status assessments from Oregon and California.

Tribes are vigilant in their efforts to respond to the needs of the groundfish resource, just as they have responded to the needs of salmon, shellfish, etc.—through needed research, collaborative management, etc. However, funding is needed to help make this effort meaningful. The four coastal Washington treaty tribes do not receive funds specifically for groundfish management activities. At the same time, the coastwide decline in groundfish stocks and resulting increased regulatory constraints are increasing the management burden on tribal fishery programs. The tribes requested, but did not receive, an appropriation of $1.5 million for FY 2003 for groundfish management. Of that amount, $620,000 was targeted for coordinated resource assessment needs; each of the four tribes would have also received $220,000 for base program needs. Again, all of these appropriations would have been very good investments.

Coastal treaty tribes are working with state and federal managers to develop an ecosystem-based stock assessment and management approach for groundfish stocks off the Washington coast. The goal is to develop regional management based on stock-specific biological and ecological characteristics. This will better synchronize fishery management response to regional stock status and abundance trends. Only this type of management capability will fully ensure the coastal tribes' ability to access their treaty share of the groundfish found within their usual and accustomed fishing areas.

PFMC manages the various groundfish species as a single, coastwide management unit with total allowable catch set either as a single quota or as two regional quotas. This has led to disproportionate landing trends within PFMC-managed waters. Under this management approach, harvest removals are not directly tied to the localized abundance of the targeted species. Consequently, harvest off the California coast can lead to increased harvest restrictions off Washington.

A transition to a more regional or ecosystem based management approach is needed for groundfish. The current single management unit approach does not adequately address regional differences in stock status and abundance. Management actions should be tailored to the localized resource and associated fisheries. Regional management capability is required for effective resource management and more equitable distribution of impacts between fisheries.

The tribes have a fundamental governmental duty to conserve and protect their treaty-reserved resources, while providing tribal harvest opportunity. A better understanding of the regional stock status and abundance of groundfish populations is needed, as well as adequate management capabilities for tribes to participate in the PFMC/federal ocean fishery management process. Although the tribes have begun to formulate some of the necessary management tools and assessment of groundfish resources, inadequate staffing and funding limits have prevented the development of fully functional tribal groundfish programs. Full development of tribal groundfish programs will be coordinated through existing tribal management structure and the tribes' Northwest Indian Fisheries Commission to efficiently and effectively advance groundfish management and recovery efforts. The abundance survey will be conducted in cooperation with the Washington Department of Fish and Wildlife (WDFW) and will augment the trawl surveys conducted by the National Marine Fisheries Service. The project would expand upon pilot work WDFW started in 2001 with a submarine video survey of yelloweye rockfish habitat.

Some specific needs include:
Port Sampling – A greater intensity of port sampling is required with the shift toward regional-specific and species-specific rockfish management. Tribal rockfish landings will require species differentiation, otilith (ear bone), and age composition sampling. This increased catch information is essential to adequately address the current decline in rockfish populations.

Fishery Observers - The transition to greater regional- and species-specific management increases the demand for fisheries specific information. Accurate fishery data regarding species catch rates by time, area, and gear type will be required. Such catch per unit effort information is essential for determining regional estimates for abundance, as well as harvest and by-catch rates.

Management Program – The establishment of a fully functional groundfish management program is necessary to ensure that the coastal tribes can effectively participate as resource managers in the federal PFMC groundfish management process. Additional qualified staff will assist the tribes to more fully participate in pre-season, in-season, and post-season groundfish management activities. This staff will oversee catch sampling, data assessment, and associated research efforts.

Enforcement – The establishment of an adequate tribal enforcement program would complement the increased groundfish emphasis. Movement toward species-specific rockfish management increases the need for a greater level of intensity in enforcement activity. A greater enforcement presence will be required to monitor compliance with increased trip limits and landing restrictions.

Research – Dedicated program funds are required to continued investigations of possible management responses to address changing resource conditions. Current pilot studies are exploring possible bycatch reduction methods. Base funding is required to fully assess and complete studies regarding the effects of depth, time, area, and bait type on reducing bycatch rates on species of concern. In addition, there is need for a detailed mapping of groundfish habitat within the tribal usual and accustomed fishing areas. Specialized staff is needed to successfully develop effective groundfish management programs. Groundfish biologists, technicians, certified fisheries enforcement personnel, and other staff are all critical to an effective groundfish management program. Expertise in statistics and biometrics are also necessary. Such expertise is currently scarce at the tribal management level.

Funding for these purposes will address the federal treaty trust responsibility and ensure the sustainable management of the groundfish resources off the Washington Coast. Regional management capability that is based upon, and responsive to, area specific stock structure and abundance is essential to the achievement of these federal responsibilities.

SHELLFISH

The shellfish resource has always been a critical resource to the tribes of the Pacific Northwest, as demonstrated by the following history. Since the Rafeedie Decision of 1994, the resource has become absolutely essential to the contemporary economies of the tribes. The tribes know full well that the resource is also a fundamental component of the Northwest's ecosystem, and are determined to assure that it is protected and well-managed. These objectives require federal funding. However, that funding has been very slow in coming. For the current biennium, for example, NWIFC tribes requested $6.8 million from the federal government, to be invested in a comprehensive program of harvest management, enforcement, critical research, etc. The effort resulted in a $500,000 appropriation for 2002 and $550,000 for 2003. This year, it appears that even this amount is in danger of being reduced.

To help emphasize the level of need that exists, it seems worthwhile to revisit the tribal history, and the case law history, associated with this highly important resource.

Shellfish have been a mainstay of western Washington's Indian tribes for thousands of years. Clams, crab, oysters, shrimp, and many other species were readily available year 'round. The relative ease with which large amounts could be harvested, cured, and stored for later consumption made shellfish an important source of nutrition – second only in importance to salmon.

Shellfish remain important for subsistence, economic, and ceremonial purposes. With the rapid decline of many salmon stocks, due to habitat loss from western Washington's unrelenting growth in the human population, shellfish harvesting has become a major factor in tribal economies. The tribes have used shellfish in trade with the non-Indian population since the first white settlers came into the region a century and a half ago. Newspaper accounts from the earliest days of the Washington Territory tell of Indians selling or trading fresh shellfish with settlers. Shellfish harvested by members of western Washington's Indian tribes is highly sought after throughout the United States and the Far East. Tribal representatives have gone on trade missions to China and other Pacific Rim nations where Pacific Northwest shellfish – particularly geoduck – is in great demand. Trade with the Far East is growing in importance as the tribes struggle to achieve financial security through a natural resources-based economy.

As with salmon, and with groundfish, the tribes' guarantees to harvest shellfish exist within a series of treaties signed with representatives of the federal government in the mid-1850s, and the eons of use, dependency and respectful management that is their legacy. As stated in the Stevens Treaties of the mid-1800's: "The right of taking fish at usual and accustomed grounds and stations is further secured to said Indians, in common with all citizens of the United States; and of erecting temporary houses for the purposes of curing; together with the privilege of hunting and gathering roots and berries on open and unclaimed lands. Provided, however, that they not take shell-fish from any beds staked or cultivated by citizens."

In exchange for the peaceful settlement of what is today most of western Washington, the tribes reserved the right to continue to harvest finfish and shellfish at all of their usual and accustomed grounds and stations. The tribes were specifically excluded from harvesting shellfish from areas "staked or cultivated" by non-Indian citizens.

Soon after they were signed, the treaties were forgotten or ignored. The influx of non-Indian settlers into western Washington continued to grow with each passing year, and the tribes were slowly excluded from their traditional shellfish and finfish harvest areas. Tribal efforts to have the federal government's treaty promises kept began in the first years of the 20th Century when the United States Supreme Court ruled in U.S. v. Winans that where a treaty reserves the right to fish at all usual and accustomed places, a state may not preclude tribal access to those places. Sixty years later, the tribes were again preparing for battle in court. After many years of harassment, beatings and arrests for exercising their treaty-reserved rights, western Washington tribes took the State of Washington to federal court to have their rights legally re-

affirmed. The result was the Boldt Decision, which ruled that the tribes had reserved the right to half of the harvestable salmon and steelhead in western Washington.

Beginning in the late 1970s, tribal and state staff have worked together to develop comprehensive fisheries that ensure harvest opportunity for Indian and non-Indian like, and also preserve the resource for generations to come. It was within this new atmosphere of cooperative management that the tribes sought to restore their treaty-reserved rights to manage and harvest shellfish from all usual and accustomed areas. Talks with their state counterparts began in the mid-1980s, but were unsuccessful. The tribes filed suit in federal court in May 1989 to have their shellfish harvest rights restored. The filing of the lawsuit brought about years of additional negotiations between the tribes and the state. Despite many serious attempts at reaching a negotiated settlement, the issue went to trial in May 1994.

Federal Circuit Court Judge Edward Rafeedie heard nearly three weeks of testimony from tribal elders, biologists, and treaty experts, as well as testimony from private property owners, non-Indian commercial shellfish growers, and state employees. Tribal elders testified in court how their parents and grandparents taught them to harvest clams, oysters, squid, octopus and barnacles from different areas. They testified of learning to dry clams and other seafood for later use. Tribal shellfish biologists and fishery managers testified about current harvest management activities, including all of the management planning that occurs prior to a shellfish harvest, as well as monitoring programs in place to ensure harvests are properly conducted. As with the court battle to have their rights to salmon restored, the tribes' arguments in the shellfish trial centered around the Stevens Treaties – specifically what the treaty language meant at the time.

Rafeedie's decision, which came on Dec. 20 1994, ruled strongly in favor of the tribes. As with the Boldt Decision of two decades earlier, Rafeedie ruled that the treaties' "in common" language meant that the tribes had reserved harvest rights. In this instance, the tribes reserved the right to harvest up to half of all shellfish from all of their usual and accustomed places, except those areas "staked or cultivated" by citizens.

"In interpreting the shellfish proviso, the court must focus on what the Indians intended: The record unequivocally reflects the Indians' insistence on reserving the right to fish as they always had, and the record is devoid of any objections or concern over their exclusion from ancient fisheries," Rafeedie wrote in his decision. "A treaty is not a grant of rights to the Indians, but a grant of rights from them" to white settlers, he wrote. Noting the "paternal pose" federal treaty negotiators took with the tribes, Judge Rafeedie wrote in his decision that the United States promised the tribes would have a permanent right to fish as they always had. "This right was promised as a sacred entitlement, one which the United States had a moral obligation to protect. The court may not rewrite the treaties or interpret the treaties in a way contrary to settled law simply to avoid or minimize hardship to the public or to the intervenors (private property owners and commercial shellfish growers)," Rafeedie wrote. Rafeedie ruled that all public and private tidelands within the case area are subject to treaty harvest, except for shellfish contained in artificially-created beds. Rafeedie's decision requires harvesting tribes to follow several time, place, and manner of harvest restrictions.

For example, accurate shellfish surveys must first be conducted, and the tribes must inform private property owners of their intent to harvest well in advance. Harvesting can occur no more than five days per year on any given private beach with less than 200 feet of shoreline. Also, tribal shellfish harvesters can cross privately-owned uplands to reach shellfish areas, but only if no water or public upland access is available. The court's ruling covers 15 tribes: Jamestown S'Klallam, Lower Elwha Klallam, Lummi, Makah, Muckleshoot, Nisqually, Nooksack, Port Gamble S'Klallam, Puyallup, Skokomish, Squaxin Island, Suquamish, Swinomish, Tulalip, and Upper Skagit. Rafeedie's ruling also included a detailed implementation plan that included a dispute resolution process.

Attorneys for the tribes, the United States, the State of Washington, commercial shellfish growers and private property owners all presented arguments to the U.S. Court of Appeals in May, 1997. The tribes and United States argued that Rafeedie's limitations to accessing private tidelands for harvest, along with his definition of cultivated shellfish beds, were too restrictive and denied the tribes the ability to exercise their treaty-reserved rights on too many beaches.

The tribes also argued that Judge Rafeedie's requirement that the tribes primarily use water access to reach harvest sites on private tidelands would jeopardize the safety of tribal harvesters. The state, in an attempt to monopolize the lucrative deepwater shellfish market, argued that the tribes have the right to harvest only those species they harvested at treaty time, and at specific places. Commercial shellfish growers argued that any shellfish bed, whether a naturally occurring bed or not, was "staked or cultivated" if a grower did anything to improve the bed or simply marked the bed's boundaries with stakes, rendering them off-limits to tribal harvesting.

On Jan. 28, 1998 the court unanimously upheld Rafeedie's decision that restored the tribes' treaty rights, re-stating that the tribes have rights to harvest 50 percent of deepwater and free-swimming species, plus a 50 percent share of all shellfish on unleased state tidelands, regardless of whether the beds were created or enhanced by the state. The court's ruling also provides the tribes with access to portions of commercial shellfish growers' beds. Specifically, the court said the tribes have a right to 50 percent of the shellfish from growers' beds that would be naturally present if the growers had not done any enhancement. The court placed the burden of proof on the growers to demonstrate what percentage of shellfish on their property resulted from their efforts.

The appellate panel upheld most of the time, place, and manner of access and harvest restrictions that Rafeedie had placed upon tribal harvests from private tidelands. The case was then appealed to the U.S. Supreme Court which, on April 5, 1999, denied a petition for rehearing the case, effectively ending the legal appeals process. The tribes are now exercising their treaty rights throughout their usual and accustomed harvest areas in a responsible manner. Meanwhile, discussions with commercial shellfish growers have resulted in a tentative plan for implementing Rafeedie's decision on their tidelands.

The tribes are fully involved in the management of their treaty-reserved shellfish resources. Tribal shellfish managers have developed harvest management and supplementation plans. Harvest data is being collected and shared with the state co-managers. One of the greatest positive steps in western Washington occurred this past summer on a small beach along Hood Canal. It is one example of how tribes and individual tideland owners are cooperatively implementing judge Rafeedie's decision. In February 1997, a tidelands owner signed a shellfish management agreement with the Point No Point Treaty Council, a natural resources consortium representing the Skokomish, Port Gamble S'Klallam, Jamestown S'Klallam, and Lower Elwha Klallam tribes. The agreement includes provisions for population surveys, harvest planning and potential cooperative shellfish enhancement activities. In August 1997, several members of the Skokomish Indian Tribe harvested about 100 dozen oysters from the tideland owner's property for a celebration honoring the tribe's elders. The harvest was conducted under the supervision of the tribe's fisheries manager and the tideland owner's family. Thousands of oysters remained on the beach after the harvest was completed. In effect, this harvest enhanced the ability of remaining oysters to grow and re-populate more efficiently. The cooperative management agreement and subsequent tribal harvest are models of cooperation that can be emulated throughout western Washington. The tideland owner has lobbied neighboring beachfront owners to follow his lead and develop harvest management agreements with the tribes.

Similar management agreements are being cooperatively developed between tribes and private tideland owners in other regions of western Washington.

Shellfish growing areas are routinely surveyed for current or potential pollution impacts, and are classified based on the results of frequent survey information. No shellfish harvest is conducted on beaches that have not been certified by the tribes and the Washington Department of Health. Growing areas are regularly monitored for water quality status and naturally-occurring biotoxins to protect the public health

The future of western Washington's thriving shellfish resources relies upon cooperative management between the tribes and their state counterparts. The tribes' long-standing conservation ethic encourages everyone to take only what is needed, and to protect the environment so that all may share in this and other natural resources for generations to come.

Cooperation in shellfish management is quickly growing, and enabling more efficiency as well as increased harvest opportunities for tribal and non-tribal diggers. The health and vitality of this resource, like salmon, provides a measuring stick for a healthy eco-system, even as it helps sustain a healthy economy. Continued federal support related to this critical resource, is a very wise investment.

CONCLUSION

The tribes of the Pacific Northwest have an extensive history of co-management with the State of Washington in natural resource management. We have proved that working together works. We continue to be advocates of working as a team with the federal, state and other governments, as well as non-government entities, when appropriate, in the search for solutions to the problems we share. We believe the principles of cooperation are applicable in the management of all natural resources. However, we also believe that such cooperation must be based on the fact that tribes exist as sovereign governments, with reserved rights to harvestable levels of our traditional resources. We work hard to do an excellent job as resource managers and we value the trust relationship we have with the federal government. We need the support of Congress, and we believe that the development and passage of Indian fish and wildlife management legislation—intended to protect tribal rights and government-to-government relations with Congress—would be timely and appropriate.

Senate Select Committee on Indian Affairs
Building on the Status of
Tribal Fish and Wildlife Management Programs
June 3, 2003

Testimony of Gordon Jackson,
Director, Business and Sustainable Development.
Central Council Tlingit and Haida Indian Tribes of Alaska

Good morning Mr. Chairman and distinguished members of the United States Senate Indian Affairs Committee. Thank you for this opportunity to speak on behalf of the Native people of Southeast Alaska regarding this important legislation you are considering.

I represent the Southeast Alaska Inter-tribal Fish and Wildlife Commission that includes most of the 20 federally recognized tribes of Southeast Alaska, and I serve as Manager of the Division of Business and Economic Development for the regional tribal organization, the Central Council of Tlingit and Haida Indian Tribes of Alaska. I also provide staff support to the very first Inter-tribal Fish and Wildlife Commission in Alaska.

The history of interactions between Alaska Natives and the government of the United States developed on a different track than that of our Native American friends of the continental U.S., or what we in Alaska call the "Lower 48."

For decades after the 1867 purchase of Russian interests in Alaska, the U.S. government paid little attention to its northernmost territory. This period of "benign neglect" had some fortunate consequences. Congress had ceased ratifying treaties, so unlike many tribes in the lower 48, we were not confined within reservations leaving us free from the paternalistic control of white bureaucrats.

Not being confined to reservations, the Native people of Southeast were able to participate in the economy of our region. I grew up in the village of Kake, and during the fishing seasons we had full employment: while the men went fishing aboard large seine boats, their families worked at the canneries. In cities like Juneau, Natives were employed in the mines, worked service jobs, or on fishing boats. Many became skilled tradesmen.

We had our struggles, we had to fight for the rights to equal education, the vote, to sit where we pleased in public places, but we won these rights decades before Congress passed the Civil Rights legislation of the 1960s.

Among the less fortunate results of our historical circumstances left unresolved until recently many legal issues. Ownership of the land and resources of Alaska was a big one, largely resolved in 1971 with the passage of the Alaska Natives Claims Settlement Act. Not every issue was settled. To this day, the rights of Native people to fish and hunt for

subsistence purposes remains unsettled. Until quite recently, left unresolved was the question of whether or not we even had "tribes" in Alaska. Tribes have been around Alaska for a long time. Almost 90 years ago, the Indian Reorganization Act of 1936 made Alaska Natives eligible for economic activity under that law. Most Southeast communities have organized IRA councils. In the communities of Kake, Klawock, Hydaburg, Angoon, Hoonah and Metlakatla they got into the fishing industry. By the end of the 1940s, these federally recognized tribes ran canneries, owned boats, land, and fish traps. They were major players in the fishing industry. Our village canneries were vibrant but began to fail with the small fish runs of the 1950s and abolition of fish traps. New Alaska policies of limiting entry to the fisheries also contributed to this as well as falling fish prices and loss of processors on or near our villages.

Tribes continue to flourish in Alaska and were made even stronger with the passage of PL 93-638, the Indian Self-Determination and Educational Assistance Act and the production of a list of tribes in Alaska over 10 years ago. This list recognized over 200 tribes in the State of Alaska.

This brings me to the present day and my reason for being here.

We have attempted, with the creation of the Southeast Alaska Inter-tribal Fish and Wildlife Commission, to unite the 20 tribal organizations of Southeast Alaska so that we can answer, with one voice, the question we are so often asked: "What do you people want?"

If you want to raise the hackles of any ethnic group in America, just start speaking to them as "you people." We're no different. After all, we call ourselves American, we take great pride in being citizens of this great country, pledge allegiance to the same flag, and honor at public occasions those of us who have served our country in the armed services.

But on a practical, political level, Alaska Natives know that we have always been more successful when we speak with one voice, so I am here to tell you that "my people" want to be more directly involved in the management of fish and wildlife resources of our region.

As other speakers have alluded to, Native people feel a deep affinity for the land, waters, fish and wildlife of our homelands. We tend to remain where we were born and raised, and therefore have more of a proprietary interest in what happens to these resources.

Last summer the people of Angoon, the only village on Admiralty Island, a Tlingit community of about 600 people, took it upon themselves to manage an important salmon stream. Kanalku Creek flows across federal land, Tongass National Forest, and empties into salt water controlled by the State of Alaska. No state or federal officials were monitoring or managing the salmon returns, yet Kanalku is Angoon's most important sockeye salmon stream. Community leaders became concerned, got together, and

requested that the people of Angoon got in their skiffs, went to distant sockeye streams, and made up the harvest. Kanalku is getting healthier.

Last summer, the federally recognized tribal organization for my home town, the Organized Village of Kake, joined with the Alaska Department of Fish & Game to conduct a scientific monitoring project that measured the returns of salmon to a stream important for subsistence harvests. Other Southeast tribes followed the initiatives in Angoon and Kake.

For "my people," Alaska Natives, subsistence is a hugely emotional issue, and occupies a great deal of our political efforts, but economic considerations are even more important. We are trying, desperately, to regain lost opportunities in commercial fisheries. A state program to limit participation in commercial fisheries had the, perhaps unintentional, consequence of stripping from our villages the economic benefits of the salmon and herring fisheries. Federal changes in laws relating to bottom fish, halibut and black cod, have converted these public resources to private ownership, and again, perhaps unintentionally, the result is that participation of Natives in these fisheries have fallen precipitously since the laws were changed.

In the village of my birth, Kake, we have struggled to rebuild the once vibrant commercial fisheries over the last twelve years. Our community hatchery spawns millions of salmon, our local, though much reduced, fleet of salmon seiner's harvest the returns, and our processing facilities prepare everything from fresh fillets, frozen whole fish, and value-added smoked and dried seafood. But, obstacles remain. We have lost our markets to *farmed salmon*, prices have been dropping like a rock the last 10 years, and processors have left most of our villages. With these trends, many of our native fishermen left the industry resulting in the loss of hundreds of jobs.

If we are to continue progress in reclaiming economic ground lost in recent decades, we need new tools. We need to be more directly involved in monitoring and managing fish and wildlife resources. We also need to be involved in processing. If history is any gauge, it will show that at the peak of our employment in the fishing industry, we owned the processing units. Today, we have few processors in our villages. They choose to be located in the larger communities where they say it is more efficient.

For all the reasons so eloquently addressed by my colleagues, for sound economic reasons, and to realize social justice, we ask that you continue your good work that will create a means for Native Americans to more fully participate in the management and stewardship of our country's natural resources.

Testimony of D. Fred Matt, Chairman, Tribal Council
Confederated Salish and Kootenai Tribes of the Flathead Nation

On

The Status of Tribal Fish and Wildlife Management Programs

Before

The Committee on Indian Affairs, United States Senate
June 3, 2003

BACKGROUND

For thousands of years the ancestors of my Tribes occupied a vast homeland. In 1855 my ancestors signed a Treaty with the United States Government from which my Tribe ceded to the United States 22 million acres of aboriginal territory and reserved for themselves the 1.2 million acre Flathead Reservation as a permanent homeland. The Flathead Reservation is located in the heart of western Montana. The Flathead Reservation has mountains, high mountain lakes, streams and rivers, valley lakes, Flathead Lake (the largest natural freshwater lake west of the Mississippi), Flathead River, fisheries and other aquatic resources, wildlife and other land based resources, timber and plant resources. Tribal cultural resources are extensive throughout the Reservation and our aboriginal territory. In 1935 my Tribe was the first to adopt a constitution under the Indian Reorganization Act. Over the years my Tribe has also been first to advance fair, unique, creative, powerful and effective fish and wildlife management programs and initiatives. To complement our fish and wildlife goals we have also implemented special grazing management systems. Important federal initiatives have also supported some of our efforts in fish and wildlife management. Some of the Tribal efforts have been achieved through litigation and some through negotiations. In the end, it is important that Tribal governmental exercise Tribal authority over Tribal resources.

GOVERNMENTAL ORGANIZATION

The Confederated Salish and Kootenai Tribes have a strong infrastructure organized, under the Tribal Council, into multiple departments, enterprises and committees. The attached Tribal Organizational Chart shows the structure that supports our programs. Administrative support is provided by the Accounting Department and legal support is provided by the Tribal Legal Department. These two key departments provide support needed for the extensive contracting, compacting, implementation and auditing requirements for Tribal programs. Cultural resource activities are located in two Culture Committees, the Cultural Preservation Department and the Peoples Center. The Tribal Council and most Tribal programs look to these departments for advice and support in all major endeavors.

The Confederated Salish and Kootenai Tribes fish and wildlife programs are organized within the Tribal Natural Resources Department, under the Division of Fish, Wildlife, Recreation and Conservation. The attached Natural Resource Department Organizational Chart shows the structure of the Department. The following information summarizes the Fish and Wildlife Programs.

As you hear about our programs it is also important to keep in mind that our programs are successful because of the people who staff the programs. We have always strived to meet multiple objectives. When we hire people for our programs we set high qualifications and seek out the necessary expertise to meet our objectives. We also strive to place Tribal members in these programs. We also support education and training

objectives that allow Tribal members to work toward the goals they are interested in. Education and experience play an important role in our success. Among the Tribal professional fish and wildlife biologists alone we estimate that they have over 160 years of management experience.

TRIBAL FISH AND WILDLIFE PROGRAMS

The Division's mission is to protect and enhance the fish, wildlife, and wildland resources of the Tribes for continued use today and by seven generations to come. We strive to accomplish this by maintaining professional staffing, monitoring resources, coordinating with other agencies, crafting and implementing management plans and regulations, and educating users in the wise and ethical use of the resources. We have been fortunate during the past few decades to primarily finance these needs through hard Tribal dollars and funding from various mitigation activities, which has allowed us to assume fish and wildlife management functions previously engaged in by the U.S. Fish and Wildlife Service and the Montana Fish, Wildlife and Parks. Continued funding is always a question of Tribal priorities and availability, consequently, the availability of Federally mandated dollars for the future financing of our sound resource management programs is necessary.

Current staffing within the Division is at fifty employees, with twelve fish and wildlife biologists, one wetland/riparian ecologist, one watershed coordinator, three biologist trainees, one information and education specialist, one licensing agent, three recreation specialists, six field technicians, seven seasonal field technicians, ten game wardens, four secretaries, and one general manager.

Let me tell you about each of our programs and some of their recognized work tasks and accomplishments. A record that has been given tribute by such organizations as the American Fisheries Society, the Northern Region of U.S.F.S, and the Montana Wilderness Society, and a record that benefits all Americans today.

Wildlife Program

Tribal wildlife biologists have been active in developing data bases related to wildlife and habitat resources to assist with management prescriptions. Program staff has been in leadership roles in the reintroduction of rare species of native wildlife, including the peregrine falcon, the trumpeter swam and the northern leopard frog, with each species once again re-occupying voids that it once filled in the Reservation's ecosystems. Staff members are also active in numerous interagency management committees and working groups that work cooperatively to address management issues for rare, threatened and endangered species. In addition, special conservation areas for grizzly bears, elk, and bighorn sheep have been established, and benefit those species, as well as many others. Wetland and riparian habitat resources are benefiting from hydroelectric mitigation agreements, with habitat acquisition and restoration activities underway as several sites.

Fisheries Program

Our fisheries biologists have been the leaders in Montana for protecting and restoring native fisheries populations through establishment of minimum in stream flows and reservoir levels, construction of irrigation canal fish screens, management of non-native fish species, and stream channel reconstruction and riparian habitat protection. The Tribal Fisheries Program and Montana Fish, Wildlife, and Parks have written and implemented the Flathead Lake and Upper River Fisheries Co-Management Plan, a plan unique for Montana and perhaps the entire United States. The Plan represents the coming together of two governments and two cultures voluntarily, in a common direction for the shared fishery of the West's largest freshwater lake. This Lake had once harbored one of the most robust populations of native bull trout in the lower 48 states, but in the early 1990's the fisheries took a serious decline from the effects of non-native fish, resulting in the listing of the species. The current management plan strives to shift the species balance to benefit the bull trout while maintaining a recreation sport fishery. The co-management plan has been published as a model of cooperation and public involvement.

Wildland Recreation Program

The Wildland Recreation Program is very proud of the responsibility to manage this country's first Tribally designated wilderness area and wilderness buffer zone. The twenty year old and 92,000 acre sized, Mission Mountains Tribal Wilderness Area is second to none in it's spectacular resources, conservation management rules, and visitor educational programming. This designation combined with other Tribal preservation designations provide for nearly one quarter of the Tribes land base in natural area management. The recreation staff has also been instrumental in crafting the Lower Flathead River Plan, a Tribal guidance plan akin to a federal scenic river designation, and the implementation of an annual 1,000-student river ecology event for all Reservation schools. This program's ability to provide recreation facilities with limited funding, signifies the best in cooperative and creative management found anywhere in Indian Country.

Conservation Program

The Conservation wardens provide enforcement for fish, wildlife and recreation rules through Tribal and Federal Law, and most interestingly, the Tribal-State Cooperative Fishing and Bird Hunting Agreement. This twelve-year old litigation settlement agreement regulates non-member bird hunting and fishing on the Reservation through a Tribal licensing system and joint State and Tribal fish and wildlife board, and allows for continued public input and management actions and regulations.

> The late Tribal Chairman Michael Pablo and Marc Raciot, former Governor of Montana, once stated "the agreement has shown that by working together, we can continue to enjoy this magnificent place we call the Flathead Indian Reservation". (1994 - 1998 Joint Report)

Tribal, State, and Federal wardens all enforce the joint regulations, citing violators into courts of appropriate jurisdiction. Our wardens, who are cross deputized with the U.S. Fish and Wildlife Service and Montana Fish, Wildlife and Parks, patrol the Reservation's 30,000 individual non-member users and 7,000 Tribal member users for compliance checks and information contacts. The wardens have been recognized for their technical search and rescue skills and training and continue to offer their services to all of Western Montana.

OTHER IMPORTANT HIGHLIGHTS

The many accomplishments of my Tribe are numerous. I will list some of the other plans, laws, and programs that affect Fish and Wildlife management on the Flathead Reservation, either directly or indirectly. They include:

1. Tribal primitive area designations – Tribal use protection/preservation areas (97,000 acres under this designation).
2. Flathead Reservation Comprehensive Resource Plan – Overall natural and land based resource guidance plan.
3. Flathead Forest Management Plan – An ecosystem based forestry management plan with the primary goal to restore historic vegetation patterns.
4. Kerr Dam Mitigation Fish and Wildlife Implementation Strategy – Specific mitigation planning for the effects of Kerr Dam on the Flathead River.
5. Tribal planning with the NEPA process – The Tribes utilize NEPA for planning and decision making processes.
6. Flathead Reservation Class 1 Air Quality Designation – The tribes maintain the most stringent air quality standard available through EPA.
7. Shoreline Protection Ordinance – Tribal shoreline standards to provide environmental safeguards for construction activities.
8. Aquatic Lands Conservation Ordinance – Provides protection of all aquatic lands, including wetlands.
9. Hunting, Fishing, and Recreation Ordinance – Provides for both member and non-member use regulations.

Finally, we look forward to adding the National Bison Range to our list of highlights in the near future. We are excited about the opportunity to negotiate for the management of the National Bison Range. The National Bison Range is currently managed by the United States Fish and Wildlife Service and under current federal law is required to negotiate with a Tribe, who shows interest, for the management of certain federal facilities, (Those facilities are listed and the National Bison Range is on that list) if a Tribe can show a historic, geographic or cultural connection to the facility. The National Bison Range is located in the middle of the Flathead Reservation and the Confederated Salish and Kootenai Tribes clearly have historic and geographic and cultural connections to the National Bison Range lands.

SUPPORT AND NEED FOR FUTURE PROGRAMS

I would like to remind the Committee of some important items for your considerations. Indian Tribes, when compared to States, do not have equal access to all the Federal funding opportunities available today, such as the Dingell-Johnson and Pittman-Robertson excise taxes, or U.S. Coast Guard funding assistance, even though Tribal lands, waters, people and visitors are used to derive the funding base and disbursements of funds to the States. In addition, when funding is available, the unique needs and internal limitations of the Tribes prevent application for certain grants that would otherwise greatly behoove Tribal efforts in resource management and economic development. Current and forecasted population growth in and around our Reservation will continue to place increasing demands upon our resources and staffing which also increases our need for enhanced and new funding opportunities.

CLOSING AND CONCLUSIONS

The Confederated Salish and Kootenai Tribes have always been good stewards of the natural resources. Today we strive to achieve good stewardship through, among other things, excellent Fish and Wildlife Program Management. Our efforts include continuing out cultural traditions, interdisciplinary consultation, setting high standards and professional qualifications, providing due process and public involvement as part of the regulation development process, including non-Tribal members on regulatory boards, staying active in the political process and coordination with Federal agencies and State Government. These efforts have gained us recognition by Federal agencies and benefit Tribal Government, Tribal members, the reservation economy and all Americans. In the future we need to be strong to continue to be a vital part of the regional economy and to meet the challenges that we will face from population growth. It will take your support to help keep us strong.

As always we appreciate your time and your efforts to find ways to keep Tribal governments and Tribal people healthy, viable and sovereign.

Testimony of Millard J. (Sonny) Myers

Before the Senate Committee on Indian Affairs

June 3, 2003

Mr. Chairman, members of the Committee, my name is Sonny Myers. I am the Executive Director of the 1854 Authority in Minnesota.

The 1854 Authority is a tribal organization created by the Bois Forte and Grand Portage Bands of the Minnesota Chippewa Tribe. The purpose of the 1854 Authority is to manage, regulate, preserve and protect the natural resources that are subject to the rights reserved in the Treaty of September 30, 1854.

Along with the Fond Du Lac Band, the Grand Portage and Bois Forte Bands reserved the right to hunt, fish and gather in the approximately 5 million acres ceded to the United States in the Treaty of 1854. For reference, the ceded territory is the "arrowhead" of Northeastern Minnesota. The area contains a great deal of public land, including the Boundary Waters Canoe Area Wilderness and nearly all of the Superior National Forest. The Bands reserved the right in the Treaty of 1854 not only because the area contained the fish, game and plant resources that supported a subsistence lifestyle, but also because the area was a historic homeland containing sites that were then, and remain today, significant in Chippewa history and culture.

The 1854 Authority is 15 years old and, as a result, can speak directly to the status of this fish and wildlife management program. In short, the 1854 Authority is slowly but surely beginning to feel the effects of funding that remains relatively level while expenses increase. For example, when my predecessor testified before this Committee 10 years ago, we employed five (5) conservation officers to patrol 5 million acres. Today we have four (4), and as the cost of health insurance, liability insurance, gas and nearly everything else increases, we may soon be faced with cutbacks in hours or positions. We appreciate

that Congress has consistently earmarked funds for the 1854 Authority in the Interior appropriation, and those funds are the lifeblood of the Authority. The level of funding, however, has never been enough to enable the Authority to develop a program that fully meets the needs of the Bands.

Additional funding would allow the Authority to take a more substantial role in fish and wildlife research, in long-term planning by various public and private non-profit entities, and in habitat improvement projects. Our participation in habitat projects has been limited but successful. The limitation is due not to a lack of need but to a lack of funds. The success has been because we have joined with other agencies and entities and thereby made our Circle of Flight funds go much further. In the opinion of the Authority, the Circle of Flight program has been an extremely cost effective way to do projects with lasting impact on fish and wildlife resources. The Authority urges Congress to make that program permanent and to fund it at a level that will allow us to realize significant gains in project numbers and size.

The Circle of Flight Program is one example of efficient use of funds to improve habitat used both by those exercising treaty-reserved rights and others. Because of the federal land holdings in the ceded territory, the 1854 Authority has many opportunities to join with federal land managers on projects that are mutually beneficial. Our opportunities are limited, however, by the fact that we have little to "bring to the table." More funding would mean that two or more contributors would be able to do something that one alone found impossible. It should be emphasized that the benefits of projects in which the 1854 Authority has been able to participate are realized not only by tribal members but by all who take advantage of recreational activities on public lands and waters.

Environmental review and compliance is an area of concern for the 1854 Authority. Federal actions, state actions and private activities subject to federal and state

permitting all have a potential impact on treaty resources. One of the obligations of the 1854 Authority is to protect those resources and, whenever possible, ensure that the actions of others either avoid negative impacts on treaty resources or are mitigated. To fulfill that obligation, we need staff that can review proposed actions from a tribal prospective and provide comments to state, federal and local decision-makers. Proposals such as a Superior National Forest Management Plan or a State forest management plan have a multitude of implications for fish, game and wild rice populations, and today the 1854 Authority lacks the funds – and staff – to be confident that treaty resources are being protected adequately. Similarly, the Authority needs more funding to be able to participate in long-range planning efforts such as the Lake Superior Bi-National Program. A basin-wide effort to evaluate the source and impact of toxins on a fishery that is vital to treaty fishermen, that program is one in which the Authority would actively participate if it had the staff.

During the fifteen years the 1854 Authority has been in existence we have seen the Bureau of Indian Affairs continue to focus on trust resources on the reservations. While that is certainly a necessary part of the government's trust responsibility, too often it has resulted in the subordination of off-reservation ceded territory resources when it comes to funding. Most recently, the furor over historic accounting claims has diverted resources away from programs – like ours – which are more forward-looking. The Congress should consider action which will resolve past wrongs behind us and allow the BIA to refocus on the future. There is much to be done in both areas, but we believe that generations which follow will benefit from a renewed effort to protect and enhance the natural resources that will provide subsistence in the future.

The final point the 1854 Authority wants to make is that Congress needs to strengthen the role of entities such as ours in terms of our relationship with federal agencies. As I mentioned earlier, resources in the ceded territory are managed by many,

and the 1854 Authority often tries to influence them to do no harm – or at least minimize the harm – to treaty resources. Those land managers – including federal land managers – rarely consider the Authority to be a voice it should listen to with care. We are lumped with "special interests" and the fact that a treaty resource may be impacted is of little consequence. Federal agencies like the Forest Service pay only lip service to the trust responsibility of the United States to protect treaty resources. It is discouraging when there is only perfunctory "consultation" and little substantive attention given to how a federal action affects treaty resources both long and short term. The Authority suggests that Congress mandate federal agencies to recognize tribal regulatory bodies such as ours and give us a seat at the table when decisions affecting trust resources are made.

An example of the different treatment of tribal entities which manage and regulate off-reservation treaty resources can be found in the Federal law known as the Lacey Act Amendment, of 1981, 16 USC §§ 3371 to 3378. That law makes it a federal offense to import, export, transport, sell, receive, acquire, or purchase fish or wildlife or plants taken, possessed, transported, or sold in violation of Federal law or in violation of any Indian tribal law. "Indian tribal law", however, is defined by statute as being tribal rules or regulations applicable within Indian country as defined in 18 U.S.C. § 1151. That means, essentially, reservations. As a practical matter it means that tribal rules applicable in a ceded territory – where perhaps a major part of hunting, fishing and gathering is occurring - are relegated to second – class status. A simple amendment to the definition of "Indian tribal law" in the Lacey Act Amendments would mean that the treaty resources in the ceded territory would have the same protection as resources on the reservation. If the Secretary of the Interior truly wants to protect resources that she has a trust responsibility to protect she should support that amendment and then, use existing law to deputize tribal conservation offices with authority to enforce Federal conservation laws. This would be a small step towards elevating the role of the 1854 Authority in

management of trust resources, but it would be an important step in terms of Congressional recognition that off-reservation trust resources are as important as those within reservations.

In summary, the status of our fish and wildlife program is that funding shortfalls cause us to do the bare minimum. We need the funding to do what we must to protect the resources that make the treaty rights meaningful. Along with funding, we need the other governmental resource manages to recognize that we have a place in the management of the resources.

Thank you for the opportunity to present testimony to the Committee on behalf of the 1854 Authority and the Grand Portage and Bois Forte Bands.

June 18, 2003

Honorable Senator Inouye - Vice Chairman
Senate Committee on Indian Affairs
838 Hart Office Building
Washington DC 20510

Dear Senator Inouye,

I am writing to request your assistance to restore the Circle of Flight Tribal Wetland & Waterfowl Enhancement Initiative in FY 2004. This program, under the BIA's Other Recurring Programs - Resource Management line item, was eliminated by President Bush from his FY 2003 budget. Congress restored this important program in FY 2003, but the President has again proposed eliminating the Circle of Flight in FY 2004.

Secretary of Interior Gale Norton has said "successful programs should be funded and allowed to thrive". Well, we believe the Circle of Flight has proven to be one of Interior's top trust resource protection programs for more than 10 years. Since initial funding in FY 1991, Great Lakes tribes, inter-tribal organizations, and partners have restored or enhanced more than 60,000 wetland acres (including 8,000 acres of wild rice lakes and rivers), more than 6,000 acres of grassland and native prairie, installed thousands of waterfowl nest structures, and have taken part in numerous other wetland enhancement and education activities.

The Circle of Flight has enabled Great Lakes tribes to become key resource partners with federal, state, and local government units, as well as private organizations such as Ducks Unlimited. *The Circle of Flight program has invested more than $6 million in habitat projects, and has leveraged these dollars for an additional $18 million in federal, state, private, and tribal funding, yielding an impressive match ratio of 3 to 1.*

The Circle of Flight has served as the national tribal model for wetland and waterfowl enhancement, and in terms of results achieved from dollars invested, few programs in the country can match its success. Elimination of the Circle of Flight will cripple Great Lakes tribes' ability to continue successful partnerships which have benefitted a diverse array of wildlife and associated habitats.

I ask for your assistance to restore the Circle of Flight program to the BIA's FY 2004 budget to at least the FY 2003 level of $594,000, and to consider providing the FY 2003 requested amount of $915,000. I thank you in advance for your assistance in this important matter.

Sincerely,

Millard J. (Sonny) Myers
Executive Director
1854 Authority

WRITTEN TESTIMONY TO THE
UNITED STATES SENATE COMMITTEE ON INDIAN AFFAIRS
THE HONORABLE BEN 'KNIGHTHORSE' CAMPBELL, CHAIRMAN
June 3, 2003
IRA NEW BREAST, EXECUTIVE DIRECTOR
NATIVE AMERICAN FISH & WILDLIFE SOCIETY

Mr. Chairman and Distinguished Committee Members:

My name is Ira New Breast, Executive Director of the Native American Fish and Wildlife Society (Society) and an enrolled member of the Blackfeet Tribe of Montana. I would like to respectfully thank you for the opportunity to present written testimony to the Senate Committee on Indian Affairs and speak to you on the development of the Native American Fish and Wildlife Management Act (NAFWMA).

The Society is a national non-profit organization established in 1982 by Tribal, leaders, fishery and wildlife biologists, conservation law enforcement officers, land use managers, planners, and a broad array of fish and wildlife technical specialists. The Society serves as a platform, from which Tribes can network on a wide-range of national, regional, area, and local topics. The organization offers federal, state, tribal and international governments, as well as private organizations and general public, to share formal and informal information surrounding fish and wildlife issues. The Society is dedicated to the sound management and prudent use of Tribal fish and wildlife resources, and accomplishes this through charitable; training opportunities, assembly, technical coordinate assistance, education, administrative counsel support, circular publications and internet media. As Tribes recognize themselves as sovereign governments operating in perpetuity, the Society embraces its role to provide assistance for the interminable future.

Through the Society membership the organizations relationship with Tribes is intrinsic and is imbued with a unique national perspective, insight particular to the Society reflects many of the basic fish and wildlife program needs common to Tribes throughout Indian country. The Society as a organization is not a substitute for Government-to-Government relationships with Tribes, it cannot speak for a Tribe/s, not all Tribes participate within an organization, but because of our intimate relationship we are logically equipped to report knowledgeably on the challenges, barriers, obstacles and impediments facing Tribes as they strive to develop and sustain fish and wildlife management programs.

The Intent of this testimony is to draw your attention to an important area of oversight and unmet needs, the scope of which is vital to Tribal efforts to realize sustainable tangible management practices for their fish and wildlife natural resource. It is our hope that your findings from our testimony and the testimony of the other distinguished speakers will justly and morally lead you to the conclusion that the enactment of the NAFWMA is necessary to ensure the future of fish and wildlife resources for Tribes and the general American public.

It is a complex undertaking to expect all members of congress to completely embrace and value the cultural, spiritual and historic connection to the resource that forms the basis and foundation of each Tribes management efforts. Indeed, each Tribe is unique, yet in general there is a fundamental harmonized regard for the resource. It is these connections that form the basis for Tribal resource management decisions, which strives to balance resources for "future

generations" and provide for current optimum Tribal interests. It is then your discretion, and our entreat, to ask that congress objectively concede this as a valid factor of critical importance in weighing the development of the NAFWMA for America's Tribes.

The Federal Indian trust responsibility is a legal duty on the part of the United States to protect Indian land and resources, fulfill treaty, Congressional agreement and executive order obligations, and carry out mandates of Federal/Judicial law for the benefit of American Indians and Alaska Natives. No less than international and other domestic duties. Congresses highest trait exemplifies the good American conscience, Tribes rely on your honest willingness to champion and bond your actions to edicts of this land but also to rest your fortitude on the words of good intent. In this era of expanding international leadership and responsibilities for the country, what better way to build international confidence than by demonstrating excellence in the overall treatment of indigenous domestic sovereigns. In the face of mounting energy and resource use, and to address solutions, express an example of the best commitment to the environment by enacting this legislation which ensures quality standards and integrity of management for present and future resource needs. Indian country's interest in the environment is embodied, inherent and evident, our fellow Americans dearly share this interest in their own valid way. As the country and world exorbitantly consumes it is prudent for our leaders to invoke measures that unite all efforts to provide a future of quality environmental resource standards and presence.

Protection of tribal trust resources is the cornerstone of the federal Indian trust responsibility. The majority of tribal conservation activities are contracted directly by tribes from the federal government, under authorization of the Indian Self-Determination and Education Assistance Act of 1993 (ISDEA, P.L. 93-638). Funding under the ISDEA, either by direct service contracts with the BIA or through Self-Governance agreements, provides the base from which tribes manage their natural resources. Unfortunately, this funding has shrunk by more than 20% in the last five years. This is due primarily to a massive cut made by Congress in 1996 to the portion of the BIA budget which goes to tribes to provide services to their members (known as the Tribal Priority Allocations account). Subsequently, additional congressional cuts have occurred almost yearly, coupled with congressionally mandated rerouting of funds to "people based" service programs. The result has been severe reductions in Tribes ability to protect their cherished natural resources. Each Tribe that seeks federal funding for projects or programs out of the scope and policy of agency funding must petition directly to the Senate and House Appropriation Committees. This avenue is generally beyond the financial and resource scope of Tribal Fish and Wildlife capabilities.

A compelling difficulty for Tribes struggling to develop and sustain fish and wildlife programs is that authorizing language for the wide assortment of federal conservation programs largely fail to include Tribes as eligible to participate. One classic example is the Federal aid in Fish and Wildlife restoration and Recreation legislation, commonly known as Pittman-Robertson, Dingle-Johnson and Wallop-Breaux. These authorized levies of excise taxes proceed approximately $450 million annually to states, territories and the District of Columbia. Native American populations, Indian land masses, and Indian water bodies are used to inflate formula factors that decide allocations, and Native Americans pay the taxes. Taxation without representation plays a role here. Native Americans appreciate better than most the burden that states face in funding fish and wildlife management, equity at the cost of the resource is not our strategy or intent, rather we call attention to the unfair injustice and await our trusted leaders

resolve. The Endangered Species Act (ESA), Section six is absent of language affording Tribes a means of capacity to manage their resident endangered species or species of concern. Over 30 ESA animal species and numerous plant species fall within the jurisdiction of Tribes. Current federal agency resources fall short of filling the management gap of need, and more than often play an obstructive compliance role in the economic development activities of poverty stressed Tribes. The NAFWMA would greatly assist the United States to offset these shortfalls and ensure the integrity of the resource designed for protection and management.

An important issue is the encroachment of states on the jurisdiction of the Tribes in all areas of government activity, which also includes fish and wildlife authority. The Tribes look to you the Congress to preserve and fairly protect our interests. The factors leading to state infringement on Tribal lands and interests are many; at the core is a misled understanding of funding processes and allocations, a long history of miss-understanding and subjugation of Indian culture and society, and a failure to embrace and acknowledge the special trust commitment made by this countries great fore-fathers and their contemporaries. It is erroneous for state leaders and state civil resource employees to assume that their attempt to have controlling authority over Indian Lands will bring about solutions that will satisfy the State citizenry, the state tax payers. Any new burden of authority for the states on Indian lands will be paid for by the states residents, in state taxes, states easily overlook the special relationship Native Americans have with the law of the land. Congress, do your constituents know that their state governments are leading them down this one way endless financial road of commitment? It is in the American Peoples interest to protect Native American, Alaska Native Interest from states unfair encroachment. One demonstrative method is to enact the NAFWMA to ensure Tribes capacity to manage their resource for the benefit of the environment and all American people.

Federally recognized Indian Tribes within the lower 48 states have jurisdiction over a reservation land base of over 55 million acres, or 85,938 square miles. Alaska native lands comprise another 45 million acres. Additionally, some tribes control resources outside of their reservations due to federal court decisions and voluntary cooperative agreements that allow a co-management status between tribes and states. These lands are called ceded and usual and accustomed areas and equal over 38 million acres. In these areas, tribes maintain co-management jurisdiction for fisheries and wildlife management and utilization. Thus, tribal lands coupled with the ceded, usual, and accustomed areas total a natural resource base of over 140,625 sq. miles, containing more than 730,000 acres of lakes and over 10,000 square miles of streams and rivers. Thus, if all Native American owned land were combined, it would constitute the fifth largest state in the U.S.

In Indian Country, each Tribe functions as a distinctively unique Governmental, Political, Social and Cultural entity operating on a government to government basis nationally and internationally. The language describing a Treaty, Congressional Legislation or Agreement, Executive Order, and Supreme Court Statute is unique to each Tribe and molds the governing nature of each individual Tribes distinctive system of governance and authority. The contemporary culture of each Tribe is as autonomous today as it was in the past, distinctive and independent. Native Americans are unique in Tribal and individual heritage and are collectively unique as an intergraded ethnic group. On the surface, facilitating the interests of a wide range of individual Tribes may appear daunting. In practice, once embraced the diversity and

distinguishing richness of Native American cultures offers an extraordinary meaningful experience.

Indian Reservation lands are diverse in habitat and represent many of the fish and wildlife species that naturally occur in the lower United States. Many species listed within the Endangered Species act and many species of special concern are present throughout Indian Country. The various habitats that support the game populations are extensive and persist in a pristine state throughout most of Indian Country. Stressed economies at poverty levels have had the effect of safeguarding the habitats against development and destruction. As a result an extensive faunal presence can be found throughout Indian Lands.

Typically, Indian Lands are adjoined by a variety of jurisdictions in rural settings. Tribes and other managing authorities recognize the importance of cumulative eco-system management. Playing an effective management role in the immediate and surrounding environmental community is recognized as a necessity to ensure the best interest of the fish and wildlife resource, a resource that does not recognize boundaries or jurisdictions.

The challenges of the past continue to confront Tribes today, where Tribes maintain a grassroots identity inherently close to its own needs. Fundamental conservation management practices enhance the potential for immense resource growth. Through the implementation of optimum management practices for the fish and wildlife, the best Tribal and associated resource interest can be achieved.

One role for the proposed legislation is to further encourage the establishment and continuation of Tribal fish and wildlife codes and programs. Tribes of the United States function at different developmental levels of fish and wildlife management. A number of Tribes find it difficult to institute fish and wildlife programs because of a combination of economic and political barriers. Other Tribes have well established successful programs with scientific, administrative and law enforcement capacity. Funds for successful programs are made available through federal legislation, litigation, mitigation, executive order, agreement, or contract/grant. Other Tribes operate programs that rely primarily on the Tribes general fund or revenues generated by their hunting and fishing permitting process, where the size and scope of operations are proportional to the amount of permitted services available or utilized.

Among the challenges Tribes face, they must contend with two common misconceptions, one is that Tribes are federally funded throughout their needs, and the other is that Indian Casinos serve every Tribe and their needs. This is not true.

Tribal programs of low capacity consist of one or more Conservation officers enforcing Tribal and Federal codes. Technical management is provided through limited levels of assistance by the US Fish and Wildlife Service, Bureau of Indian Affairs and other federal agencies. For most State agencies fish and wildlife assistance to Tribes is not common because of jurisdiction and in-state limited and/or priority department management funds.

At times, private organizations supplement Tribal management efforts. This is infrequent as private management assistance is either governed by current organizational policy and requires a match of purpose, mission or funds with that of a Tribe before dedicated funds can be considered, or private organizations may not have an awareness or relationship with Tribes to feasibly assess and render potential services.

Although limited, current grants and contracts play a needed role in project work. The problem is pre-determined fish and wildlife management funds are a complicated maze and the process is not equipped to accumulatively meet many areas of a Tribe's management needs.

Compliance with grants and contracts can burden a Tribes overall operational resource and be time consumptive.

Tribal fish and wildlife management needs are straightforward. Fundamentally they are a combination of capable personnel supported by proficient resource capitol driven by a clear objective and purpose that encourages the affected public and governing body to embrace and support the best interests of all current and future aspects of the fish and wildlife resource.

Tribes have a large need to gain an understanding of fundraising and communicate awareness of their needs to the general public. Internally, Tribes, Indian organizations and fundraising affiliates can facilitate grant writing proficiency and teach methods of donor participation. Support to create capacity in this important area is necessary .

Training needs involve biological technical capability, law enforcement, educational, administrative, and an understanding of marketing services. Contracting and obtaining training instruction services figure as a prominent challenge. Training location bears importantly on a Tribes ability to participate as travel costs can impede attendance. The frequency of available training, and level of training (i.e. beginner, intermediate, & advanced) are factors among experience of needs.

Tribal fish and wildlife programs have frequent major capitol asset turn over which is typically difficult to address under Tribal budget allocations. Resource supplementation assistance is essential to ensure basic operations capabilities. Miscellaneous operational needs of support equipment and material (i.e. Office supplies, firearm ammunition, handheld radios, GPS units, publication capabilities, internet, bullet proof vests, uniform/work clothes, gasoline, maintenance...) are periodic ancillary logistical forms of aid that allow Tribal capacity.

Information dissemination is a essential need of Tribes. Intertribal information publications and literature production play a vital role to network and generate awareness through building bridges, cooperatives and partnerships. Tribes can benefit from the sincere interest held by the general public and their ability to champion the needs of the fish and wildlife resource.

A comprehensive fish and wildlife data inventory and survey of bio-diversity and human resources in Indian country is a crucial Tribal need to assess and measure achievements and target areas for maximum effect.

Programs that facilitate Indian Bison Conservation and management is dearly needed. Tribes see buffalo as a fundamental wild resource, basic to contemporary existence and among the cumulative fishery and wildlife needs of Tribes.

The Native American Fish and Wildlife Management Act is a long awaited measure that will conscript funding and impart legal process to Tribes as they realize development and sustainable fish and wildlife conservation for the benefit of the resource and the people of Indian Country and the United States.

Tribes rely on the strength of Congress to exercise legislative authority to ensure natural resource interests, and to protect Tribes from unjust exterior pressures, and eliminate disparities, where do we go if you cannot prevail for us? Much of our hope and ways of life to enjoy our natural destinies dutifully rests with this body.

Testimony of Mr. Olney Patt, Jr.
Executive Director
Columbia River Inter-Tribal Fish Commission
Before the
United States Senate Committee on Indian Affairs
On June 4, 2003

Mr. Chairman, Mr. Vice-Chairman, members of the committee. My name is Olney Patt, Jr. I am the new executive director of the Columbia River Inter-Tribal Fish Commission as well as the immediate past chairman of the Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon. While I am providing oral testimony to the committee on behalf of the commission, I would like to direct your attention to the written testimony provided by the member tribes of the Commission and I will reference some of the points and issues made there.

Two years ago, a former member of this committee, the distinguished Senator from Oregon, Mark Hatfield, addressed a broad group of Columbia Basin stakeholders and governments concerning the governance of the Columbia River. His message simply and eloquently recounted the history of the Bonneville Power Administration and it's goal of rural electrification and employment in the Pacific Northwest during the Great Depression. He further stated that this mission had been accomplished but that Bonneville needed to redefine its societal goals to take into account new realities in the Pacific Northwest . . . or risk losing the benefits of the Federal Columbia River Power System to the Pacific Northwest. He believed that the redefinition of the Bonneville mission could be found at the core of its history . . "high social purposes that could improve lives." With his permission, I have included Senator Hatfield's remarks as part of this testimony and request that it be included in the record.

Senator Hatfield was correct in stating that the original goals of the Bonneville Project Act of 1937 were accomplished. However, they were achieved while leaving both the tribes of the basin and the ecosystems and salmon upon which tribes depended in Bonneville's wake.

The passage of the Northwest Power Planning and Conservation Act in 1980 (the Regional Act) under the leadership of Senator Hatfield and the early work of the Act's Council under the chairmanship of Senator Dan Evans were important attempts to remedy the damages caused by the system. The Regional Act's mandate was for the project operators "to protect, mitigate and enhance" fish and wildlife resources affected by the hydro system through a planning process that included rigorous consultation with the tribes in terms of a statutory trust responsibility and the use of the Bonneville revenue stream consistent with a fish and wildlife program. As our written testimony yesterday and today points out, during the first twenty years that the Act was in place, we made great progress in our efforts to rebuild our ecosystems and salmon populations while providing significant economic benefits to our own and surrounding communities. These included the multiplier effects of capital expenditure and the stream of benefits in terms of fishing opportunities that are helping to buoy up our sagging rural economies that suffer from high unemployment and hunger rates.

However, during the last two years, Bonneville and, for that matter, the Council, which has the responsibility to develop an effective fish and wildlife program, have failed

to fulfill the mandates of the Regional Act. The Yakama Nation, the Confederated Tribes of the Umatilla Indian Reservation, and the Nez Perce Tribe are providing written testimony to the Committee. In each testimony they provide a detailed account of the problems they have encountered since the year 2000. They include:

- Failure to implement the Fish and Wildlife Program and the hydrosystem Biological Opinion that was recently held invalid by a federal district court.
- Placing the risk of energy-related financial mismanagement on fish and wildlife funding.
- Failure to consult and coordinate with tribes over the funding of the Fish and Wildlife Program.
- Failure to honor numerous commitments to the tribes made in their 1996 MOA, and in its rate case.
- Failure to employ efficient contracting procedures and prompt expense reimbursement resulting in missed opportunities and unnecessary costs to the tribes.
- Providing an increase of $4 million to its $8 million Fish and Wildlife Division budget resulting in new impediments to efficient fish and wildlife funding.
- Emphasizing certain federal agency funding needs in the name of the ESA at the expense of successful tribal fish and wildlife programs that address both watershed and systemwide needs.

I would also direct your attention to a memo attached to this testimony from the Nez Perce Tribal Department of Fisheries Resource Management detailing the contracting problems that are wreaking havoc on the time and resources of our tribal programs.

Bonneville continues to provide the cheapest electricity in the United States in part because it has not internalized the full cost of its fish and wildlife responsibilities that are normally borne by power plant operators. As noted in the Yakama testimony, our analysis shows that BPA could meet funding levels for high priority fish and wildlife projects and still be six to 14 percent below market prices for electricity. This additional funding would add only about $1.90 per month for the average consumer.

In order to provide the impetus for BPA to recognize and fund its obligations, our tribes believe that greater oversight at the national level is essential. In this regard, we greatly appreciate this committee's effort and call on you to ensure that BPA's trust responsibilities are implemented. BPA must also honor its commitments by providing adequate funding to pay for high priority fish and wildlife projects and not use fish and wildlife funding as a shock absorber for bad water years or bad management.

Most importantly though, echoing Senator Hatfield's words, BPA needs to redefine its commitment to societal values including environmental justice. This federal agency needs to assist in honoring the obligations of the United States when the Congress ratified our treaties securing our right to take fish at all usual and accustomed fishing places. Tribes are partners to the states and federal government and exercise jurisdiction over the waters and the fish and wildlife of the Columbia Basin. As partners

under the supreme -laws of the United States, we must be treated as true partners at the same table, not as supplicants whose needs can be arbitrarily and capriciously ignored.

I would also like to enter in the record the unanimous resolutions of both the Affiliated Tribes of Northwest Indians and the National Congress of American Indians that detail our grievances and call upon the Congress and the Administration to remedy them. Along with the Yakama testimony, these resolutions call for specific remedies for the problems that tribes have identified in their relationship with the Bonneville Power Administration. These remedies include:

- Providing strong oversight including GAO review and regular reports to this committee.
- Improving implementation by streamlining contracting or transferring implementation to another federal entity.
- Providing assured and adequate long-term funding for Bonneville's fish and wildlife obligations.
- Providing a coordination mechanism among the federal, state and tribal governments consistent with section 4(h)(11)(b) of the Regional Act.
- Improve BPA Tribal Policy and set measurable objectives.
- Require BPA to document compliance with the substantive standards of the Regional Act especially the equitable treatment standard.

Thank you for this opportunity to testify. If you have any questions about our testimony or our programs, other members of the Commission or myself would be happy to attempt to answer them.

FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA
WRITTEN TESTIMONY ON THE
STATUS OF TRIBAL FISH AND WILDLIFE MANAGEMENT PROGRAMS
TO THE
SENATE COMMITTEE ON INDIAN AFFAIRS

Mr. Chairman, Members of the Committee, I, Robert B. Peacock, Chairman of the Fond du Lac Band of Lake Superior Chippewa would like to thank you for this opportunity to present written testimony on the Status of Tribal Fish and Wildlife Programs to the Senate Committee on Indian Affairs.

The Fond du Lac Reservation was established by Treaty with the United States on September 30, 1854 and encompasses 100,000 acres of land in northeastern Minnesota. There is a population of 6,500 Indian people that live within the service area of the Reservation, with the Band providing employment or services to most of them. The Fond du Band of Lake Superior Chippewa rely on the natural resources within the Fond du Lac Reservation and also within the 8 million acres within the Territory Ceded by the 1837 and 1854 Treaties. The fish, wildlife, wild rice and forest resources in this vast area are very important to the Band members for subsistence, cultural and spiritual reasons, their very health and well being. The funds provided to the Fond du Lac Band by the Bureau of Indian Affairs and the Department of Interior to develop Conservation Enforcement, Natural Resources, and Forestry Programs has been crucial to protecting, managing and restoring our fish, wildlife, wild rice and forest resources. All of these Programs are organized within the Fond du Lac Resource Management Division. I am very concerned about the budget cuts to these Programs, when our base funding level is inadequate for our Resource Management Division to protect and manage the fish and wildlife resources on our Reservation, and the shared responsibility of protecting and managing the natural resources on the 8 million acres in the 1837 and 1854 Ceded Territories. In recent years the Fond du Lac Band, the other Chippewa bands in the Great Lakes Region, as well as many tribes across the nation, have developed conservation enforcement, natural resources, forestry and fire protection programs which have been successful in addressing some of the backlog of natural resource management needs on millions of acres. This would not be possible without the continued financial resources provided by the federal government to the tribes. The Fond du Lac Band has been able to augment the support for their resource management programs, however this financial assistance is limited, because there are many unmet needs for the education, healthcare, housing, public safety, and care for the elderly. The great majority of tribes rely solely on federal funds from the BIA, IHS, HUD, and DOJ for these purposes. Therefore, the continued federal support of tribal fish and wildlife management programs at Fond du Lac and throughout this nation is essential.

The Tribal Wildlife Grants (TWG) and the Tribal Landowner Incentive Program (T-LIP), which were recently established by Congress, is recognition that there are important unmet needs for additional funds for natural resource and conservation projects on tribal lands. These funds will help to address some of the considerable deficit in funding of specific fish and wildlife management and habitat conservation projects, but will not increase the base funding of tribal conservation enforcement, natural resources, and forestry programs on reservations across this land. A long-term commitment to support tribal programs is necessary for the tribes to protect and manage the shared natural resources of this nation.

A more thorough explanation of our Tribal resources and how we have been able to manage them would be helpful in understanding the current status of tribal fish and wildlife programs. Under Treaties with the United States made in 1837 and 1854 the Fond du Lac Band reserved the right to hunt, fish and gather on the lands ceded (a large portion of central and northeastern Minnesota) to the United States. The Band's rights under these treaties have been recognized and upheld by the federal courts--most recently the United States Supreme Court. On March 24, 1999 the Supreme Court issued a decision expressly re-affirming the Band's hunting and fishing rights in the 1837 Ceded Territory. Under established Band conservation law, the exercise of these off-reservation treaty rights require that the Band take the steps necessary to ensure proper use and management of the natural resources. This means the Band is responsible for member's hunting, fishing and gathering activities over approximately 8,000,000 acres of land. The Band has adopted, along with the federal courts, a code and a resource management plan that protects the exercise of treaty reserved rights and the resources. It is essential that the Band continues to manage its' on-reservation resources in order to meet the demands of an increasing population. Established by the Treaty of 1854 with the United States, the home of the Band is 100,000 acres in northeastern Minnesota. The waters, wildlife, wild rice and the forest resources of the reservation are vitally important to it's members as these resources provide the foundation for our culture, subsistence, employment and recreation. The Fond du Lac Reservation includes some 3,200 acres of lakes, 1,900 acres of wild rice lakes and associated wetlands, 66 miles of cool water streams, and 17,500 acres of forest, with the remaining acres being used by individual land owner for housing and development. The increasing resident population and development are placing all resources under great stress. The loss of wild rice acres, wildlife habitat, and the decline of our forest are of great concern to the Band. Therefore, we have testified to the House and Senate Appropriation Committee, Subcommittee on Interior and Related Agencies for additional funds the Band's base budget for the Fond du Lac Resource Management Division that will enable us to protect these resources for the future generations on Fond du Lac. Unfortunately, our base program budgets for Conservation Enforcement, Natural Resources and Forestry Programs have remained under-funded since their inception.

The Circle of Flight - Tribal Wetland & Waterfowl Enhancement Initiative program, under the BIA's Other Recurring Programs category, was again eliminated in President Bush's FY 2004 budget request. The Circle of Flight program has been one of Interior's top trust resource protection programs for 10 years. Since FY 1991, Great Lakes tribes and other partners have restored or enhanced more than 66,000 wetland, wild rice, grassland and native prairie acres, and installed thousands of waterfowl nest structures. Wild rice lakes provide high quality forage for migratory waterfowl as well as waterfowl nesting habitat. The Circle of Flight program enabled the Great Lakes tribes to become key partners with federal, state, and local government units, as well as private organizations such as Ducks Unlimited, the Nature Conservancy. *The Circle of Flight program has invested more than $6 million in habitat projects, and has leveraged these dollars for an additional $18 million in federal, state, private, and tribal funding, yielding and impressive match ratio of 3 to 1.* The elimination of the Circle of Flight program would cripple the Great Lakes tribe's ability to continue these successful partnerships, which have benefited a diverse array of wildlife species and their associated habitats. We have been able to implement an ambitious project to restore five wild rice lakes, totaling 1,900 acres, on the Fond du Lac Reservation. With the support of the Circle of Flight funds we were able to work with federal and state resource agencies, and corporate partners, to design and construct four water control structures. Our Natural Resources Program is now restoring hundreds of acres of wild rice habitat that was lost when the lakes were partially drained

by ditches dug some 80 years ago. The proper management and restoration of the wild rice lakes to their historical abundance is important to the Ojibwe ("Chippewa") people because wild rice or "Mahnomen" is an important part of their cultural and spiritual heritage, and is still hand harvested for subsistence, for gifts, and for family income.

I am also very concerned about the current lack of commitment by the Department of Interior's *Draft Revised Strategic Plan for FY-2003-2008* to Federal trust responsibility to protect Indian land and resources, to treaty obligations, and to carry out the mandates of Federal law for the benefit of American Indians and Alaska Natives. It is unacceptable that this Draft Plan was developed without adequate consultation with the tribes. Previous DOI Strategic Plans acknowledged "Interior's trust responsibility to Indian tribes is to ensure the protection, wise use, and management of these resources, and where necessary, their restoration." The Department also recognized that "The Trust obligations for natural resources are and will continue to be a major responsibility for Interior." The Draft Plan fails to affirm the historical and statutory commitment to Federal Indian Trust responsibility by merely including the tribes within the general mission to serve communities nation-wide. The American Indian Trust Management Reform Act of 1994 (P.L. 103-412) providing the following.

"The Secretary's proper discharge of the trust responsibility of the United States shall include (but are not limited to) the following:

> ... (8) Appropriately managing the natural resources located within the boundaries of Indian reservations and trust lands."

The Department's draft Strategic Plan does not fully recognize the Department's historical commitment to the protection of Indian Trust assets and Trust resource. For example, on beginning on page 55 of the Plan, under mission of Serving Communities, not a single End or Intermediate Outcome Goal or Measure addresses: "Appropriately managing the natural resources located within the boundaries of Indian reservations and trust lands" as specified in 25 U.S.C., and as described above and excerpted from previous Department Strategic Plans. Our grave concern is also evident when reviewing Appendix 3; Serving Communities, Fulfilling Indian Trust Responsibility, Goal 3. Although mention is made in this Plan of Mineral Revenue Payments, Surface Land Rental Payments, Appraisals, and Leasing, no mention is made, nor action proposed, to meet the Department's trust responsibility to protect natural resources on Indian Trust land.

This critique of the DOI Draft Strategic Plan was sent to Secretary Norton, after the Plan had been drafted without our consultation. I request that the Senate Committee on Indian Affairs review this Draft Plan and that the Committee requests the Secretary to revise the plan to clearly state the historical and statutory commitment of the Department of Interior to fulfill its' Federal Indian trust responsibilities, and to protect our natural resources within the reservations on trust lands.

In conclusion, the protection and management of the tribal fish, wildlife, wild rice, and forest resources of the Fond du Lac Reservation and the territory ceded by the 1837 and 1854 Treaties has been improved by the Fond du Lac Conservation Enforcement, Natural Resources, and Forestry Programs, however much more needs to be done to increase the capabilities of these Programs and to properly manage these resources. The continued support from the BIA and the DOI is necessary

to fulfill these needs at Fond du Lac and throughout Indian Country. Your support to preserve the current BIA funding request is critical to maintain current program levels. Your consideration for our additional funding requests will enable us to improve the delivery of services to Band members and help ensure that we enter the 21st Century with a renewed sense of hope.

Miigwech. Thank you.

Fond du Lac Reservation
Business Committee

1720 Big Lake Rd.
Cloquet, MN 55720
Phone (218) 879-4593
Fax (218) 879-4146

June 2, 2003

Chairman
Robert B. Peacock

Secretary/Treasurer
Kevin R. Dupuis, Sr.

Dist. I Councilman
Clifton Rabideaux

Dist. II Councilman
V.R. "Butch" Martineau

Dist. III Councilman
George Dupuis

Executive Director
I. Jean Mulder

The Honorable Daniel K. Inouye
Vice Chairman
United States Senate Committee on Indian Affairs
Washington, DC 20510-6450

Dear Vice Chairman Inouye:

I wish to thank you for your invitation to submit testimony to the Committee regarding the Status of Tribal Fish and Wildlife Management Programs. The management of our fish, wildlife, wild rice and forest resources on the Fond du Lac Reservation, and on the territory ceded by the 1837 and 1854 Treaties, is very important to the Fond du Lac Band of Lake Superior Chippewa. The continued support of the Department of Interior and the Bureau of Indian Affairs for our Conservation Enforcement, Natural Resources and Forestry Programs is necessary for the protection and management of these resources. I request the support of the Senate Indian Affairs Committee for tribal fish and wildlife management programs and for our requests to increase funding for these programs by the Department of Interior and the Bureau of Indian Affairs.

Sincerely,

Robert B. Peacock
Chairman

UPPER COLUMBIA UNITED TRIBES
***** UCUT *****
910 N. Washington, Suite 107
Spokane, Washington 99201
(509) 838-1057

Colville * Coeur d'Alene * Kalispel * Kootenai * Spokane

STATEMENT OF CHAIRMAN WARREN SEYLER
ON BEHALF OF THE UPPER COLUMBIA UNITED TRIBES
BEFORE THE U.S. SENATE COMMITTEE ON INDIAN AFFAIRS
JUNE 3, 2003
REGARDING THE STATUS OF FISH AND WILDLIFE PROGRAMS

Mr. Chairman and Honorable Committee Members, thank you for this opportunity to provide a snapshot of the fish and wildlife management activities of the Upper Columbia United Tribes (UCUT). My name is Warren Seyler, Tribal Council Member of the Spokane Tribe of Indians and Chairman of this inter-Tribal organization. Also present is Gary Aitken, Chairman of the Kootenai Tribe of Idaho and Vice-Chairman of UCUT.

The combined territories of the five UCUT member Tribes are large and ecologically complex, and over the years we have been innovative and persistent in our management approaches. We are proud of what we have accomplished on a shoestring budget, and we believe you will be favorably impressed by our achievements.

Our Geographic Range

The five members of UCUT are the Coeur d'Alene Tribe of Idaho, Colville Confederated Tribes, Kalispel Tribe of Indians, Kootenai Tribe of Idaho, and the Spokane Tribe of Indians. Historically, our Tribes shared a vast area of aboriginal grounds, from present-day western Montana to the Cascades of central Washington, and from Canada to Oregon. Today, we still proudly retain management responsibilities over:

- 450 miles of waterways, which include approximately 40 interior lakes and approximately 30 dams and reservoirs, all of which falls within the 14 million acres of our combined aboriginal territories established by the Indian Land Claims Commission.
- Our current Tribal reservations are used to store the water for two of BPA's major dams, Chief Joseph and Grand Coulee. Grand Coulee is the largest hydropower facility in the United States. As you will see in the written testimony of the Spokane Tribe, there are unresolved and uncompensated issues concerning the impacts of Grand Coulee Dam.

Within our region, management of this wide range of resources is a daunting task. Included into any decision is the Endangered Species Act, the Northwest Power Act, National Historic Preservation Act, Clean Water Act, Superfund sites, regional growth and development, and developing relationships with local utilities, counties, and other governments ... all within our diminishing financial resources. We definitely have our challenges.

Status of Fish and Wildlife Populations

Impacts of hydropower facilities have been devastating to upriver fish and wildlife resources; both have been in drastic decline for several decades. As ocean-going salmon were completely blocked by the construction of Grand Coulee Dam in 1940, a complete change to our historical diet has led us to the highest level of diabetes in the county.

As partial mitigation for our great losses, the UCUT Tribes have constructed 4 hatcheries, where they raise approximately 2.5 million fish per year. These fish are released into reservoirs and rivers for the benefit of the entire Northwest and its visitors.

UCUT member Tribes also have acquired and restored approximately 31,000 acres of wildlife habitat, but our concerns are rising due to the fact that mitigation funding has been stopped.

Community Partnerships

Our Tribes have not remained isolated in our management activities. To the contrary, the Tribes have invested personal dollars in travel and management costs to interact with our neighbors, which include 13 Tribes, 12 counties, multiple federal agencies, and State departments. We intend to expand our discussions with local public and private utilities, as we at UCUT believe the only way to long-term solutions is for open, honest and frank discussions involving all concerned parties.

Our primary program funding is acquired through the Northwest Power Planning & Conservation Council, an inter-state compact of the 4 northwestern States. Recommendations for program funding are proposed by the Columbia Basin Fish & Wildlife Authority, a body of 13 Tribes, 4 States, and 2 federal fish and wildlife agencies.

The Importance of Federal Funding

Each of UCUT's five member tribes depends almost entirely on federal funding to manage fish, wildlife, and habitats. Ratepayer funding from the Bonneville Power Administration is an obligation to mitigate for impacts of the hydropower system. Additional Congressional appropriations are needed to address Endangered Species Act, Clean Water Act, National Historic Preservation Act, and other federal statutory responsibilities. We implore this Committee to be very assertive on our behalf, to ensure that the funds are there for us to continue

with our fish and wildlife programs. The money is well-used, spent very efficiently, and is matched in many ways, with local government contributions, voluntary efforts of our neighboring communities, and countless "in-kind" contributions from within our Tribes.

As for UCUT, itself, let me take this opportunity to raise the Committee's awareness of our organization's great need. Consider the geographic area, resources and challenges I have described for the Upper Columbia United Tribes, compared to the more limited salmon focus of our two sister inter-Tribal organizations in the Pacific Northwest. Both the Northwest Indian Fisheries Commission (NWIFC) and the Columbia River Inter-Tribal Fish Commission (CRITFC) are supported by federal budgets well into the seven digits. Those organizations serve important coordinating and clearinghouse roles on fisheries issues, similar to the role of UCUT for our five member tribes.

However, at UCUT, our wildlife, habitat, and cultural resources issues are as important as our concerns about fish. And, we combine our efforts to address common concerns regarding social services, economic development, and sovereign rights, in addition to environmental issues. Yet, the UCUT annual appropriation has been flat-lined for many years at only around $300,000, shared among the 5 member tribes and the central UCUT organization. UCUT is in dire need of an adequate and equitable annual appropriation to continue to serve its vital inter-Tribal role.

Before I conclude, I would like to draw the Committee's attention to the written testimony of the Spokane Tribe. It focuses on what we have learned as a result of BPA's financial crisis and how it got there. It provides a remedy for avoiding these problems in the future. The history of failed governance in the Basin is demonstrated, and we include recommendations to create a workable process. The Tribes, particularly upriver Tribes, suffer the greatest impacts, but upriver issues seem to be forgotten or pushed aside as listed salmon get all the attention. We need a regional forum with full participation by Federal, State and Tribal governments and stakeholders to address these issues in a river governance process that is accountable and fair.

Again, I appreciate your attention and interest in our programs and the challenges we face in fish and wildlife management.

WRITTEN TESTIMONY OF THE SPOKANE TRIBE OF INDIANS TO THE UNITED STATES SENATE COMMITTEE ON INDIAN AFFAIRS REGARDING THE STATUS OF TRIBAL FISH AND WILDLIFE MANAGEMENT PROGRAMS IN THE PACIFIC NORTHWEST

June 3, 2003

Chairman Ben Nighthorse Campbell and Vice-Chairman Daniel Inouye and honorable members of the United States Senate Committee on Indian Affairs, thank you for inviting the Spokane Tribe to submit testimony regarding issues relating to Bonneville Power Administration ("BPA"), specifically, the status of our tribal fish and wildlife management programs in light of BPA's current financial condition. My name is Greg Abrahamson and I am Vice-Chairman of the Spokane Tribal Business Council. Please accept this written testimony submitted on behalf of the Spokane Tribe of Indians for inclusion in the record of the United States Senate Committee on Indian Affairs hearing scheduled for June 3, 2003. These written comments incorporate by reference, as well as expand upon and supplement the oral and written testimony of Mr. Warren Seyler, a member of the Spokane Tribe of Indians' Business Council and Chairman of the Upper Columbia United Tribes ("UCUT"), submitted on June 3, 2003 and Mr. Gary Aitken Sr., Tribal Chairman of the Kootenai Tribe and Vice-Chairman of the Upper Columbia United Tribes, on behalf of the Upper Columbia United Tribes submitted on June 4, 2003.

To facilitate your review and consideration, I've organized this testimony into three parts. The first part describes the risks that BPA's current financial condition poses for the Spokane Tribe and how our fish and wildlife programs, as well as other rights and interests, are likely to be adversely impacted by strategies BPA is implementing to deal with its financial problems. The second part describes lessons the Pacific Northwest region should have learned in coming to this point. The third and final part suggests where we should go from here.

IMPACTS OF BPA'S FINANCIAL CONDITION ON THE SPOKANE TRIBE OF INDIANS

The Committee hearing on this matter is very timely. Funding for fish and wildlife programs in the Columbia River Basin is, in large part, dependant upon BPA's financial condition. At this time, BPA projects its probability of deferring upcoming payments to the United States Treasury as significantly higher than it would like and BPA is conducting an expedited proceeding to increase its revenues. This "safety net" cost recovery adjustment mechanism was included as a risk-mitigation tool during BPA's FY 2002-2006 rate case. It is triggered by a decline in BPA's reserves and diminished probability of meetings its financial obligations. It comes on the heels of :

(1) recent rate adjustments to cover BPA's increased "load augmentation" costs incurred since the beginning of fiscal year 2002 in excess of 40% with BPA's previously projected rate adjustments

ranging as high as 250% depending upon energy prices in the western United States and water conditions in the Pacific Northwest;

(2) recent judicial decisions regarding implementation of NMFS' Biological Opinion which suggest that the agencies responsible for management and operation of the Federal Columbia River Power System are simultaneously "defaulting" on their obligations under the Endangered Species Act, raising the probability that system costs of compliance may be significantly higher than BPA estimated in establishing rates; and

(3) reductions in BPA funding for its fish and wildlife obligations under the Northwest Power Act.

What this means for the Spokane Tribe and its fish and wildlife programs is difficult to summarize in a summary sentence---or even written testimony---as there are multiple impacts to consider and address. Essentially, our fish and wildlife have always been part of our tribal culture and central to our way of life. Like other cultural "resources," our fish and wildlife have been and will continue to be heavily impacted by the development of the Federal Columbia River Power System in general and the construction, expansion and operation of the Grand Coulee Project in particular. The Grand Coulee Project makes a unique contribution to the interconnected energy systems serving the western United States. Grand Coulee is unsurpassed by any other asset in terms of hydroelectric power generation and coordinated water storage/release. The Project is absolutely critical for maintaining the reliability, stability and operating flexibility of the regional power system.

Within the region, the Grand Coulee Project is the central feature of the Columbia Basin Project. It provides a full water supply for about 500,000 acres under cultivation and is the backbone of agriculture and commerce in eastern Washington State. In addition, the Grand Coulee Project shoulders a disproportionate share of the costs of measures taken in the Columbia River Basin to comply with the requirements of the Endangered Species Act, as well as fish and wildlife programs undertaken pursuant to the Northwest Power Act. It also bears a disproportionate share of the responsibility for system flood control, providing benefits as far downstream as Portland, Oregon, shapes flows for coordinated power generation, aids navigation and supports other public purposes.

On a national level, the Grand Coulee Project makes, and will continue to make, unique contributions to the security, prosperity and energy future of the United States. Initially constructed as part of the "New Deal" measures taken to stimulate the economy and recover from the Great Depression, construction began in 1933 and provided relief for unemployed workers. The Grand Coulee Dam was completed in 1942 and the left and right powerhouses with nine generating units each were put into service between 1941 and 1950. The power generated at Grand Coulee was essential for producing

aircraft which played a critical role during WWII, as well as the production of the atomic bomb which helped end that conflict.

Construction of a third power plant containing six generating units began in 1967 with the first generating unit put in service in 1974 and the sixth and final unit completed in 1980. The third powerhouse alone provides enough electricity to meet the combined power needs of the cities of Portland, Oregon and Seattle, Washington and made it possible for the nation to secure the benefits of the 1964 U.S./Canada Treaty. It also allowed for distribution of numerous benefits in the form of low-cost power for ratepayers in the Pacific Northwest, surplus sales of electricity outside the region and subsidies for irrigation projects throughout the Basin.

The Grand Coulee Project is commonly referred to as the "economic engine" of the Northwest. At the same time that it generates these (and other) benefits for the region and the nation, it poses unique risks for the Spokane Tribe. In the simplest possible terms, the Grand Coulee Project and the Federal Columbia River Power System threaten the fish and wildlife and other cultural resources which are central to our existence. If you were to visualize our situation in, say, a "homeland security" context, the status of Columbia River Basin fish and wildlife programs would likely correspond to an "orange flag" representing "high alert." Given BPA's financial condition, however, for the Spokane Tribe's fish and wildlife programs, our current tribal fish and wildlife programs, our cultural resource programs and our other rights and interests are arguably the most "at risk" of any of the fourteen federally-recognized tribes in the Columbia River Basin and we have already lost much.

The agencies responsible for managing and operating the Power System---from the earliest stages of planning for the development of the power system, during and after its construction, and continuing through this day---have failed to meet their trust obligations and requirements to the Spokane Tribe as they relate to fish and wildlife and other cultural resources. Construction of Grand Coulee Project blocked our fish runs. With impoundment of the mainstem Columbia River, our western boundary, and flooding of tribal lands by the United States government for the Project, the Spokane Tribe lost its entire salmon fishery, the base of our economy and culture. We have also suffered extensive losses within the Spokane River basin, known as the "Spokane Arm of Lake Roosevelt," our southern boundary, and the heart of their ancestral home.

It cannot be denied that the experience of indigenous people all over the world is that large-scale, hydroelectric facilities are devastating to their way of life and Grand Coulee Dam, the largest concrete structure ever built, is no exception. It is 5,223 feet long, 550 feet high and contains over 11,975,000 cubic yards of concrete. To put this in perspective, one can imagine a concrete structure that is one mile long and twice the height of Niagra Falls. The reservoir behind the dam, Franklin D. Roosevelt Lake, has an active storage capacity exceeding 5 million acre-feet and extends 151 miles up the mainstem Columbia River; it floods twenty-five miles of our southern boundary, the Spokane River, situated over 50 miles upstream from the Project.

Grand Coulee accounts for one-third of the total water storage capability in the United States' portion of the Columbia River Basin. It is the last "catch basin" on the Columbia River and, because of the enormous storage capacity of Lake Roosevelt which permits water released from Canada to be stored for use at hydropower plants sited downstream, the Project plays a central and unique role among all the dams that make up the Federal Columbia River Power System. Flood control provided by the Grand Coulee Project creates region-wide benefits that, during high runoff years, may exceed $200 million. In addition, Grand Coulee has, since the early 1980's, shouldered more than its share of the responsibility for supplying water to meet the needs of Columbia-Snake River Basin species listed as threatened or endangered under the Endangered Species Act.

For more than half a century, the Grand Coulee Project has made an extraordinary contribution to this nation. It helped pull the economy out of the Great Depression. It provided the electricity that produced aluminum required for airplanes and weapons that ensured our national security. The Project continues to produce enormous revenues for the United States and plays a pivotal role in the electric systems serving the western United States and Canada. Without the Grand Coulee Project, the inter-connected electric systems serving the western United States would be less efficient, far more costly and less reliable. By serving as a backbone for the power system and providing the lifeblood for irrigated agriculture in central and eastern Washington State, the Grand Coulee Project has made a unique and lasting contribution to the security and prosperity of the Pacific Northwest and the nation.

However, to the Spokane Tribe of Indians, Grand Coulee represents a monument to the destruction of our way of life and source of continuing adverse impacts to our rights and interests. The enormous benefits that continue to accrue to the Northwest and the nation are made possible by uncompensated and irreparable injuries to the Spokane Tribe. Over 3,000 acres of Spokane lands were appropriated by the United States for Project purposes without just compensation. These lands were of the utmost importance to the Spokane, critical assets we had always depended upon and needed to ensure our survival. The tribal lands inundated by the Grand Coulee Project included some of the most valuable lands within the Spokane Reservation---the beds, banks and adjacent riparian areas of the mainstem Columbia River and the tributary Spokane River, our boundary waters and the ancestral umbilical cord of Spokane existence and the very heart of our Reservation.

The free flowing waterways that once supported robust and plentiful salmon runs and provided for virtually all of the subsistence needs of the Spokane Tribe were changed to barren slack water that erodes away more and more of the Reservation's lands. Our tribal communities sited along the Columbia River and Spokane River, our schools, telecommunications, roads and other infrastructure were flooded. Fords which had always provided the Spokane people with access to their tribal lands on both sides of the river bed were inundated. The inter-tribal trading centers in the upper Columbia Plateau that the Spokane and Colville had developed over a long period of time were destroyed. The fisheries that operated under the jurisdiction of the Spokane on the mainstem

Columbia River and the Spokane River tributary fisheries, as well as the important inter-tribal fishery at Kettle Falls hosted by the Colville, were all flooded. Inter-tribal relations among Salish-speaking people in the upper Columbia Basin were severely disrupted. The forced physical relocation of tribal households was especially hard on the elderly Spokane and the elimination of the Spokane's anadromous fish runs threatened our economic survival by removing a key component of our subsistence without providing other means of employment. The social ramifications in terms of disruptions of tribal families were enormous. The inundation of tribal burial sites and termination of our salmon runs had devastating impacts in terms of cultural discontinuity.

From 1927 to 1931, at the direction of Congress, the U.S. Army Corps of Engineers investigated the development of the water power potential of the Columbia River and its tributaries. The Columbia River Commission, an agency of the State of Washington, applied for, and in August 1933 was granted, a preliminary permit from the Federal Power Commission for development of the Grand Coulee site. However, on November 1, 1933, Harold Ickes, Secretary of the Interior and the Director of Public Works Administration, federalized the project under the National Industrial Recovery Act of 1933. Excavation of the dam site commenced in December, 1933 with the legality of authorization still in question. Congress reauthorized the Project in the Rivers and Harbors Act of 1935.

Between 1935 and 1940, with construction underway, the Spokane Tribe repeatedly raised its concerns with the impacts the Project would have on tribally-owned lands, their rights and interests in resources, and concerns that burials sites would be flooded. By March of 1939 when the water level behind the dam began rising and flooding tribal lands, the United States and the tribes had still not reached an agreement. In 1938, before the reservoir began to fill, the United States Government assured the tribes that over 3,000 known burial sites would be relocated and federal agencies understood that a large number of additional ancestral burial sites had not yet been identified. However, by 1940---the year the relocation program was halted---only 1200 of the graves had been relocated and, during the process, many funeral and sacred cultural objects buried with the deceased were looted or conveyed to museums without tribal consent. Now, with changes in reservoir levels due to operation of the Grand Coulee Project for power peaking purposes, for flood control and for providing water downstream for fish species listed for protection under the Endangered Species Act, the burial sites that were not relocated are increasingly exposed and the adverse impacts on the Spokane Tribe continue to mount.

Given BPA's financial condition, there is every indication that the Grand Coulee Project will play a formidable role in allowing the region to take advantage of opportunities for surplus power sales to offset the decline in BPA's reserves. This has the potential of adding several hundred million dollars annually to BPA's reserves given improvements in market prices and water conditions. However, this also means that the elevation of Lake Roosevelt may fluctuate in lock-step with volatile conditions in western energy markets. The adverse effects of BPA's surplus sales on water quality in Lake Roosevelt, the Spokane Tribe's lands which are subject to erosion, resident fish and

wildlife, other cultural resources and burial sites will escalate. In other words, the risk-mitigation strategies that BPA and the region are deploying to deal with BPA's financial "crises" to limit the exposure of the U.S. Treasury and Pacific Northwest ratepayers exposes the Spokane Tribe's rights and interests to even greater harm. This is indicative of the kinds of damages we have suffered at the hands of the United States since development of the Federal Columbia River Power System began.

The Department of Interior and other federal agencies were well aware of the catastrophic impacts the Grand Coulee Project would have on the tribes. Federal inter-departmental and intra-office correspondence of the Department from September, 1933 through October, 1934 clearly demonstrate that representatives of the federal government knew that the Colville Tribes and Spokane Tribe should be compensated for the taking of their lands, the destruction of their property, fishery and other resources and should receive as compensation a proportion of the annual value of power production for use of the tribes' lands and water resources. However, neither the 1933 nor the 1935 authorizations mentioned the United States Government's obligation to provide the tribes with an equitable share of the value and benefits of water power development for the contribution of tribal lands to the Project or acknowledged the need to compensate the tribes for the loss of their fish runs, the destruction of their communities and infrastructure, the dislocation of their members or the flooding of thousands of tribal burial sites.

In 1940, Congress belatedly enacted legislation, 54 Stat. 703, at the urging of the Department of the Interior which authorized the Secretary to designate Indian lands he deemed necessary for Project construction and to receive the Indians' rights, titles and interest therein in return for his appraisal and payment of compensation. But this was hasty and obviously inadequate. Only newly-flooded lands were actually appraised and supposedly compensated for. The Spokane Tribe received the grand total of $4,700. There is no indication that the Department advised Congress that the Indians' title to, and the trust status of, all lands underlying the riverbeds, banks and reservoir had not been extinguished and there is no evidence that Congress was advised or knew that the Tribes' water rights had not been and were not diminished by the Project. As pointed out in the 1976 Opinion of the Acting Associate Solicitor, Division of Indian Affairs, Department of the Interior:

> The 1940 act followed seven years of construction during which farmlands, and timberlands were flooded, and a fishery destroyed, and during which Congress was silent as to the Indian interests affected by the construction. Both the Congress and the Department of the Interior appeared to proceed with the Grand Coulee Project as if there were no Indians involved there.
>
> * * *
>
> The Department correspondence and memoranda on the subject of Indian rights apparently came to an abrupt halt [after 1934]. There is no tangible evidence, currently available, to indicate that the

> Department ever consulted with the tribes during the 1933 – 1940 period concerning the ongoing destruction of their land and resources and proposed compensation therefore.

The opinion summarizes the violation of the fiduciary duty, conflict of interest, illegal and unilateral abrogation of Indian rights and confiscation of our tribal resources as follows:

> It is our conclusion that the location of the dams on tribal land and the use of the water for power production, without compensation, violated the Government's fiduciary duty towards the Tribes.
>
> * * *
>
> The situation at hand involves a conflict-of interest on the part of the Department of the Interior. * * * The Department of the Interior has responsibility for protecting the Tribes' Winters Rights [water rights] as well as its property rights in the bed of the river. Recognizing the value of the river as a power production and irrigation site, the Department of the Interior has used this land and the water for its own purposes, without ensuring that consideration and benefit from the development of those resources flowed to the Tribe who own part of them. The case fits squarely into the reasoning of Manchester Band, Navajo Tribe and Pryamid Lake cases, where " ... a fiduciary who learns of an opportunity prevents the beneficiary from getting it, and seizes it for himself." (Citations omitted)
>
> * * *
>
> Throughout the construction . . ., the Department's apparent failure to communicate with the Tribes concerning their land and water rights is appalling. No case law grants executive agencies authority to unilaterally abrogate Indian rights ... [T]he posture of the Department can be described not as "an exercise of guardianship but an act of confiscation." (Citations omitted)

Ironically, after suffering the loss of our anadromous fisheries in the upper Columbia River (and Spokane River) and having the United States seize thousands of acres of tribal lands for Grand Coulee, flooding our tribal communities and inundating our burial sites without just compensation or even consideration, the plans developed and being implemented by BPA and other federal agencies to meet their fish and wildlife requirements---especially the Endangered Species Act---put the Spokane Tribe's remaining resident fish and wildlife resources, as well as tribal lands, waters and burial sites at even greater risk.

Simultaneously, BPA's precarious financial condition has already reduced funding available for the tribal programs which we implement to protect against and

mitigate for the impacts of the region's ESA-driven fish and wildlife program, the Northwest's reliance on Grand Coulee for power production, surplus power sales and provision of numerous other regional subsidies and benefits which the Project contributes to the Power System and the nation. The region's fish and wildlife programs are a "mixed bag" for the Spokane Tribe and we do the best job we can to use our resources in an efficient and cost-effective manner, build cooperative partnerships and coordinate where possible with other parties in the upper Columbia River Basin. In the future we intend to strengthen these programs but, for now, given BPA's financial condition, those efforts are facing very serious challenges. Opportunities to acquire much-needed (and promised) habitat and habitat improvements are being missed and the near- and mid-term future of all of my Tribe's fish and wildlife programs funded by BPA must be addressed "one day at a time." Due, in large part, to BPA's unwillingness, given its financial condition, to commit to fund program measures whose success requires that we complete a multi-year set of tasks and activities, it is extremely difficult, if not impossible, for our Spokane and the other UCUT members to effectively plan, budget and prioritize our BPA-supported fish and wildlife programs.

BPA's financial condition also poses a serious threat to our tribal economy. Our reservation is served by Avista, an investor-owned utility and customer of BPA. The 2000 Census of the Spokane Indian Reservation reported that 37.4% of households use electricity for heating. Just under one percent (1%) and five percent (5%) of our households respectively lack complete plumbing and have no vehicle for transportation. Eight percent (8%) of our households have no telephone. The median value of owner-occupied housing units on the Spokane Indian Reservation is about 60% of that for the United States. Only 56% of our civilian labor force over the age of 16 is employed and median household income was just 66.6% of that for the United States. Income is a mere 47% of per capita income for the nation as a whole. Estimates of poverty rates among families and individuals are about 28% for the Spokane Reservation compared to 13.9% for all individuals in the five counties that make up northeast Washington State and lie within the Spokane Tribe's service area. It is very likely that such estimates seriously understate the actual level of poverty among Spokane families due to problems of undercounting in Census 2000. Poverty rates on the Spokane Indian Reservation may be more in the range of 35%, or higher.

BPA's recent and prospective rate increases reduce the amount of disposable income that Spokane tribal households (and other Native American/Alaskan households receiving services from the Spokane Tribe) have available for other household expenses, including subsistence, health care, child care, education and so on. Rate increases also adversely impact the regional economy and reduce employment opportunities available for members of tribal households, particularly in the agricultural, manufacturing and service industries. This has "cascading" economic effects. The combination of rising energy costs and declining economic opportunities is extremely difficult for tribal households that are already struggling to make ends meet. In turn, this stresses the resources of our tribal governmental infrastructure.

When electric rates increase, the caseload for temporary assistance to needy families, maintenance payments and administrative costs for providing our tribal governmental services skyrocket. Based upon the 2000 Census, the American Indian and Alaskan Native population within the Spokane Tribe's service area is estimated at 16,320 individuals and the annual average rate of population growth is about 1.051%. This means that there are currently over 17,000 American Indians and Alaskan Natives individuals residing on or near the Spokane Reservation who may be eligible for services provided by our tribal government. To the extent BPA's financial condition requires it to raise rates to cover its obligations to the United States Treasury, our tribal households and other native households will suffer and the resources of our tribal government will be subjected to further stressed. Fewer services will be provided for increasing numbers of tribal people in need.

The funds available for tribal programs to meet the requirements of families in need were "frozen" at 1994 levels by Personal Responsibility and Work Opportunity Reconciliation Act of 1996. As a result, tribes that erect their own Temporary Assistance for Needy Families or "TANF" programs must negotiate with states to secure a share of scarce federal funding. When electric rates increase, service costs rise but the resources available to meet such needs are frozen at pre-reform levels. This sabotages our efforts to establish community partnerships and coordinate with other providers of health and human services within our five-county service area. This poses a special problem for our tribal governmental infrastructure because our service area population is generally regarded as the "hardest" to serve.

BPA's financial condition also poses challenges for our Tribe's economic development initiatives. Rate increases pose problems for our small tribal gaming enterprise at a time when we are trying to upgrade the electric service to the facility. Rising rates also pose challenges to developing new enterprises and employment opportunities at our industrial park, particularly manufacturing of products requiring significant energy inputs. We have also experienced setbacks in our effort to upgrade and improve the communication services available to our Reservation. Improving communication services available to our Reservation is an important part of our economic development strategy and we were counting on BPA's assistance, particularly for fiber optics. BPA's worsening financial condition may delay or thwart such efforts.

There is one additional aspect of BPA's financial condition which is especially troublesome for the Spokane Tribe and I wish to bring this matter to your attention. This concern is unique to the Spokane Tribe and is a direct and devastating impact due, in large part, to BPA's financial condition ... over and above the other adverse impacts of the Federal Columbia River Power System on our resident fish and wildlife, our cultural resources, our inundated burial sites or the economic effects on our tribal households and economic development initiatives and our very culture and way of life. Since 1995, with the support and guidance of members of this Committee, we have engaged BPA in good-faith negotiations to resolve the Spokane Tribe's claims for damages attributable to the Grand Coulee Project. These negotiations have clarified differences in terms of the appropriate methodologies to apply in determining a fair share of the benefits of the

Grand Coulee Project for the Spokane Tribe. We have also narrowed our differences regarding estimates of the amount of tribal land that was seized by the United States from the Spokane Tribe for Project purposes. However, we have not been able to reach a final settlement due, in large part, to the condition of BPA's finances over the course of the negotiations.

The Confederated Tribes of the Colville Reservation, directly across the Columbia River from us, suffered similar damages and made comparable claims, reached a settlement with the United States in 1995 and has already received over $205 million in payments since 1995, adjusted for inflation. The Colville Tribes, depending upon water conditions and energy prices, currently receive about $20 million in annual compensation as its share of the values contributed by the Grand Coulee Project to the Federal Columbia River Power System. A fair, 39.4% proportional settlement with the Spokane Tribe for the damages it has suffered would require a one-time "back payment" of about $80 million and future annual payments of about $7.9 million. The actual level of future annual payments to the Spokane Tribe would be proportional to payments made to the Colville Tribes. These payments should be incorporated, like payments to the Colville Tribe, in BPA's revenue requirement. This would have virtually no discernable impact on BPA's electric rates. Similarly, an $80 million, proportional payment for past damages due the Spokane Tribe and a fair share of the power generation values that have accrued since 1995 from the Grand Coulee Project can easily be structured over the remainder of the current rate case and BPA's upcoming rate case so that the effects on ratepayers in the region and the United States Treasury are de minimis. However, BPA is unwilling to make the financial commitment to fund a fair and honorable settlement with the Spokane Tribe along the lines outlined above despite repeated congressional directives to conclude a fair and honorable agreement with the Spokane Tribe. Thus, we have a unique tribal interest in seeing a successful resolution of BPA's current "financial crises" and look forward to working with Senate Committee on Indian Affairs in enacting legislation to resolve this matter.

LESSONS THE REGION HAS LEARNED SINCE 1995

The second part of my testimony uses five examples to illustrate the lessons the region should have learned since the 1995 when the Power Council began 180-Day Review of strategies to improve fish and wildlife governance in the region. The Spokane Tribe respectfully suggests that the region should have learned that the benefits of the Federal Columbia River Power System cannot be secured without addressing the full range of BPA's obligations in a regional, consensus-based decision-making process backed up by effective dispute resolution measures which are available to all. In addition to the 180-Day Review, for other examples are selected, described and probed for the lessons that they may have. These include: the 1996 Report to Columbia Basin Tribes; 1996 Fish and Wildlife Funding MOA/Annex; the 1996 Comprehensive Review; 1997 Amendments to Regional Power Plan; and BPA's FY 2002-FY2006 rate case and ongoing Regional Dialogue which is officially on hold.

180-Day Review of Fish and Wildlife Governance

The 180-day Review of Fish and Wildlife Governance was initiated by the Northwest Power Planning Council pursuant to energy and water appropriations legislation adopted November 13, 1995, wherein Congress directed Power Council to report back within 180 days regarding the most appropriate governance structure to allow for more effective regional control over efforts to conserve and enhance anadromous and resident fish and wildlife within the Federal Columbia River Power System.

The Power Council submitted its final report to Congress May 20, 1996. Overall, it found a "surprising level of agreement" within the region about many steps that could be taken to improve fish and wildlife management on the River. The Power Council reported widespread agreement within the region regarding the need to bring sovereign entities---the states, federal government and tribes---together to address important fish and wildlife issues, develop an effective dispute resolution mechanism and ensure consistency between regional and federal agency activities. The Power Council's report identified seven ways to improve fish and wildlife governance:

- integrate various fish and wildlife recovery plans (federal, tribal and the Power Council's);
- establish clear responsibility for implementing the integrated plan;
- establish effective regional dispute resolution mechanisms;
- support watershed processes and integrate them into basinwide decision-making;
- establish monitoring and evaluation programs that measure results and ensure accountability;
- ensure credible scientific foundations for planning and implementation; and
- secure and allocate a reliable fish and wildlife budget.

Their "findings" suggested widespread agreement relating to five specific regional needs:

- a single fish and wildlife recovery plan, not multiple plans;
- an implementation structure in which there are clear and logical rules, clear responsibility and accountability for decisions, as well as opportunities for interested parties to offer information and understand how and why decisions are made;
- a way to evaluate the results of decisions;
- independent scientific advice in decision-making and evaluation; and
- "watershed up" rather than "top-down" decisionmaking.

The Council's report to Congress contained three broad recommendations. First, development of an executive order directing the federal agencies responsible for

operation of the hydropower system to implement its (the Power Council's) Fish and Wildlife program insofar as permitted by their statutory responsibilities and, if the federal agencies diverged from the Power Council's program, to provide detailed, written explanations for such divergence. Second, if legislation was necessary, the federal agencies that govern operations of the hydropower system should be required to act consistently with the Fish and Wildlife Program developed by the Power Council under the Northwest Power Act. Third, the Council committed to play an active role in monitoring implementation of fish and wildlife mitigation measures and recommended that funding for mitigation be linked to progress in implementing a monitoring and evaluation program.

On dispute resolution and integrated fish and wildlife budget management, the Power Council did not report a consensus in the region but committed to continue to work with interested parties and report further to the Congress. The Power Council committed to facilitate efforts to bring sovereigns together periodically, on a basis of equality, to work toward a single fish and wildlife program, and to coordinate technical and policy aspects of implementation. The Council suggested that, if such collaborative efforts failed, legislation would be needed to "cement cooperation and ensure greater consistency." The Power Council did not recommend modifications of the Endangered Species Act.

One issue addressed was control of "the science" that underpinned fish and wildlife recovery strategies, in particular "breaching" of the four federal hydroelectric projects on the lower Snake River. The Power Council noted that section 4(h)(6)(B) of the Northwest Power Act and section 4(b)(1)(A) of the Endangered Species Act require that decisions be based on the best available scientific information. Under ESA, the federal agencies that administer the Act are accorded deference in determining the best available scientific information.

The Power Council noted that the Northwest Power Act creates a "more ambiguous situation" arguing that it---the Power Council---was responsible for determining whether fish and wildlife recommendations satisfy the "best available scientific knowledge" requirement. The Power Council maintained that, under section 4(h)(6)(D) of the Northwest Power Act, when it receives conflicting fish and wildlife recommendations, it must resolve the inconsistency "giving due weight to the recommendations, expertise, and legal rights and responsibilities" of the fish and wildlife managers. The Council's report asserted this provision does not mean that (federal) fish and wildlife managers were the "final arbiters" of what constituted the best available scientific knowledge:

> The Northwest Power Act requires the Council to make this determination. However, in doing so the Council must rely heavily on the fish and wildlife managers. At the same time, because there is so much uncertainty about how to rehabilitate fish and wildlife populations, improving the level of scientific knowledge is critical.

The Council noted that, in the early 1980s, it had adopted a strategy for dealing with such uncertainty or the so-called "adaptive management" concept which stressed action over protracted analysis and, at the same time, emphasized learning by doing. In other words, the Power Council considered the measures in its fish and wildlife program as experiments designed to provide additional information which would serve as a basis for future action. Agreement on appropriate monitoring and evaluation strategies for measuring progress was critical for the success of the adaptive management approach to fish and wildlife measures. Unfortunately, such agreement was not attained.

In its 1992 "Strategy for Salmon," the Power Council called for the formation of an "Independent Scientific Group" to advise decision makers on the critical issues and uncertainties surrounding fish and wildlife measures. After the Power Council adopted its 1994 Fish and Wildlife Program, a number of parties, including newly-appointed Council members from Idaho, questioned the scientific merits of these controversial features of the 1994 Fish and Wildlife Program. The Power Council used its Independent Scientific Group to review "the science" underlying its recently-adopted fish and wildlife program measures which were based on the recommendations of fish and wildlife managers.

This scientific review was viewed by the Spokane Tribe and many others in the region as an after-the-fact effort by new political appointees to the Power Council designed solely to delay decision on the necessity of breaching hydro projects in the lower Snake River and providing flow augmentation from reservoirs above Hells Canyon Dam in Idaho. More generally, there was widespread concern that the Power Council intended to exploit the substantial uncertainty surrounding fish and wildlife recovery measures to duplicate and/or undermine the region's reliance on the expertise of its fish and wildlife managers in favor of the politically-based judgments of the Council's members. The fact the Power Council chartered an "Independent Scientific Advisory Board" which would play a crucial role in decision making, implementation, monitoring and evaluation did nothing to allay such fears. In fact, this view was strengthened by the Council's 180-day Review and report to Congress which stated:

> While reliance on the expertise of the fish and wildlife managers will continue, independent scientific review is an important aid in determining the best available scientific knowledge.

Similar concerns attached to disputes over budgeting and prioritization of fish and wildlife measures. Another key finding of the Council's 1996 governance workshop was the need for a more effective implementation process, action and accountability:

> The greatest failing in regional governance of fish and wildlife, expressed repeatedly by workshop participants, has been the failure to implement plans. It was generally agreed that *actions* must be taken if salmon recovery is to be effective. For this to occur, the objectives of plans must be *simplified*. Those charged with carrying out plans should be *accountable* for doing so promptly and effectively.

In contrast to their findings reflecting virtual unanimity on the need for more effective regional governance, the recommendations of the Council were flawed because the alternatives considered to improve regional governance were designed primarily to enhance the four states' control of NMFS' implementation process for its recovery plan. This exercise took place at essentially the same time as the central feature of the NMFS' decision-making structure emerged---the so-called "Executive Committee"---for implementing the 1995 biological opinions with other parties involved in salmon rehabilitation programs. Despite the serious shortcomings of its recommendations, the Power Council's report on its 180-Day Governance Review provides a very valuable lesson: without fair and efficient ways to resolve them, fish and wildlife disputes lead to gridlock. As a corollary, one of the more important themes (lessons) that emerged from the Council's Fish and Wildlife Governance Workshop was the need for a

> [f]air and efficient means of dispute resolution . . . to avoid paralyzing planning and implementation of fish and wildlife mitigation." The workshop explored several different models of dispute resolution.

The alternative dispute resolution prototypes considered in the 180-Day Review included the procedures used by the federal court in *United States v. Oregon* to define and resolve "technical" issues and "policy" differences over harvest without the need for further judicial intervention. The participants also reviewed dispute resolution processes that had been in place regarding the hydropower projects owned by the Mid-Columbia public utility districts in Washington. That process also involves a series of technical and policy groups that define and attempt to resolve issues short of judicial intervention. The structure of the Columbia Basin Fish and Wildlife Authority ("CBFWA") was reviewed. In CBFWA, federal, state and tribal sovereigns with shared responsibilities and authorities for fish and wildlife resources coordinate their planning and implementation activities, exchange information and make recommendations re regional priorities for fish and wildlife for consideration by the Power Council for BPA funding.

To summarize the lessons learned from the Council's 180-Day Review, there was unanimous agreement within the region regarding the urgent need to improve regional governance, get on with actions and ensure accountability. There was not agreement on putting the Power Planning Council in charge. There was agreement that whatever system of regional governance was put in place, it needed to have a fair and effective dispute resolution process.

1996 Report to Columbia River Basin Tribes

The 13 Columbia River Basin Tribes did not sit idly by while the Power Council conducted its 180-Day Review of fish and wildlife governance. Many participated in inter-tribal workshops and considered alternative ways of improving regional governance of fish and wildlife programs. This effort was initiated by a consensus of the various tribes' leaders and supported, to the extent that available funds and resources allowed, by tribal staffs and program managers. Organizational support was provided by the Upper

Columbia United Tribes, the Columbia River Inter-Tribal Fish Commission, the Snake River Compact Tribes and other tribal and non-federal organizations. A "vision statement" was developed and an Inter-tribal Workgroup was established to assess strategies and alternatives for river governance and report back by mid May 1996.

Members of the Spokane Tribal Business Council, our program managers and staff were involved in the discussion and the sessions raised many issues and involved a lot of hard work by people in our government who have a lot of other responsibilities. We brought in our general and special counsel and retained the services of a consultant to assist our efforts. We did this without any incremental funding from BPA and with only a fraction of the resources used by the Northwest Power Planning Council in its 180-Day Review or consumed by NMFS in establishing its Executive Committee's structure.

The Columbia River Basin tribes initiated there own expedited review during 1995-1996 because it was apparent that there was a critical need to improve regional governance of fish and wildlife programs and integrate these programs with the region's power planning activities in a truly "unified" regional plan. All participating tribes agreed on one point: both the Executive Committee structure proposed by NMFS and the Power Council's proposals (executive order and legislative) were seriously flawed and fell far short of what was required. The belief was that the region, under either of those alternatives, risked losing the substantial benefits of the Federal Columbia River Power System AND squandering the Basin's fish and wildlife resources in the process.

The Inter-Tribal Workgroup submitted its final Report For Fish and Wildlife Program Implementation and Regional Governance on May 14, 1996. The report contained a "vision statement" and a set of eight (8) principles for improving regional governance. The alternative proposed by the Inter-Tribal Workgroup included elements and strategies designed to:

- Provide an expanded regional forum with participation by all stakeholders for more effective planning and operations;
- Continue development and coordination of programs, plans and measures through a consensus process of fish and wildlife managers within the Basin;
- Focus the role of the Northwest Power Planning Council on facilitation and coordination of decision-making and assistance in implementation;
- Improve accountability, fiscal management and cost-effectiveness of fish and wildlife programs
- Establish trust among agencies through systematic consensus building leading to policy-level decisions; and

- Establish dispute resolution mechanisms which operate effectively when a consensus is not achieved and avoid gridlock.

The primary role for the "regional forum" designed by the Inter-Tribal Workgroup was to provide a framework which retained and strengthened the traditional roles of tribes and states in river and resource management while structuring the federal management presence consistent with the requirements of applicable federal laws. The Inter-Tribal Workgroup proposed broad participation, bringing together policy-level executives of NMFS and the U.S. Fish and Wildlife Service, the four states and the Columbia River Basin tribes in a dynamic, visible and adaptive governance process which linked responsibilities for implementation and funding priorities to shared jurisdiction over subject matter while facilitating consensus positions and providing for dispute resolution in the event a consensus could not be achieved. The Inter-Tribal Workgroup also included elements in the decision-making structure to adapt and strengthen the role of the Power Council. Specifically, the Power Council would integrate fish and wildlife planning with regional power planning efforts, affording deference to consensus-based decisions of federal and state fish and wildlife agencies and tribes in the design and development of program measures. The Workgroup recommended that a Fiscal Management Entity be established with a "lead role" for the Power Council. This regional entity would be designed to overcome obstacles to more effective implementation of regional fish and wildlife programs. Funds would be transferred from BPA to the fiscal management entity under the direction of the Power Council which would be responsible for managing a region-wide "trust fund" for watershed restoration and habitat improvements. The Power Council would be responsible for ensuring stakeholders and interested members of the public were afforded full opportunities to participate in the regional forum.

The Workgroup's report circulated in the region along with other governance proposals. The Columbia River Basin tribes' underlying approach---facilitated, consensus-base decision making accompanied by effective dispute resolution procedures---contrasted sharply with both the legislative and non-legislative recommendations of the Power Council. NFMS continued development of its own "top-down" Executive Committee framework for implementing its biological opinions.

Many of the concepts underlying the 1996 Report of the Inter-Tribal Workgroup, as well as the recommendations contained in the Power Council's 180-Day Review, survived and resurfaced in follow-on efforts by federal, state and tribal governments to improve regional governance of fish and wildlife programs and integrate these actions with the power planning activities that were occurring in the region. This took the form of attempts to establish the "Three Sovereigns" process and, later, a "Columbia River Basin Regional Forum". Although these efforts were never actually implemented, the goal was put in place a process that could generate a unified regional plan. The federal, tribal and state sovereigns designed a consensus-based decision-making process that incorporated and strengthened their collective authorities. There was agreement regarding opportunities regarding full participation and the scope of issues to be

addressed. There was general agreement on the need for and scope of effective dispute resolution procedures. Meanwhile, NMFS has continued making decision via its Executive Committee.

The Three Sovereigns/Columbia River Basin Regional Forum was never established and the Spokane have focused on establishing an Upper Columbia River and Reservoir Operations Forum which is fashioned along the lines of the draft frameworks that were initially suggested for a larger geographic scope. We are currently working with federal agencies to clarify the scope and subject matter of issues to be addressed. The parties to those discussions are also reviewing dispute resolution procedures and other mechanisms for building consensus-based decisions on a provincial level. One of the key issues is the extent to which non-federal parties have access to dispute resolution procedures once the issues for dispute resolution have been framed.

1996 Fish and Wildlife Funding MOA and Annex

Late in 1995, the Spokane Tribe learned, after the fact, that Randy Hardy (Administrator of Bonneville Power Administration), Will Stelle (Regional Director of NMFS) and Angus Duncan (Chairman of the Northwest Power Planning Council) had been meeting informally and reached some sort of "gentleman's agreement" which established a multi-year "cap" on BPA's fish and wildlife funding for fiscal years 1996 through 2001. This took the form of the 1996 Fish and Wildlife Funding Memorandum of Agreement ("MOA") among federal agencies.

On March 19, 1996, Warren Seyler, then-Chairman of the Spokane Tribe's Business Council, wrote to Alice Rivlin, Director of Office of Management and Budget, expressing the Spokane Tribe's concern regarding efforts of the federal agencies to "cap", BPA's expenditures for fish and wildlife. Chairman Seyler wrote:

> Although the agencies have continued to develop a draft memorandum of agreement (MOA) they have done so without adhering to the Administration's directive to incorporate input from the Northwest Power Planning Council (NPPC) and the Tribes.

Chairman Seyler noted that the Spokane Tribe had written to OMB Director Rivlin on January 10, 1996 expressing the very same concern and had received a letter dated February 22, 1996 from the Secretary of Energy, Hazel O'Leary, assuring him that we would be provided an opportunity for true government-to-government consultation. However, he noted, the Spokane Tribe continued to have no meaningful involvement in developing the MOA and, indeed, had only two opportunities---with only a few hours advance notice---to participate in meetings via telephone conference calls:

> Our reaction to the agencies' exclusion of out Tribe is much more than a complaint about poor protocol. We have sincere, legitimate concerns about the objectives of the federal parties, the viability of their strategy, and the scope of the agreement.

In anticipation of the federal agencies' representatives meeting with OMB on March 29, 1996 to affirm their concurrence regarding the draft MOA. Chairman Seyler wrote:

> Tribal and State participants in the call strongly objected that the agencies' position has been developed without meaningful involvement of the Tribes or the NPPC. We feel that presenting the agencies' MOA to the Administration would be a misrepresentation of the draft MOA as a regionally-developed solution, when in fact the MOA has been drafted almost exclusively by Bonneville Power Administration and the National Marine Fisheries Service, with some input from the Bureau of Reclamation, the Corps of Engineers, and the U.S. Fish and Wildlife Service. There may also have been involvement by the Columbia River Inter-Tribal Fish Commission, which does not represent the broad range of Tribal interests in the region.

Following the conference call, the federal agencies agreed to postpone their presentation of the MOA and begin the government-to-government consultation process required by the Administration's original directive for the federal agencies to consult with tribes. Chairman Seyler indicated that the Spokane Tribe was willing to cooperate to the greatest degree possible and expedite such consultation. At the same time, he pointed out that t the Spokane Tribe had not been afforded an opportunity to participate during the prior several months in which the MOA had been developed. He specifically requested that the Spokane Tribe be given an opportunity to review and understand how the draft MOA was developed and how the Spokane Tribe's interests would be affected.

He requested an opportunity to meet with OMB Director Rivlin and explain the Tribe's concerns. Attached to Chairman Seyler's letter was the following summary of the Spokane Tribe's concerns regarding the draft MOA and BPA fish and wildlife funding, styled as five central questions:

1. Was it the Administration's intent that neither the initial spending targets ("caps") nor implementation of the MOA impose fiscal and/or legal risks arising from the federal agencies' inability to comply with other requirements of federal legislation, international treaties, etc?
2. Will the MOA maintain adequate funding for present and future recovery measures, fish and wildlife programs, and all other legislatively or judicially mandated fish and wildlife measures under the three categories of non-hydropower costs covered by the MOA, including a reasonable budget margin for contingencies, escalating costs of operations and maintenance of facilities?
3. Will the MOA assure that activities undertaken by federal agencies pursuant to the MOA meet the legal responsibilities to protect Tribes' trust assets in the Columbia River basin, as well as comply with treaties, executive orders and judicial mandates relating to Tribes"

4. Will the MOA establish a reasonable baseline for estimating and revising the actual net incremental costs of operating the Federal Columbia River Power System during average and adverse water conditions to meet certain fish and wildlife objectives?
5. Will the MOA provide for adequate consultation between federal parties, Tribes in the Columbia River basin, the Northwest Power Planning Council, and fish and wildlife agencies on the following matters as they arise?
    - development of budget submittals by BPA and other federal parties;
    - initial allocations and reallocations of funds between the four budget categories;
    - specification of changes in system operations for the benefit of fish and wildlife programs;
    - development of a model for estimating system operation costs;
    - prioritization and coordination of fish and wildlife activities.

The 1996 Fish and Wildlife Funding MOA and Annex set forth BPA's five-year commitment to "pay" for the cost of river operations to meet flow and spill levels called for in NMFS' 1995 biological opinion on hydropower operations. It also provided that BPA would commit to expend a sum of money for other fish and wildlife activities and afforded access to a contingency fund depending upon market prices and water conditions. Following discussions in March, 1996, the federal agencies delayed the Administration's consideration of the inter-agency agreement and negotiated, in consultation with the Power Council and the region's tribes, an Annex to describe the accounting and other financial workings of the budget and provide a dispute resolution process. These three developments---an administrative budget, a regional prioritization process and effective access to dispute resolution mechanisms---were supposed to work together and were a matter of the utmost importance to the tribes and states in the region.

BPA generally assigns the highest funding priority to measures required by NMFS' reasonable and prudent alternatives. But BPA's priorities are distinguished from the other Endangered Species Act-related measures such as the NMFS' Recovery Plan and measures in the Power Council's program developed under the Northwest Power Act. BPA's "commitments" included the cost of river operations---budgeting for this item operated in a way different from other actual expenditures---as well as capital investment costs (such as dam modifications by the United States Army Corps of Engineers) identified in NMFS' biological opinions which were funded originally by Congressional appropriations and then reimbursed by BPA. Other measures contained in the biological opinions were to be funded directly. Despite the "non-discretionary" nature of NMS' biological opinions, the Power Council and BPA include projects in determining priorities and funding levels.

BPA also accords top priority to funding mitigation activities for which Congress appropriated monies and imposed reimbursement obligations on Bonneville, whether or nor related to the biological opinion and the ESA. Repayment of capital investments by the Corps of Engineers under the Biological Opinion fit into this priority category which also included other capital investments and operation and maintenance expenditures that come from Congressional authorizations and appropriations, including mitigation activities by the Corps and U. S. Fish and Wildlife Service under the Lower Snake River Compensation Plan. BPA also expended funds to implement measures in the Council's fish and wildlife to mitigate for the adverse impact of hydropower operations on fish and wildlife, whether or not the species are listed under the Endangered Species Act.

By August, 1996, several important implementation issues had been clarified. For budget purposes, there was a general understanding a multi-year work plan should be developed to guide budget planning and prioritization. The work plan was to provide a valuable fish and wildlife management tool. The regional entities also recognized several other needs: (1) bring the rest of the mitigation activities funded by BPA into the prioritization process; (2) devise a broader prioritization review across budget categories and groups; (3) ensure appropriate allocations occurred for each category; and (4) figure out a way to integrate non-BPA fish and wildlife mitigation activities and funds into the prioritization process.

This underlying need to improve regional governance was echoed by the Power Council's Final Report on its 180-Day Review in the following section titled "Work with sovereigns:"

> There is widespread agreement on the need for a collaborative decision-making process in which sovereign entities participate on a basis of equality. Some of the basin's Indian tribes have submitted a version of one possible process ... While other approaches are also possible, the Council will work with the sovereigns to organize a process as soon as practicable. The details of the process will need to be worked out with the sovereign interests. However, there is one obvious way in which to mesh the requirements of the Northwest Power Act, the Endangered Species Act, Indian treaties and other obligations: The sovereigns could be convened to develop a cohesive set of recommendations to ... determine the most appropriate regional response.

The Power Council went on to report:

> There is broad consensus in the region that federal, state and tribal fish and wildlife efforts should be consistent with each other. If these collaborative efforts fail, legislation will be needed. The Council does recommend that an executive order be developed to help cement cooperation.

There was no consensus regarding the Power Council's recommendation to amend the Northwest Power Act to require consistency with the Power Council's fish and wildlife programs giving the region more influence, if not outright control, over river operations

and other key recovery measures. However, the Power Council's assessment that an executive order and/or legislation could be required to elicit the type of cooperation necessary to develop a unified regional plan may be accurate. The question is whether a unified plan is more likely to be produced by: (1) a consensus-based decision-making regional forum with access to effective dispute resolution processes; (2) a "top down" approach with federal agencies remaining in charge; or (3) a state-controlled framework which requires all federal agencies to act consistent with the Power Council's fish and wildlife programs.

The 1996 'Comprehensive' Regional Review

The Comprehensive Regional Review was initiated by the governors of the four states in January, 1996. Its subscription process, power allocations and planning strategies were then used by BPA as policy-level guides for designing the power business line's products for sale and the terms on which such products would be offered during its FY 2002-2006 rate period. In announcing the formation of a Steering Committee for the 1996 Regional Review, the four governors included a document outlining their guidance on the goals, scope and procedures for the review. That document established the goal of the 1996 Comprehensive Review as "the development of recommendations for changes in the institutional structure of the region's electric utility industry." The governors suggested that changes in the institutional structure should be

> designed to protect the region's natural resources and distribute equitably the costs and benefits of a more competitive marketplace, while at the same time assuring the region an adequate, efficient, economical and reliable power system.

The governors' objectives for the 1996 Comprehensive Review included creating an "open, public process" in order to "find the best means of securing ... the benefits" of the region's power system and recognized that a consensus-based approach would be essential. They charged the Steering Committee with:

> convening working groups to involve a broad range of participants representing, where appropriate, all segments of the power industry, agriculture, labor, low-income groups, affected industries such as sport and commercial fishing, transportation and others.

The four governors nevertheless instructed the Steering Committee that "the extent of the hydroelectric system's obligation for restoration and protection of fish and wildlife should not be a subject for the Review." They called upon the Power Council to provide logistical support, including public outreach assistance, and other means. The governors appointed 14 "voting" representatives to serve on the steering committee, as well as "ex-officio" representatives of BPA and the four states to serve on the steering committee. No tribal representatives were appointed by the governors to serve on the Steering Committee. Instead, the governors mentioned the need for the Steering Committee to maintain a "formal liaison with the region's Indian tribes, the Administration and the Congress."

The scope of the 1996 Regional Review included the entire Northwest energy system, with the key focus being the role federal power generation and transmission assets would play in a competitive power marketplace. The governors specifically called upon the Steering Committee to address the following issues:

- the degree of separation of generation and transmission assets necessary to ensure a competitive market;
- changes in the ownership and operation of the region's generation and transmission assets;
- standards to apply for pricing the power products and services from the region's generation and transmission assets;
- payment and amortization of the costs and debts related to federal assets;
- federal and state laws that would require amendment to implement the recommendations.

The governors also instructed the Steering Committee to "determine how the region should provide for the power system's non-power obligations." The governors required that the Steering Committee NOT consider fish and wildlife by instructing it to defer to the findings and recommendations in the 180-Day Review:

> If the committee encounters fish and wildlife governance questions, it shall defer to the process the Power Planning Council is using to develop a report to Congress on appropriate measures to improve regional control over efforts to conserve and enhance fish and wildlife within the Federal Columbia River Power System.

A March 12, 1996 memorandum from Rick Applegate, the one and only member of the Steering Committee representing sport fishing interests (Trout Unlimited), raised serious concerns regarding the key public purposes and obligations of the power system. Applegate argued that the work group structure called for by the four governors needed a committee to focus explicitly on "alternative means by which the power system can improve its ability to meet its fish and wildlife obligations and serve its other public purposes." Applegate specifically called for a "searching review of the subsidies and debts currently embedded in power system operations--particularly since they have, according to Bonneville and some of its customers, adversely affected Bonneville's ability to fund fish and wildlife protection and restoration while remaining competitive."

Applegate identified two issues as "very important items" for further discussion: (1) the ability of the Federal Columbia River Power System to meet is obligations and fulfill it historic public purposes---an ability which he characterized as "at risk"; and (2) the need to improve the governance structure of the power system. Applegate insisted that the 1996 Regional Review needed to

> examine very carefully how these obligations and purposes can be addressed by the emerging markets; the levels at which they will be pursued; the forums that will be responsible for making decisions about them; and the entities responsible for meeting the obligations and serving the purposes.

As part of the examination of the risk posed by BPA not being able to meet its legal obligations, Applegate implored members of the Steering Committee to "evaluate the current costs to the system when subsidized operations are undertaken for irrigation, navigation and other industries." He stated:

> I can't imagine how we can satisfactorily address the risk of financial failure or other financial difficulties without a careful review of the subsidies embedded in the current system operations.

> Later, in May, 1996 Lorraine Bodi, Co-Director for the Northwest Regional Office of American Rivers, and Applegate circulated a discussion paper entitled "Fish Issues and The Regional Energy Review." They reminded the Steering Committee that the Columbia River Basin's salmon runs were declining and suggested that fish and wildlife restoration should be incorporated as a goal for the Regional Review, citing the 1980 Northwest Power Act's provisions which stressed the need to protect, mitigate and enhance fish and wildlife, including habitat, of the Columbia River and its tributaries.

They suggested that, in the 1996 Regional Review, explicit provision should be made for the restructured power system to carry out and meet the region's restoration obligations, that no portion of the restructured system should be excused from restoration obligations and that the restructured power system should provide the funding and river operations necessary to complement and meet restoration obligations and that the Steering Committees analyses of restructuring options should consider their effects on the costs and consequences of fish and wildlife measures.

Given the Power Planning Council's instructions that the extent of the region's obligations to fish and wildlife recovery was outside the scope of the 1996 Comprehensive Review, the points stressed repeatedly by Applegate as the lone representative of fish and wildlife interests on the Steering Committee were never adequately addressed. One of the lessons that stands out from the 1996 Comprehensive Review, is the need to address regional power planning and budget priorities for all fish and wildlife programs funded by BPA in an integrated manner.

The 20 members of the Steering Committee worked through most of 1996 to develop recommendations contained in a final report completed and submitted on December 12, 1996. Titled "Toward a Competitive Electric Power Industry for the 21'st Century," the recommendations represented a consensus of 13 of the 14 voting members. The dissent was filed by Rick Applegate who did not believe that the issues related to fish and wildlife or river governance had been adequately addressed. In its final report, the

members of the Steering Committee acknowledged the need to achieve a consensus in the region:

> With a consensus position, the Pacific Northwest has the best hope of retaining the benefits of the federal hydropower system and transitioning to a competitive electricity system that will maximize benefits for all consumers in the region. The work embodied in this report will not easily be replicated if the regional consensus is destroyed by unilateral actions of any party.
>
> * * *
>
> The region's ability to sustain its core industries, support conservation and renewable resources, and restore salmon runs is clearly threatened if we cannot reach a consensus regional position to bring to the national electricity restructuring debate. Without a sustainable and financially healthy power system, funding for fish and wildlife restoration could be jeopardized.
>
> * * *
>
> In short, an effective conclusion of our effort is not possible without an improved system of river governance that pursues fish restoration as a high priority.

1997 Amendment of Regional Power Plan

The 1996 Comprehensive Regional Review generated, as a "work product" amendments to the Power Council's 1997 Regional Power Plan. This was a significant concern to the Spokane Tribe and other UCUT members, partly because of the instructions excluding consideration of fish and wildlife and the lack of tribal representation on the Steering Committee. When the Power Council announced its intention to proceed with the 1997 Amendments to its Regional Power Plan, the Spokane Tribe, and others, objected.

On October 31, 1997, Mary Verner-Moore, then-Director of the Spokane Tribe's Natural Resources Department, submitted comments to John Etchart, Chairman of the Northwest Power Planning Council regarding the proposed amendments of the Power Council's Power Plan. She reminded the Power Council that the Spokane Tribe had ongoing and proposed programs for fish and wildlife and that the success of such programs depended, in large part, on funding provided by the operation of the Power System. In addition, she noted that the Spokane Tribe was greatly affected by river operations, especially Lake Roosevelt and the Spokane River system, which impacted burials, important cultural sites and tribal economic resources. In her evaluation and comments on the proposed amendments, Verner-Moore wrote:

> On several occasions over the past 18 months, the [Spokane] Tribe has attempted to have the Power Council, the Comprehensive Review Steering Committee and, more recently, the Transition Board take into consideration the vital interests of Columbia Basin tribes in regional power planning .... We do not feel that these efforts have been successful .... A discussion of the role of tribes in charting the regions [sic] energy future is conspicuously absent throughout the amendment documents.

Verner-Moore advised that it was not appropriate for the Power Council to view the limited discussions in the 1996 Comprehensive Review as a surrogate for a proper, balanced, and more inclusive power planning amendment process required by the Northwest Power Act. Echoing both the Bodi/Applegate concerns and Applegate's dissent from the Steering Committee December, 1996 final report, she stated:

> Essentially, the Comprehensive Review was an exercise on how the players in the regional electric industry would divide up the benefits of the federal power generation and transmission systems if afforded the opportunity. This seriously taints the utility of the recommendations as a basis for amending the electric plan.
>
> Membership on [the] Comprehensive Review Steering Committee was imbalanced from the beginning. This imbalance has been carried forward by the appointment of the Transition Board. Tribes, in particular, were excluded from membership and representation of consumer and environmental interests was token at best. Tribal representatives that did participate were in the position of being reactive, e.g., no input in setting agenda, suggesting alternatives, etc. Opportunity for tribal input was confined to a short period at the end of the meetings reserved for public comment.
>
> Even more to the point, in a proper process, the Power Council would have solicited proposed amendments from throughout the region and used these, along with input from staff, to fashion a revised energy plan. This would have gone back out for public comment and consultation. That is how it should have worked. In the work of the Steering Committee, alternative approaches were offered in work groups, discussed, defined, rejected or developed further by members. Tribes and the public could only "observe" these discussion and, unless invited, could comment at the end points. As a result, valuable opportunities to develop workable strategies for restructuring were not developed. And much of the committee's efforts were wasted on strategies that simply won't fly within or outside the region.

Director Verner-Moore posed the question of how to move from the Steering Committee's recommendations to a more workable proposal that had the support of tribal, federal, state, public and private interests, as well as the Administration and Congress and pointed out that

> [T]he three sovereigns have been working on a comprehensive approach for governance of fish and wildlife programs and river operations. A workgroup is in the process of completing a set of recommendations that will be considered and refined by the governments .... One outcome of this process will be a unified fish and wildlife plan for the basin which addresses recovery of listed species, habitat, system operations, etc on a comprehensive basis. We believe that this is the best way for the region to address many of the questions that remain following the work of the Comprehensive Review.

She respectfully requested that the Power Council defer action on amending its Power Plan until the Three Sovereigns process came to fruition:

> This will provide a sound foundation for discussion of the future role of the Northwest Power Planning Council in regional power planning and serve as a guide for meshing the various components in a unified plan. This plan will feature agreed-upon budgets, clear priorities, well-defined benefits and results expected. It will also include appropriate standards, monitoring and evaluation programs. It will necessarily include a dispute resolution mechanism which, at a minimum, addresses issues that arise in implementation of a unified basin plan.
>
> This is what the region needs and is in the process of developing. The Power Council is, in fact, participating and assisting in the process. It would be a serious misstep---potentially undermine the three sovereigns initiative---for the Power Council to proceed independently to design a role for itself along the lines described in the planning documents. Our suggested approach---deferral until the three sovereigns take action on a regional forum---will establish a process that makes a significant contribution to resolving many of the issues left hanging by the Comprehensive Review.

The fact that the Power Council was amending its Regional Power Plan based solely on the deliberations of the Steering Committee without the benefit of a proper public process and without any recognition of the authorities, responsibilities, rights and interests of tribes in regional power planning was troubling. Verner-Moore wrote:

> This is alarming and raises very serious questions regarding how tribal rights embodied in statutes, judicial decisions and administrative orders will be respected and trust responsibilities owed tribes will be fulfilled in the evolving energy markets.

In addition, she identified with specificity three fundamental assumptions and values underlying the recommendations of the Steering Committee that needed to be reconsidered. These included

- The treatment of fish and wildlife program costs as a "risk" to purchasers of federal power while failing to address ... how the region plans to resolve disputes over these issues
- The economic consequences of establishing a marketing scheme for federal power along the recommendations of the committee, i.e., a subscription process which is the very antithesis of competition and severely curtains the scope of Bonneville's marketing activities
- The consequences of setting up an independent grid operator and structuring rates charged for transmission services so as to limit the responsibility of transmission providers to shoulder their equitable share of the system costs of fish and wildlife programs, public purposes, etc.

She suggested that, with respect to three fundamental policy matters, the Steering Committee's recommendations were generally self-serving---reflecting only the interests of participants in the regional energy system---and fell far short of the mark as a guide for the future:

> The overriding weakness inherent in the Steering Committee's recommendations is that they are designed to secure the benefits of the hydroelectric system for participants in the regional energy system while minimizing the same participants' corresponding obligations and responsibilities.

The Spokane Tribe also raised one additional concern with the economic analyses the Power Council used in amending its Regional Power Plan: the analytic results of the competitive models that the Steering Committee (and BPA) were using to "model" emerging regional electric markets were unreliable guide for pricing generation. She wrote:

> The clear implication is that electric markets will be characterized by a handful of dominant firms with the market power to progit greatly from restructuring. The rest of the electric industry ill be largely composed of sick, overcrowded, inefficient firms with chronic excess capacity, charging "captive" customers high prices. Such a market will be prone to collusion, maintained by restraints of trade, rigid prices, wasted resources and economic inefficiencies.

She specifically suggested that the doctrine of "price equals marginal" was taken from an abstract economic model which was wholly inappropriate as a guide for regional policy in an evolving and volatile market and particularly unsuitable for equitably allocating costs across customer classes.

The Power Planning Council failed to heed these and other warnings. As a result, it seriously underestimated the magnitude of potential load-augmentation costs that might

occur with BPA's over-subscription of the generating capability of the Federal Columbia River System in an effort to share the benefits of the power system as widely as possible in the region.

BPA's FY 2002-2006 Rate Case and Regional Dialogue

BPA used the recommendations of the 1996 Comprehensive Review as a basis for implementing its subscription strategy in the rate case without the benefit of a regional forum in place and the results are apparent. BPA took on in excess of $5 billion in additional obligations for the current rate period. This includes $3.9 billion in additional costs for providing 3,300 megawatts of load service in the face of high market prices and short power supplies, followed by expensive load "buy downs' just as the market declined. Since the beginning of FY 2002, BPA has triggered cost recovery adjustment mechanisms of over 40% to cover the incremental benefits to the region of its over-subscription of the Power System.

BPA's current financial situation varies greatly depending upon market prices and water conditions. At a workshop held at the end of February, BPA projected a net revenue loss of about $920 million for FY 2002-06. BPA staff explained that costs are about $5 billion higher than projected because BPA took on 3,300 MW of additional load. $3.9 billion of the $5 billion in costs is due to the fact that BPA had to purchase power and bought down loads to meet those obligations. BPA began FY 2002 with $576 million in reserves but, by the end of FY 2002, reserves had declined to $182 million, a decline of $394 million. Late in 2002, BPA projected that over, the course of the current rate case, it would face a budget shortfall of $1.2 billion. Then, in March of 2003, with higher market prices and increased earnings on BPA's surplus sales, the $1.2 billion shortfall BPA expected over the course of the current rate case was reportedly reduced to approximately $690 million. Nevertheless, BPA triggered the safety net cost recovery adjustment.

Looking backward, BPA providing benefits to aluminum companies and using load "buy-downs" for demand management purposes during periods of energy shortages proved to be very expensive for BPA and of questionable value for the region. Only two of the 10 aluminum smelters that added significant loads to BPA's system are still in operation at greatly reduced levels. BPA's financial reserves have also been drained by incremental financial benefits for residential customers of investor-owned-utilities over FY 2001 levels. These benefits, estimated at about $1.8 billion for FY 2002-2006 are provided under a partial settlement agreement reached between BPA and many of its utility customers in Feburary, 2001 after several months of discussion. They were incorporated in the BPA Administrator's June, 2001 Record of Decision for the FY 2002-2006 Rate Case and BPA's Oct. 2001 amended rates provided an additional five-years of payments on top of existing subsidies for residential exchange customers. These are now the subject of closed-door discussion between BPA staff and a representatives of investor-owned-utilities.

After the lessons learned in the region since 1995, BPA has moved unilaterally to put the "regional dialogue/financial choices" initiative designed to determine BPA's

obligations during the FY 2007-2011 rate case officially on hold pending the outcome of the safety-net cost recovery adjustment proceeding. But not everything is on hold. Last week we learned that BPA and the investor own utilities are close-door discussions on residential exchange settlement, entitlements. The deal that appears to be emerging is that the investor-owned-utilities may forego the benefits of the residential exchange during the current rate case f they can secure an increase in the benefits during the next rate case. See Attachment A.

WHERE SHOULD WE GO FROM HERE?

Chairman Campbell and Vice-Chairman Inouye and honorable members of the Senate Committee on Indian Affairs, your deliberations on these matters are of the utmost importance to the Spokane Tribe. On behalf of the Chairman and other members of the Spokane Tribal Business Council, I thank you again for your invitation to submit testimony on these matters, as well as your careful review and consideration of these matters. We look forward to your guidance and support as we work together with the federal agencies, the four states, the other Native American tribes and stakeholders in the region to address these concerns in a timely and effective manner.

For the Spokane Tribe and other UCUT members, the immediate need is to restore funding for habitat acquisition programs, resident fish and wildlife, and cultural resources programs. We also need to address the impacts on water quality in upper river reservoirs from measures to benefit ESA-listed species. There is also an immediate need to address "order of magnitude" disparities in funding. Specifically, UCUT tribes must conduct their activities with a fraction of the support BPA provides other sovereigns. This makes it very difficult for UCUT members to effectively participate in decisions which affect their resources. This is of special importance given the water-equity issues which arose beginning in 1982 with adoption of the Power Council's first Fish and Wildlife Program. The "flagship" of the program, i.e., their "water budget" for anadromous fish established continuing imbalances in the allocation of the burden of meeting the needs of endangered species.

On a regional level, the Spokane Tribe respectfully suggests that what the Pacific Northwest requires is a regional forum with full participation by federal, tribal, state governments and stakeholders. Decision-making should be consensus-based, not unilateral. If collaborative efforts don't succeed, effective dispute resolutions must be available. The region needs to develop a unified plan which integrates power planning with management of BPA-funded fish and wildlife programs, resolves issues relating to budgets, program prioritization, etc. The region needs to define operating strategies for the Federal Columbia River Power Systems which improve its capability to public objectives and purposes. The distribution of subsidies and benefits needs to be evaluated in light of the full range of BPA obligations, including the obligation to conclude a fair and honorable settlement with the Spokane Tribe for Grand Coulee. Perhaps the most important lesson that should have been learned since 1995 is that it is not possible to ensure the region's energy future and meet our resource obligations without improving regional governance. We need a BPA that provides for public purposes and meets its

statutory obligations. That includes fish and wildlife obligations and tribal rights. The elements of a regional forum that will assist the region in developing and implementing a unified plan have already been designed and discussed. We know what that forum has to look like. It has to have equality between sovereigns. It has to have involvement of stakeholders. It has to conduct its business in an open and visible manner.

Thank you very much.

ATTACHMENT A

The Oregonian

Talks aim at easing BPA financial pinch
05/26/03

TOM DETZEL

WASHINGTON -- The Northwest's six private power utilities are being asked to give up hundreds of millions of dollars in ratepayer benefits in the near term to help bail the Bonneville Power Administration out of its financial jam.

The pressure comes from Bonneville and its public utility customers, both of whom are looking for a deal involving PacifiCorp, Portland General Electric and other investor-owned utilities that could minimize a BPA rate increase this fall.

Closed-door talks involving the parties will continue and are said to be at a sensitive stage. Some participants said recently that chances of reaching an agreement that could significantly cut BPA's costs are good.

While that would take pressure off electricity prices regionwide, it presents a tough choice for the investor-owned utilities, whose residential and small-farm customers could see higher bills over the next three years as a result.

In return, however, the private utilities could secure support for additional payments to those ratepayers during BPA's next rate period, 2007-11, plus they could settle outstanding legal challenges to their current BPA power allocations.

"We think it's the best thing for the region to do at this point in time," Steve Oliver, BPA's vice president for power sales and transmission, said of a potential settlement. "We're not ambiguous about that."

The talks involve BPA and representatives for the private and public utilities who have pledged to keep details confidential. Some participants cautioned that proposals are fluid and that a deal is far from certain.

In addition, any agreement will need the support of public utility commissioners in Oregon, Washington, Idaho and Montana who regulate private utilities' finances and are watching out for ratepayer interests in the discussions.

The talks come at a particularly sensitive time for Portland General Electric, which has some of the region's highest rates and faces public takeover drives following the bankruptcy of its discredited parent company, Enron.

Even a modest hit on PGE ratepayers could push those efforts along. Lee Beyer, who sits on the

Oregon Public Utility Commission, said a settlement could end up raising PGE and PacifiCorp's bills by up to 3 percent in the near term.

That might be a worthy tradeoff if ratepayers get better benefits in the future, he said. But Beyer also said he would examine any agreement skeptically.

"PGE customers have taken a pretty big hit, and I'm looking at getting those rates down, not up," he said. "It would be a really hard sell for me to save Bonneville's bacon and some of the others at the cost of PGE ratepayers."

PacifiCorp and PGE representatives declined to discuss the talks in detail.

"Our goal is to retain customer benefits and get as much for our customers as we can," said Scott Simms, PGE spokesman.

Dave Kvamme, a PacifiCorp spokesman, said the company is concerned about its customers' rates. But he added, "It's in the mutual best interests of the region and all of the region's utilities that (BPA) return to financial health."

A settlement could reduce the monthly BPA credits that residential and small-farm customers of the utilities get. Right now, the credit is worth $10.94 for PacifiCorp customers and $6.95 for a PGE customer using 1,000 kilowatt hours.

Bonneville's continuing financial problems are driving the talks.

Still smarting from the financial impact of the Western power crisis, the agency proposed a 15 percent rate boost in March to help plug a five-year, $920 million budget gap and make this year's debt payment to the U.S. Treasury.

Bonneville provides nearly half the region's electricity, selling wholesale power from federal dams in the Columbia River basin and one nuclear plant.

Since the power crisis, BPA already has raised its prices an average of 45 percent. Utilities and industry officials say another hit in power rates would bring more job losses to a regional economy that can't seem to get out of reverse.

Lately, however, BPA officials have said their financial picture is brightening because of better hydropower conditions and stronger market prices, which could boost income from surplus power sales outside the Northwest.

That and other recent cost cuts will trim the rate increase to 10 percent or less. Now, BPA is trying to turn up the heat on the settlement talks, suggesting they could generate enough savings to avoid an increase altogether this year.

Big money is at stake.

A deal would get BPA out of an obligation to pay a $200 million "risk premium" to the two largest private utilities -- PacifiCorp and Puget Sound Energy -- that was part of a controversial contract signed during the energy crisis.

Under a proposal now on the table, BPA would also defer $55 million in scheduled payments to private utilities until after 2006, and the utilities also would forgo $225 million more due from BPA over the next three years.

In return, the utilities in the 2007-11 rate period would receive between 200 megawatts and 400 megawatts of additional BPA power. The exact amount and how to value the power remains at issue, three sources familiar with the talks said.

Besides PacifiCorp, PGE and Puget, the other private utilities affected are Spokane-based Avista, Idaho Power and NorthWestern Energy in Montana.

All those utilities receive benefits from Bonneville under auspices of the 1980 Northwest Power Act, which required BPA to share the advantages of low-cost federal power with the utilities' residential and small-farm customers.

Called the "residential exchange," this provision of the law had funneled gradually diminishing credits to private utility ratepayers over the years.

But the value of the exchange went up dramatically after BPA signed new contracts with the utilities in 2000, guaranteeing them 1,900 megawatts worth of cash and power, growing to 2,200 megawatts after October 2006.

Although BPA said the allocation would bring balance back to the exchange, public utilities sued, contending that the allocation went beyond the authority of the Power Act. The private utilities also joined in the case.

It was with that legal uncertainty in mind that BPA agreed in early 2001 to pay PacifiCorp and Puget the $200 million "risk premium" -- unless parties to the court challenge reached a settlement over the residential exchange.

The $200 million premium still hasn't been paid, but it has enraged public power officials, who consider it a giveaway to Puget and PacifiCorp.

"Why it was done, I don't know," said Jerry Leone, manager of the Public Power Council, which represents 114 co-ops, municipals and public utility districts that buy BPA power. "If I had known, I would have screamed like a stabbed owl."

Oliver, the BPA vice president, defended the premium. At the time, BPA had committed to sell customers far more power than it could generate. The agency was feverishly trying to dodge a triple-digit rate boost by buying itself out of those commitments for less than the record prices during the power crisis.

He said Puget and PacifiCorp worried about the legal cloud over the exchange but accepted the premium to offset that risk. For BPA, "the alternative in terms of going to the market was really pretty gruesome," Oliver said.

The $200 million premium and the other buyouts BPA signed with customers during the power crisis have dramatically raised the agency's costs.

Investor-owned utilities are scheduled to collect $380 million a year, excluding the premium, through 2006. That's up from an average $80 million in residential exchange costs the five years before the buyouts, according to BPA.

Given BPA's financial problems and the ailing economy, some say it's time for the investor-owned utilities to give up some of those benefits.

"The (utilities) have gotten a fairly substantial amount of money," said Ken Canon, executive director of the Industrial Customers of Northwest Utilities, which represents employers that buy from public and private utilities.

Canon noted that BPA just bought itself out of high-priced power sales contracts with Enron, saving $41 million measured against market prices now. He said BPA's contracts with the private utilities "are not all that different."

"From our perspective, we'd just like to see Bonneville being more aggressive in renegotiating these kinds of deals," Canon said.

Steve Weiss of the Northwest Energy Coalition, which promotes conservation and renewable energy, said the big payments made to investor-owned utilities have reopened a "food fight" between public and private power. A settlement "lowers rates for the publics, so they're happy. And it raises rates to PGE and PacifiCorp customers here in Oregon. So it's just a shift from one class to the other" over the near term, he said.

In the settlement talks, all sides have some leverage.

Private utilities have signed contracts guaranteeing BPA financial benefits. The public utilities have a lawsuit that could nullify those deals. Bonneville has the hammer of a rate increase that all the utilities want to avoid.

"It seems to me that there's pressure on all sides," said Dick Byers, who is representing the Washington Utilities and Transportation Commission in the talks. "I'm optimistic. I think we are making progress."

Tom Detzel: 503-294-7604; tom.detzel@newhouse.com

Testimony of James E. Zorn, Policy Analyst
Great Lakes Indian Fish and Wildlife Commission

Mr. Chairman and Members of the Committee, my name is James E. Zorn and I am a Policy Analyst with the Great Lakes Indian Fish and Wildlife Commission (GLIFWC). On behalf of GLIFWC's eleven member tribes, thank you for the opportunity to appear before you today. It was nearly ten years ago to the day that GLIFWC provided testimony to this Committee on a bill designed to support and enhance tribal natural resources programs.

GLIFWC is honored to have this opportunity to re-engage with Congress on these important issues and to participate in the dialogue on how the United States can and should support tribal programs. GLIFWC stands ready to play whatever role it can in helping the Committee, and ultimately the entire Congress, understand the importance of tribal natural resource management programs not only for tribal communities, but for the Nation as whole.

While much may have changed since we last appeared before you, much more has remained the same:

- Tribal natural resource management programs are integral to the physical, social, cultural, economic and spiritual well-being of tribal communities as those communities strive to provide for the underlying lifeways that are at the heart of their society and culture.

- Despite many continuing challenges and unmet needs, tribal natural resource management programs are successful because they are based upon a sound foundation of culturally-appropriate principles, as well as upon sound biology and science.

- Tribal natural resource management programs provide conservation, health, and safety benefits beyond tribal communities to the general public.

We hope that this report on the status of GLIFWC's natural resource management program helps provide a portion of the documentation necessary for Congress to understand that:

- Tribal natural resource management programs protect and conserve natural resources for everyone, protect and enhance habitats and ecosystems for everyone, produce economic benefits and development for everyone, protect public health and safety for everyone, and promote cooperation and partnerships that are effective and efficient for everyone; and

- Congressional recognition and support of tribal natural resource management programs is necessary public policy not only in terms of honoring this Nation's commitments to tribes in treaties and under the trust responsibility, but also in terms of preserving and protecting this Nation's natural resource wealth and heritage for generations to come.

I. GLIFWC'S MEMBERSHIP AND PURPOSE

GLIFWC is a natural resources management agency exercising delegated authority from its 11 member federally-recognized Ojibwe[1] tribes in Wisconsin, Michigan and Minnesota regarding their ceded territory (off-reservation) treaty rights.[2]

Each of its member tribes has entered into one or more treaties with the United States, under which the tribes reserved off-reservation hunting, fishing and gathering rights in the lands ceded to the United States.[3] These treaties represent a reservation of rights by each signatory Tribe individually and by all signatory Tribes collectively, as well as a guarantee of those rights by the United States.

Courts, including the United States Supreme Court in its 1999 *Minnesota v. Mille Lacs* ruling, consistently have recognized and upheld the treaty rights of GLIFWC's member tribes.[4]

---

[1]The tribes also are referred to as Chippewa, or, in their own language, *Anishinaabe.*

[2]GLIFWC member tribes are: in Wisconsin – the 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, and Red Cliff Band of Lake Superior Chippewa Indians; in Minnesota – Fond du Lac Chippewa Tribe, and Mille Lacs Band of Chippewa Indians; and in Michigan – Bay Mills Indian Community, Keweenaw Bay Indian Community, and Lac Vieux Desert Band of Lake Superior Chippewa Indians. *See* Attachment 1 for a map showing where these tribes and the treaty cession areas are located.

[3] *See* Treaty of 1836, 7 Stat. 491; Treaty of 1837, 7 Stat. 536; Treaty of 1842, 7 Stat. 591; and Treaty of 1854, 10 Stat. 1109.

[4]*See* People v. Jondreau, 384 Mich 539, 185 N.W. 2d 375 (1971); State of Wisconsin v. Gurnoe, 53 Wis. 2d 390 (1972); Lac Courte Oreilles v. Voigt (LCO I), 700 F. 2d 341 (7th Cir. 1983), *cert. denied* 464 U.S. 805 (1983); Lac Courte Oreilles v. State of Wisconsin (LCO III), 653 F.Supp. 1420 (W.D. Wis. 1987); Lac Courte Oreilles v. State of Wisconsin (LCO IV), 668 F.Supp. 1233 (W.D. Wis. 1987); Lac Courte Oreilles v. State of Wisconsin (LCO V), 686 F.Supp. 226 (W.D. Wis. 1988); Lac Courte Oreilles v. State of Wisconsin (LCO VI), 707 F.Supp. 1034 (W.D. Wis. 1989); Lac Courte Oreilles v. State of Wisconsin (LCO VII), 740 F.Supp 1400 (W.D. Wis. 1990); Lac Courte Oreilles v. State of Wisconsin (LCO VIII), 749 F.Supp. 913 (W.D. Wis. 1990); Lac Courte Oreilles v. State of Wisconsin (LCO IX), 758 F.Supp. 1262 (W.D. Wis. 1991); Lac Courte Oreilles v. State of Wisconsin (LCO X), 775 F.Supp. 321 (W.D. Wis. 1991); U.S. v. Bresette, 761 F.Supp. 658 (D. Minn. 1991); Mille Lacs Band v. State of Minnesota, 861 F.Supp. 784 (D. Minn. 1994); Mille Lacs Band v. State of

The rights apply to public lands and waters located within the ceded territories, and include the right to harvest virtually all natural resources found there.

In fact, the historical record is clear – the tribes would not sign these treaties until the United States agreed that they could continue their way of life on the ceded lands to meet their subsistence, economic, cultural, spiritual and medicinal needs.[5] As a number of federal courts have found, one of the primary purposes of these treaties is to provide a permanent right for the tribes to make a moderate living off of the ceded territory lands and waters by engaging in hunting, fishing and gathering as they had in the past.[6]

With these treaties and treaty rights in mind, GLIFWC was established in 1984 pursuant to a Constitution developed and ratified by its member tribes. It is an intertribal organization within the meaning of the Indian Self-Determination and Educational Assistance Act (PL 93-638). Since its inception, GLIFWC has entered into a contract with the Bureau of Indian Affairs pursuant to the Act, with funding provided on a regular basis by Congress.

Minnesota, 952 F.Supp. 1362 (D. Minn. 1997); Mille Lacs Band v. State of Minnesota, 124 F.3d 904 (8th Cir. 1997); Minnesota v. Mille Lacs Band, 199 S.Ct. 1187 (1999).

In affirming the Ojibwe's treaty rights, the courts, including the United States Supreme Court, relied on a number of key principles regarding treaty interpretation. Indian treaties, like treaties with other any other nation, are the supreme law of the land as provided in the United States Constitution. They take priority over state laws, cannot be abrogated or terminated by implication, and the rights that they guarantee to the Indians are considered constitutional rights.

[5]After carefully examining considerable historical evidence surrounding the treaty negotiations, the courts have concluded that GLIFWC's member tribes intended to reserve, and the United States intended to guarantee, the right to continue the Ojibwe's traditional way of life. *See, e.g., Lac Courte Oreilles Band (LCO III), supra* note 4, at 1426; *Mille Lacs Band v. State of Minnesota, 952 F. Supp. 1362, 1393. See also* Section II, below, for a discussion of Ojibwe culture and lifeways. The courts also looked at the historical record since the treaties were signed and found that there has been no action by Congress or the President to terminate these rights, and that "statehood" by itself does not take away the rights. *See, e.g., Minnesota v. Mille Lacs Band, 199 S.Ct. 1187 (1999).*

[6]*See, e.g., Lac Courte Oreilles Band (LCO III), supra* note 4, at 1426 (a "permanent" guarantee "to make a moderate living off the land and from the waters . . . by engaging in hunting, fishing and gathering as they had in the past. . . ."); *Mille Lacs Band v. State of Minnesota*, 952 F. Supp. 1362, 1393 ("[T]he 1837 treaty provides the Bands the *right* to continue a way of life based on hunting, fishing and gathering . . . .") (emphasis in original).

GLIFWC's ultimate responsibility is twofold:

- To ensure that its tribes and their tribal members are able to meet their subsistence, economic, cultural, medicinal and religious needs through the exercise of their ceded territory natural resource harvest and management treaty rights; and

- To ensure a healthy, sustainable natural resource base in the ceded territories.

This responsibility is reflected in GLIFWC's Mission Statement:

- To assist member tribes in the conservation and management of fish, wildlife and other natural resources throughout the ceded territories, thereby ensuring access to the traditional pursuits of the Ojibwe people;

- To facilitate the development of institutions of tribal self-government so as to ensure the continued sovereignty of its member tribes in the regulation and management of natural resources;

- To protect ecosystems in recognition that fish, wildlife and wild plants cannot long survive in abundance in an environment that has been degraded; and

- To infuse traditional Ojibwe culture and values in all aspects of its mission.

To accomplish this mission, GLIFWC's member tribes have delegated particular duties and authority to carry out a ceded territory natural resource management and regulatory program.[7] This program is designed to assist the tribes in meeting:

- Each tribe's sovereign obligation to its members to provide for their health and welfare in accordance with tradition and custom;

- The legal requirements of an effective ceded territory tribal self-regulatory system to conserve natural resources and to protect public health and safety;

---

[7]Each delegation of responsibility or authority can be traced to a particular document , such as GLIFWC's Constitution, the Charters of GLIFWC's two Committees, and various other intertribal agreements and enactments, or to a particular action by GLIFWC's governing bodies. In addition, GLIFWC's job for its member tribes is in the intertribal off-reservation context and then only to the extent of specific delegations from its member tribes. As for areas beyond these delegations and for on-reservation natural resource management, the tribes retain their individual sovereign prerogatives.

- The tribes' legal responsibilities to each other in the context of their collectively reserved rights, i.e. intertribal co-management; and

- The tribes' legal obligations to other sovereigns, i.e. co-management with state governments and federal agencies.

As outlined below in more detail in Section IV, GLIFWC's staff of biologists, scientists, technicians, conservation enforcement officers, public information specialists, and policy advisors carry out a comprehensive treaty rights protection and implementation program under the direction of member tribes. Activities include:

- Natural resource population assessments and studies;

- Monitoring and reporting on the harvest of fish, wildlife and plants;

- Developing natural resource management plans and conservation codes;

- Providing law enforcement officers to enforce tribal off-reservation conservation codes and to participate in regional emergency services networks;

- Providing funding for tribal courts and tribal registration/permit stations;

- Negotiating and implementing agreements with state, federal and local agencies;

- Implementing protocols between member tribes and states for determining natural resource harvestable surpluses and treaty harvest limits/quotas;

- Invasive species eradication and control projects;

- Biological and scientific research;

- Natural resource and habitat rehabilitation, enhancement, and restoration; and

- Preparing and disseminating public information materials.

In short, GLIFWC is an intertribal agency that does its best to provide its member tribes with a high level of biological, management and other expertise. But to fully understand GLIFWC and its member tribes' treaty rights, one must understand the true basis for their existence – Ojibwe culture and lifeways.

II. The Circle of the Seasons – Ojibwe Culture and Lifeways

GLIFWC's member tribes share a common origin, history, language, culture and treaties. They share a traditional and continuing reliance upon fish, wildlife and plants to meet religious, ceremonial, medicinal, subsistence and economic needs.

It is precisely to maintain this lifeway that the tribes reserved the rights to hunt, fish and gather in the ceded territories.[8] In proper perspective, this reservation of sovereign rights is part of the Ojibwe's on-going struggle to preserve a culture – a way of life and a set of deeply held values – that is best understood in terms of the tribes' relationship to *Aki* (earth) and the circle of the seasons.

For the Ojibwe,

> Culture is not merely a way of doing things that all human beings living in a society do to survive, such as eat, build homes, and arrange their relationships with each other. Culture also must be understood as a system of beliefs and practices that organize these activities. For example the collection of wild rice, the spearing of sturgeon, and the hunting of deer are fundamentally different activities for these Indian people in contrast to non-Indians. When Indians undertake these activities, the harvesting, processing, distribution, and consumption of natural foods, they are not only perpetuating their ancient cultures but the resources themselves. As Algonquian people take from the environment for their own use, they conceptualize their role as hunters, gatherers, and fishermen as part of the supernatural as well as the natural world. The manner of hunting, the ritual offering left to assuage the souls of collected plants, and the use of rice, venison, and sturgeon as integral components of ceremonial feasts are activities which themselves assure the perpetuation of these creatures as well as themselves.[9]

Thus, the Ojibwe are closely tied to the natural environment by a system of beliefs and

---

[8]In affirming the treaty rights of GLIFWC's member tribes, the courts took a "snapshot" of Ojibwe life at treaty times in order to determine the nature and extent of the rights that were reserved. In reaching their decisions, the courts made extensive findings on the Ojibwe's extensive knowledge and use of natural resources where each species played a role in supporting some part of the Ojibwe's lifeway and constituted the essence of Ojibwe culture. *See, e.g., Lac Courte Oreilles* (*LCO III*), *supra* note 4, at 1422-1429; *Mille Lacs Band v. State of Minnesota*, 861 F.Supp. 784, 791-793 (D. Minn. 1994).

[9]CHARLES CLELAND, ET AL., THE POTENTIAL CULTURAL IMPACT OF THE DEVELOPMENT OF THE CRANDON MINE ON THE INDIAN COMMUNITIES OF NORTHEASTERN WISCONSIN 110 (1995).

practices that organize everyday life. This environmental human relationship involves a notion of geographic place that embodies the Ojibwe's human origin and historical identity, as well as the way the Ojibwe conceive their cultural reality in the modern world.[10]

Ojibwe culture is characterized by:

- An interdependence between a people and the natural environment that is governed by several fundamental principles including "a vast knowledge of the natural history of plants and animals, efficient means of harvest, and the social and political means to partitioning and distributing resources."[11]

- The use of virtually all plants and animals in their environment to supply food, clothing, shelter, medicines, building materials, tools and implements, canoes, decorative items, and paints and dyes. The Ojibwe depend upon the "complete inventory of species for their welfare and security,"[12] and, indeed, the Ojibwe "subsistence regime must be understood not in terms of a few important resources in and of themselves but the vital interlocking use of all resources."[13]

- The organization of Ojibwe families and communities around differing activities according to the changing seasons as resources become available for harvest.[14] As one researcher has noted, "Traditional food system use provides opportunities for cultural expression and transmission of cultural patterns from one generation to the next."[15]

---

[10]In addition to the court decisions themselves, other sources documenting the essential role that natural resources play in Ojibwe culture include: FISH IN THE LAKES, WILD RICE, AND GAME IN ABUNDANCE (James M. McClurken et al. eds., (2000); and RONALD N. SATZ, WISCONSIN ACADEMY OF SCIENCES, ARTS, AND LETTERS, CHIPPEWA TREATY RIGHTS: THE RESERVED RIGHTS OF WISCONSIN'S CHIPPEWA INDIANS IN HISTORICAL PERSPECTIVE (1991).

[11]*See* CHARLES E. CLELAND, *Preliminary Report of the Ethnohistorical Basis of the Hunting, Fishing and Gathering Rights of the Mille Lacs Chippewa, in* MCCLURKEN ET AL., *supra* note 10, at 8 [hereinafter *Cleland Report*].

[12]*Cleland Report, supra* note 11, at 8.

[13]*Id.*, at 9.

[14]*Id.*, at 8-16; *see also* SATZ, *supra* note 10, at 1-2.

[15] HARRIET V. KUHNLEIN, PH.D., OJIBWE HEALTH AND TRADITIONAL FOOD USE, CENTRE FOR NUTRITION AND THE ENVIRONMENT OF INDIGENOUS PEOPLES (1995), at 4.

- Religious beliefs that guide the harvest and use of natural resources and that emphasize the existence of spirits in both animate and inanimate objects.[16] "Persons" are found throughout the material and spiritual world, and all such "persons," whether human or non-human, have rights.

- The relationship of humans to the rest of nature as one of reciprocity, and the proper attitude toward the natural world as one of humility and gratitude. Thus, the manner and rituals of harvest and use become key components to Ojibwe cultural preservation. For example, one must give thanks to the Creator both before and after harvest if the resources relied upon are to sustain themselves and make themselves continually available to meet human needs.

- Traditional ecological knowledge about plants and animals, and their habitats and habits, based upon generations of living in balance with nature that provides a wealth of information about natural processes and the impacts of human activities on them.

- The importance of language to transmit knowledge and teachings from one generation to the next. The Ojibwe language tends to wrap up many ideas into a word and involves a highly developed vocabulary for discussing particular activities, such as fishing methods, as well as more complex and abstract notions, such as the technology of maple sugar processing or the concepts of Ojibwe religion and other areas of cultural importance.[17] Frequently, there are no English equivalents for Ojibwe words or expressions.

III. EXERCISING TRIBAL SOVEREIGNTY TO PRESERVE THE CIRCLE OF THE SEASONS

In accordance with these types of traditions and teachings, the Ojibwe seek to preserve a balance between the human being and the natural resources that humans rely upon, as well as between the natural world order and the supernatural world order. They understand the need to match human needs with *Aki's* capability to produce and sustain, and the need to nourish the body as well as the spirit.

Thus, for the tribal governments involved, the exercise of retained sovereign authority to manage natural resources and to regulate tribal members in the exercise of treaty rights is a necessary element of Ojibwe cultural preservation. Simply stated, ecological sustainability equates to Ojibwe sustainability.

---

[16]SATZ, *supra* note 10, at 2.

[17]*See* JOHN D. NICHOLS, *The Translation of Key Phrases in the Treaties of 1837 and 1855, in* MCCLURKEN ET AL., *supra* note 10, at 515 [hereinafter *Nichols Report*].

GLIFWC and its member tribes are committed to natural resource management programs that sustain *Aki's* bounty for present and future generations. They recognize that perpetuation, enhancement and restoration of the natural resources upon which they rely are essential to sustaining tribal sovereignty, culture and society.

The court decisions affirming the Ojibwe's treaty rights serve as a reminder that tribes and tribal governments have a legal status not only in their own right but also under the United States Constitution. In exercising their treaty rights to harvest and manage natural resources, the tribes carry out sovereign powers of self-government and undertake a wide array of activities that perpetuate their culture. This means that other governments, particularly states, cannot maintain exclusive control of natural resource use and management in the ceded territories.

For ceded territory natural resource management and harvest regulation, the tribes' treaty rights have a number of important ramifications:

- A state's management authority is narrowed to a significant degree by the rights, and the exercise of a state's management authority is subject to judicial review to ensure that the rights are not infringed upon;
- A state may restrict the exercise of the treaty rights only to the extent reasonable and necessary for conservation, public health and public safety purposes;
- The tribes may prevent state regulation if they establish an effective system of tribal self-regulation that meets legitimate conservation, health or safety requirements; and
- These same principles have been applied to federal regulations that might impact the exercise of treaty rights.

Consequently, the tribes and the other governments involved have established various natural resource management and regulatory frameworks for exercising treaty rights. Some elements of these frameworks have been developed through agreements reached between the particular tribes and the state involved, and then incorporated into a court order. Others have been ordered after contested court proceedings where the court was compelled to resolve disputed issues.

These management and regulatory frameworks meet two needs:

- From a regulatory perspective, they set forth the regulations that conserve natural resources and protect public health and safety; and
- From a management perspective, they provide for coordination and cooperation between the governments involved.

An important aspect of cooperation and coordination lies with the tribes themselves. For example, in the Treaty of 1837, each signatory tribe reserved the hunting, fishing, and gathering rights for itself and its members. However, at the same time, all treaty signatory tribes reserved the same set of rights collectively and these rights may be exercised by each tribe throughout in the ceded territory.

Given these individually-reserved yet intertribally-shared rights, the tribes individually and collectively must:

- Undertake effective management programs, and adopt and enforce regulations consistent with reasonable and necessary conservation, public health and public safety standards;
- Stay within the total tribal allocation of natural resources; and
- Engage in intertribal co-management to preserve their system of tribal self-regulation by effectively managing and regulating treaty rights.

This is where GLIFWC fits in. It functions on an intertribal basis, in accordance with sovereign delegations from its member tribes, to coordinate co-management among the treaty signatory tribes and with other governments, and to undertake a comprehensive ceded territory natural resources management and regulatory program on their behalf.

IV. GLIFWC's Off-Reservation Natural Resource Management Program

Just as the tribes' relationship to *Aki* is all encompassing during the course of the seasons' circle, so too is GLIFWC's natural resource management program. It is part of its member tribes' comprehensive intertribal self-regulatory system of management plans and conservation codes that govern a broad range of treaty rights activities, including fishing, deer hunting, bear hunting, small game and furbearer hunting/trapping, wild rice gathering, and wild plant and forest products gathering.

GLIFWC's program is designed to secure the exercise of treaty rights to meet subsistence, economic, ceremonial, medicinal, and religious needs, as well as to protect and enhance the natural resources and habitats involved.

The information, data and analysis resulting from GLIFWC's management and research activities are available to and used by conservation agencies of other jurisdictions as they carry out their own natural resource management programs. In addition, more abundant and healthier natural resources resulting from GLIFWC's natural resource and habitat enhancement activities provide benefits beyond the tribal communities to the general public.

A. Biological Services. GLIFWC's Biological Services Division conducts a variety of fish, wildlife and plant assessments, monitors tribal harvests, assists in tribal permit issuance and animal registration, and provides other management assistance. Particular areas of work include:

1. Harvest Management – Determine available harvestable surpluses and then monitor and prepare regular reports on tribal ceded territory harvest levels for a wide range of species, including fish (such as walleyes, muskellunge, lake trout, and whitefish), wildlife (such as white-tailed deer, black bear, and furbearers), and plants (such as wild rice and other wild plants). For example:

- Lake Superior – Monitoring and preparing reports on tribal commercial fishing harvest in the 1842 ceded territory of western Lake Superior.

- Inland Lakes – Monitoring and preparing reports on tribal treaty fishing in over 160 lakes in northern Wisconsin, east central Minnesota, and the western Upper Peninsula of Michigan. This includes complete on-site monitoring of all off-reservation open water spearing and netting to obtain actual harvest statistics and other data for research purposes from the harvested fish.

- Wildlife – Monitoring and reporting on tribal treaty harvests of white-tailed deer, black bears, furbearers, and other animals. This is done by gathering registration data for quota species, such as deer and furbearers, and by conducting harvest surveys for other species, such as migratory birds.

- Wild Plants – Monitoring and reporting on treaty harvest of wild rice and a variety of other wild plants and non-timber forest products.

- Harvestable Surplus/Quota Determinations – Analyze population data, run population computer models, and interact with other agencies to determine the harvestable surpluses for species subject to quota management, and then work with the tribes to declare treaty harvest quotas and monitor harvest to ensure that it remains within those quotas.

2. Population Studies, Assessments, and Research – Conduct a variety of population studies, assessments, and related research, such as:

- Lake Superior Lake Trout Studies – Identify discrete stocks of lake trout, estimate their relative abundance, and determine their movements. Captured fish were measured, sexed, tagged, and aged. Other fish were implanted with data-gathering computer chips to record water temperature and depth profiles. This data is being used in bioenergetics models for lake trout and sea lamprey populations.

- Lake Sturgeon Project – Gather information on the distribution and movement of juvenile sturgeon in and around the Bad River and its tributaries in northern Wisconsin.

- Walleye Population Studies – Collect a myriad of data on walleyes during spring and fall. For example, in 2001, spring walleye population estimates were conducted on 17 lakes, and fall juvenile recruitment surveys were conducted on 120 lakes.

- Pine Marten Study – Radio-collaring of pine martens in the Chequamegon National Forest to monitor their home range and spatial interactions, and to examine field metabolic rates.

- Wild Rice – Sample and determine the relative abundance of each year's crop in over 40 ceded territory wild rice waters. Acreage and density of rice stands are measured and used to calculate a wild rice abundance index each year.

- Wild Plants – Evaluate the effects of logging practices on understory plant species.

- Chronic Wasting Disease (CWD) – With the discovery of CWD in Wisconsin's deer herd, sample deer harvested by tribal members to determine whether CWD has spread to the ceded territories.

3. Habitat Enhancement and Exotic Species Control – With the goal of providing healthy, fully-functioning ecosystems that will provide for the sustainability of the natural resources they support:

- Wild Rice Enhancement – Seeding either to enhance existing wild rice beds, or to reestablish traditional wild rice beds that have been harmed over the years by habitat degradation. In 2001, for example, over 3.5 tons of green rice was "seeded" in 15 waters in Wisconsin and the Upper Peninsula of Michigan. Also, studies are underway to examine the effects of sediment density on wild rice growth and on the effect of motor boats on turbidity levels in wild rice beds.

- Waterfowl Habitat Enhancement – As part of the intertribal Circle of Flight initiative, a number of wetlands that provide waterfowl habitat in the ceded territories have been restored or preserved.

- Sea Lamprey Control – As a cooperating agency with the United States Fish & Wildlife Service, work to control and reduce the sea lamprey population by trapping lamprey ascending various Lake Superior tributaries and gathering data on their

distribution and abundance. Sea lamprey is a non-native species that kills more lake trout in Lake Superior each year than human harvest.

- Noxious Weed Program – Monitor and control a wide range of invasive plants, and, in particular, a purple loosestrife control program, creation of a database of non-native plants found in the ceded territories, educational outreach activities with public land managers and private landowners, and an exotic plant web site containing basic information on the ecology of several noxious weeds, a slide library for identifying invasives, educational resources, and links to other Internet resources.

4. Contaminant Studies/Human Health Research – Research projects and fish consumption advisories to help prevent contamination of natural resources and to help tribal members maximize the health benefits from a traditional diet.[18] For example:

- Lake Superior Dioxin Study – Assessment of dioxin levels in Lake Superior whitefish, lake trout, siscowet, herring and sturgeon.

- Lake Superior Fish Contaminant Studies – Assessment of mercury, PCB, and organochlorine levels in Lake Superior lake trout, whitefish, siscowet, and herring.

- Wild Rice Contaminant Study – Study that characterizes heavy metal concentrations in wild rice plants in 8 Wisconsin lakes and that builds upon previous research published in the February 2000 edition of the journal "The Science of the Total Environment."

- Environmental Monitoring at Specific Sites – Gather baseline data on water quality and on heavy metals in wild rice, mussels, and fish near potential ceded territory mine sites.

- Mercury-in-Fish Project – Over the past seven years, GLIFWC has instituted an unprecedented lake-specific mercury advisory program to help tribal members and

[18] "[T]here is a relationship between use of traditional Ojibwe food and the health and well-being of Band members." KUHNLEIN, *supra* note 15, at 39. The holistic physical and mental health benefits of traditional food use include: the improvement of diet and nutrient intake; the prevention of chronic diseases (such as obesity, diabetes, cardiovascular diseases and hypertension, gall-bladder disease, and dental disease) associated with the consumption of non-traditional foods; the opportunities for physical fitness and outdoor recreation associated with harvesting traditional foods; the opportunity to experience, learn, and promote cultural activities; and the "opportunity to develop personal qualities desired in Ojibwe culture such as sharing, self-respect, pride, self-confidence, patience, humility and spirituality." *Id.*

the general public consume fish as part of a healthy diet.[19] The health benefits of eating fish are well known, but they can be undermined if the fish are contaminated.

GLIFWC has developed a system for sampling and testing walleye and muskellunge fillets, and then disseminating consumption advisories for specific lakes based upon the mercury contaminant data for that lake. This allows harvesters to make informed decisions about where they should fish and how much fish they should eat from a particular lake.

This is particularly important for tribal members. State fish consumption advisories are based upon the presumed consumption patterns of sports anglers. Tribal members who engage in subsistence harvests tend to eat fish in greater quantities, particularly at certain times of the year, than their angler counterparts.

GLIFWC has sampled and analyzed over 1,900 walleye fillets harvested from 137 previously un- or undersampled Wisconsin lakes. It has combined its data with that previously collected by the state, with a resulting mercury database of nearly 5,000 walleye fillets. In addition, GLIFWC has collected 94 walleye samples from 7 Minnesota lakes and 181 walleye samples from 14 Michigan lakes.

The elements of this project are:

- Collecting and testing walleye and muskellunge for mercury content – GLIFWC tests in 22 long term study lakes on an alternating year basis. The goal is to provide a 10-year data set for researchers to assess mercury trends in northern Wisconsin waters. GLIFWC also will test an additional 42 lakes in the next 3

---

[19]Much of the mercury-in-fish project has been carried out with funds provided by grants from the DHSS Administration for Native Americans and the Agency for Toxic Substances and Disease Registry. This illustrates how GLIFWC's base funding provided through its Self-Determination Act contract with the Bureau of Indian Affairs (BIA) provides important matching funds to obtain other funds. As is the case for tribes throughout the country, GLIFWC's BIA funding is not sufficient to meet all aspects of a comprehensive natural resource management program.

In seeking other funding, GLIFWC's BIA funding provides the basic infrastructure for carrying out new projects or initiatives. Special projects are thus supported by GLIFWC's regular staff of scientists, professionals, and administrators, and directed by GLIFWC's existing governance structure, all of which is primarily funded through GLIFWC's BIA Self-Determination Act funding. This allows GLIFWC to take advantage of the economies of scale of its entire organization while expanding its service and project capabilities.

years.

- Communication of testing results through Geographic Information System (GIS) maps – Lake-specific color-coded mercury advisory maps are developed. Since 1995, these maps have been used by tribal members and the general public to identify lakes and sizes of *ogaa* (walleye) low in hazardous methyl mercury. They are distributed to tribal communities at registration stations, through GLIFWC's newspaper and other publications, and through GLIFWC's web site (www.glifwc.org).

- Linkages with Health Care Networks – This information is provided to health care providers (Indian Health Service and others). Maps and data are distributed to clinics, to tribal health care providers serving the WIC program, and at local and regional nursing conferences.

5. Technical Assistance/Expert Advice – Provide technical assistance and expert advice to member tribes in the development of their ceded territory natural resource management plans and harvest regulations, in negotiation or litigation involving the treaty rights, and on interagency cooperative projects.

B. Conservation Law Enforcement and Emergency Services. GLIFWC's Conservation Enforcement Division maintains a staff of officers who are responsible for enforcing the tribes' off-reservation conservation codes and for participating in regional emergency services networks.

1. Officer Training – All GLIFWC officers are fully-certified and have the basic peace officer qualifications of surrounding jurisdictions. In addition to completing basic police recruit training, they must attend 40 hours of in-service training each year. This training includes crowd control techniques, defensive arms and arrest tactics, medical response, search and rescue, hunting and firearm safety, accident investigation, and firearms certification, among others.

2. Community-Based Enforcement – Working out of satellite offices on member tribes' reservations so that they are familiar with the communities they serve, GLIFWC's officers:

- Maintain scheduled enforcement tours of duty that provide response capability, regular patrols, and prevention services seven days a week.

- Investigate possible violations of tribal off-reservation conservation codes, gather and preserve evidence, issue citations into tribal courts, and testify at trial.

- Serve conservation-related warrants, summonses and complaints as directed by tribal

courts.

3. Community Safety Programs – GLIFWC officers are certified instructors for hunter safety, boater safety, snowmobile safety and off-road vehicle safety courses. They regularly conduct sessions for tribal members and the general public.

4. Emergency Services – As fully trained law enforcement officers and certified medical emergency first responders or emergency medical technicians (EMTs), GLIFWC officers play an important role in the overall law enforcement and public safety infrastructures of the predominantly rural ceded territories. GLIFWC's officers often are called upon to assist both within the tribal and surrounding communities. Examples of how GLIFWC's officers have been called upon include:

- Emergency Response – GLIFWC officers have a track record of "being there" when needed for:
  - Medical Emergencies – Including car accidents, snowmobile accidents, heart attacks, and births.
  - Search, Rescue and Recovery – Including boat rescues on Lake Superior, ice rescues, searches for lost persons, drownings, and lost airplanes.
  - "Officer Down"and Weapons Incidents – Among first to arrive on the scene where officers from other agencies have been shot and where there have been weapon threats or other civil disturbances.
  - Natural Disasters – Including floods and tornados.
- Interagency Training Exercises – GLIFWC officers have participated in various interagency training sessions, including cold water rescue, hazardous materials identification, firearm safety, Great Lakes commercial fishing vessel safety inspection, first aid/first responder, and crowd control/civil disturbances.
- Other Tribal, State and Federal Law Enforcement – GLIFWC's Officers often are the first to detect violations of other tribal laws or of state or federal conservation or criminal laws, and frequently are asked by the agency of primary jurisdiction to secure a site, detain a suspect, preserve evidence, and provide testimony.

C. Judicial Services. GLIFWC provides funding for the tribal courts of each of its member tribes to ensure the infrastructure necessary to prosecute and adjudicate alleged violations of off-reservation conservation codes and to deter future violations.

D. Public Information and Education Activities. GLIFWC's public information and education activities increase public knowledge and understanding of tribal off-reservation natural resource harvest and management, as well as of tribal sovereignty and tradition. One of the primary goals is to raise public awareness and diminish conflict over the tribes' treaty rights. Examples of these types of activities include:

- Presentations by biologists, scientists and attorneys/policy analysts at schools, civic organizations, various public forums and professional conferences.
- Publication and dissemination of publications, such as a quarterly newspaper, reports on tribal off-reservation harvests, research reports, booklets describing tribes and their treaty rights, and peer-reviewed professional articles.
- Production of videos for use at presentations or by others at schools, conferences, meetings, or seminars.
- Training sessions for state and federal agencies and for educational conferences on tribes, treaty rights and Ojibwe culture.
- Information displays at local and state fairs, trade and sport shows, tribal pow-wows, and education and professional conferences.

E. Traditional Environmental Knowledge. GLIFWC has undertaken a project to capture the wild plant traditional ecological knowledge (TEK) of tribal elders. Elements of this project include:

- Compiling TEK Information – Geographic information system (GIS) maps on wild plants were prepared that integrated geographic features (lakes, rivers, roads, and the like) with information from the original survey maps of the ceded territories that showed vegetation coverages at the time of the surveys in the mid-1800s. Using these base maps as tools, tribal elders provided information regarding traditional harvest sites, plants harvested, the uses for the plants, perceived threats to wild plant resources, and stories and teachings about wild plants.
- Compiling Corresponding "Scientific" Information – Using information and data reported in studies, research, commercial forest products harvest reports, and professional journals and literature, a baseline data report was prepared on understory plant frequency in the ceded territories and how logging over the years may have effected them. These scientific papers and materials are now part of a library system for storing, retrieving, disseminating, and archiving information on the ecology, habitat, traditional uses, and threats to wild plants harvested by the Ojibwe.

- Integrating TEK and "Scientific" Information – A report assessing the wild plant resources of the ceded territories was prepared that integrated the TEK provided by tribal elders with the data and information provided by "scientific" methods and knowledge. The report identified threats to wild plant resources, provided wild plant research recommendations, and recommended a number of wild plant enhancement initiatives. In addition, the TEK documented during this project is being used to provide input on a wide range of decisions and projects affecting the wild plant resources found in the ceded territories.

- Providing Wild Plant Information to Tribal Communities – A primary goal of this project was to expand opportunities for the exercise of treaty gathering rights by facilitating the inter-generational sharing of knowledge on wild plant uses and proper harvest methods, preparing wild plant habitat maps, and providing regulatory information. Some of the tools that are now available to tribal members include a calender showing when certain plants are "in season" and an interactive CD. This CD contains wild plant inventories and databases that list hundreds of plants found in the ceded territories, their Ojibwe language names, the tribal elders who passed on their knowledge about them, and their traditional uses. It also contains snippets of video interviews of tribal elders talking about wild plants and passing on teachings about them.

V. GLIFWC'S CO-MANAGEMENT ACTIVITIES

As discussed above in Section III, GLIFWC's entire natural resources management program is an exercise in co-management between its member tribes. The tribes share the off-reservation treaty rights, and they consequently share collective cultural and legal responsibilities for protecting them.

The other aspect of GLIFWC's co-management responsibilities lies with local, state, federal and foreign governments. Because the treaty rights extend to areas of shared jurisdiction and use, these other governments are compelled, whether legally or practically, to acknowledge the rights and associated self-regulatory systems, as well as to integrate GLIFWC and its member tribes as natural resource management partners.

In addition, GLIFWC has established relationships and undertaken projects with colleges and universities, non-governmental organizations and associations, and other natural resource stakeholders, including private landowners. GLIFWC recognizes that natural resource stewardship is a responsibility shared by a broader community beyond governmental natural resource management agencies.

A. Intergovernmental Co-Management Processes and Institutions. GLIFWC

participates in a number of formal intergovernmental co-management processes and institutions, such as:

1. *Lac Courte Oreilles v. State of Wisconsin* Requirements – Court orders in this case provide for GLIFWC and tribal participation in any Wisconsin Department of Natural Resources (WDNR) committee involving the natural resources found in the Wisconsin portions of the ceded territories. These orders generally require the WDNR to recognize tribal representatives as official members of species advisory committees and any other committees that manage or deal with either particular species themselves or their habitats. They also require all reasonable efforts to reach consensus on committee decisions. GLIFWC's biologists have been designated to serve as tribal representatives on these committees.

2. *Mille Lacs Band v. State of Minnesota* Requirements – The court orders in this case also establish an extensive system of coordinated ceded territory management between the tribes and state. The parties agreed to a comprehensive set of protocols establishing formal tribal/state committees specifically authorized to address issues and seek consensus as each party exercises its respective management authority in the ceded territory.

3. National Forest Memorandum of Understanding (MOU) – Ten of GLIFWC's member tribes have entered into an MOU with the USDA-Forest Service's Eastern Region covering four National Forests in Wisconsin and Michigan. The MOU acknowledges the tribes' gathering rights in the Forests, sets forth stipulated elements of a tribal self-regulatory system for implementing those rights, and a comprehensive government-to-government consultation process on any Forest Service decision in those Forests affecting the tribes' rights.[20]

---

[20]The tribal/Forest Service MOU illustrates two important considerations. First, the United States' treaty obligations and trust responsibility extends to any federal agency whose actions might effect the tribes' rights, the natural resources subject to the rights, or the supporting habitats and ecosystems. For GLIFWC and its members tribes, such agencies include not only the Bureau of Indian Affairs, but also the USDA-Forest Service, United States Fish and Wildlife Service, National Park Service, Environmental Protection Agency (EPA), Army Corps of Engineers, and United States Coast Guard, among others.

Second, other than the BIA, none of these federal agencies fall within the scope of the Indian Self-Determination Act. With limited exceptions, such as with the EPA for particular on-reservation environmental programs, these other agencies generally do not have funding specifically dedicated to implement federal treaty obligations and trust responsibilities or to provide funding directly to tribes in the same manner as under the Self-Determination Act. Thus, for example, the Forest Service has not provided any funds to GLIFWC or its member tribes for implementing the National Forest MOU. This strains existing the already limited tribal human

4. Binational Program to Restore and Protect Lake Superior – The Binational Program is a programmatic commitment by the United States and Canada pursuant to the Great Lakes Water Quality Agreement. Its purpose is to restore and protect Lake Superior by achieving consensus on goals and specific actions by all governments involved around the lake, including federal, states, provinces, and tribes. GLIFWC serves on the Program's Task Force and Workgroup. GLIFWC staff serve as the United States Co-Chairs for the Workgroup's habitat and terrestrial wildlife committees, and are members of the Workgroup's chemical and aquatic committees. These committees have been charged with the responsibility of preparing and implementing the Lake Superior Lakewide Management Plan (LaMP).

5. Great Lakes Fishery Commission (GLFC) – The GLFC was established by the 1955 Convention on Great Lakes Fisheries between Canada and the United States.[21] The GLFC coordinates Great Lakes fishery research programs and makes recommendations for achieving maximum sustained productivity of fish stocks. It also carries out sea lamprey control projects and is the primary institutional caretaker of the Joint Great Lakes Strategic Fishery Management Plan. GLIFWC has ratified this Plan and serves on a number of GLFC's bodies comprised of federal, state, provincial and tribal representatives, including the Committee of the Whole, Council of Lakes Committees, Lake Superior Committee, and Law Enforcement Committee.

6. Technical Committees of the United States Fish and Wildlife Service (USFWS) Mississippi Flyway Council – These technical committees, comprised of federal, state and tribal biologists, advise the Flyway Council on the status of waterfowl populations and their habitat.

7. Cooperative Law Enforcement – To ensure effective enforcement of tribal conservation laws, GLIFWC's member tribes generally authorize state conservation wardens to enforce their off-reservation conservation codes, citing violations into tribal court. Similarly, to ensure effective enforcement of state conservation laws, the Wisconsin Department of Natural Resources and GLIFWC have entered into a credential agreement whereby GLIFWC wardens are deputized to enforce state laws in to state court. Similar arrangements are in place for some tribal officers in Minnesota, and efforts are underway to broaden credential agreements in the three states where GLIFWC's officers patrol.

B. Specific Co-Management Projects. A few examples of GLIFWC's many co-management projects include:

---

and financial resources that must redirected meet the MOU's additional responsibilities.

[21] *See* 16 U.S.C. § 931 (1994) *et seq.*

1. Fish Population Assessment Activities – GLIFWC works with the Michigan, Minnesota and Wisconsin departments of natural resources to coordinate an agreed-upon assessment program for ceded territory waters, both for Lake Superior and inland. For Wisconsin, much of this work stems from the 1991 joint fishery assessment undertaken by the USFWS, BIA, WDNR, tribes, and GLIFWC.[22] For Minnesota, the state and the tribes are undertaking a joint walleye population study on Mille Lacs Lake as part of the co-management responsibilities set forth in the *Mille Lacs Band v. State of Minnesota* case.

2. Upper Peninsula Coastal Wetland Project – This project is designed to protect and enhance nearly 3,000 acres of wetlands and associated uplands in the Lake Superior and St. Mary's River watersheds. Funds were provided to GLIFWC and its member tribes by the BIA through the tribal Circle of Flight initiative and to Ducks Unlimited by the North American Wetlands Conservation Fund grant. Partners include the tribes and GLIFWC, and the State of Michigan, USDA-Forest Service, Gogebic County (Michigan), Ducks Unlimited, and a number of other non-governmental conservation organizations.

3. Furbearer Research – GLIFWC's biologists have undertaken a multi-year study of fishers, pine martens, and bobcats in the Chequamegon-Nicolet National Forest. Aspects of this study include home range and habitat usage, species interaction, and developing a habitat suitability index model. The USDA-Forest and WDNR are cooperators and financial contributors to this research.

4. Lake Sturgeon Project – GLIFWC, the Bad River Tribe, and the USFWS have joined to gather data on the distribution and movement of juvenile sturgeon in and around the Bad River and its tributaries. This river has one of only four known sturgeon populations that spawn in Lake Superior tributaries.

5. Lake Superior Research Institute, UW-Superior – GLIFWC and the University of Wisconsin-Superior have entered into an agreement establishing the Environmental Health Laboratory within the University's Lake Superior Research Institute. This laboratory has undertaken a number of studies regarding the health effects for Indian people associated with consuming fish contaminated with toxics. It is a major partner in GLIFWC's mercury-in-fish project and tests most of the fish samples as part of that study.

6. Purple Loosestrife Invasive Species Project – GLIFWC has undertaken a long-term project to control and reduce purple loosestrife (an invasive non-native plant that supplants native species including wild rice) in the Bad River watershed. Among its cooperators on this project are the USDA-Natural Resource Conservation Service, local county highway

---

[22] *See* BUREAU OF INDIAN AFFAIRS, U.S. DEP'T OF THE INTERIOR, CASTING LIGHT UPON THE WATERS: A JOINT FISHERY ASSESSMENT OF THE WISCONSIN CEDED TERRITORIES (1991).

departments, local town and municipal governments, the Nature Conservancy, local 4-H Clubs, and private landowners. One part of the project is to educate private landowners about loosestrife control and to provide eradication services at a landowner's request.

C. Benefits of Co-Management Partnerships. GLIFWC has built partnerships with a wide range of governmental and non-governmental entities, such as :

- Federal, state, and local government agencies (*e.g.* State departments of natural resources, United States Fish and Wildlife Service, USDA-Forest Service, USDA-Natural Resource Conservation Service, Great Lakes Fishery Commission, United States Coast Guard, Environmental Protection Agency, Agency for Toxic Disease and Substances Registry, and Canadian federal and provincial governments);

- Schools, colleges, and universities (*e.g.* University of Wisconsin-Madison, University of Wisconsin-Superior, Northland College (Ashland, Wisconsin), University of Minnesota, Michigan State University, and the Lac Courte Oreilles Ojibwe Community College); and

- Conservation groups (*e.g.* Ducks Unlimited, the Sharp-Tail Grouse Society, the Natural Resources Foundation, the Nature Conservancy, and local lake associations).

Through these partnerships, the parties have achieved public benefits that no one partner could have achieved alone by:

- Identifying mutual natural resource concerns, and implementing joint conservation and enhancement projects (*e.g.* wild rice restoration, waterfowl habitat restoration and improvement projects, and exotic species control projects);

- Providing accurate information on state and tribal harvests and on the status of natural resource populations (*e.g.* joint fishery assessment activities and jointly prepared reports);

- Maximizing financial resources to avoid duplication of effort and costs (*e.g.* coordinating annual fishery assessment schedules and sharing personnel/equipment);

- Contributing scientific research and data regarding natural resources and public health (*e.g.* furbearer/predator research, fish consumption/human health studies, and other fish contaminant research particularly regarding mercury); and

- Engendering cooperation rather than competition (*e.g.* cooperative law enforcement and emergency response, joint training sessions, mutual aid emergency services arrangements, and cross-credential agreements).

Indeed, given budget realities faced by governments across the nation, many activities and projects that non-tribal governments wish to pursue or services they wish to provide would not be possible without the contribution of tribal human and financial resources.

VI. CONCLUSION – AFFIRMING IMPORTANT NATIONAL VALUES

Tribal natural resource management programs touch the very core of federal Indian law and 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 subsistence and economic activity, the enhancement of self-government by the tribes, and the encouragement of government-to-government dealings between tribes, the federal government, and other governments. Congress carries an important obligation to promote and support these programs upon which tribes rely to maintain their sovereignty, culture and society.

This Committee's sensitivity to the needs of tribal natural resource management programs provides the opportunity to reexamine and reaffirm our Nation's public values. As this Committee knows well, there was much opposition and social unrest in Wisconsin in the 1980s as the *Lac Courte Oreilles v. State of Wisconsin* case worked its way through the courts and the tribes began exercising their treaty rights under protection of federal court order. Tribal members fishing in northern Wisconsin's waters were met by angry protesters, violence, harassment, and abuse.[23]

However, at the case's end, when both the tribes and the state accepted the rulings of the court and simultaneously issued statements accepting the court's final judgment,[24] the tone was set, as Wisconsin's Attorney General recognized,

> to open a new chapter in state, community and tribal relations. . . . The long legal struggle is over. It is time to recognize, as the Court has, that both sides have rights. . . . It is now up to the State and all the people of Wisconsin to build on a relationship that we have begun.[25]

---

[23]For a thorough documentation of what took place at northern Wisconsin's boat landings, *see* Lac du Flambeau v. Stop Treaty Abuse-Wisconsin, 843 F.Supp. 1284 (W.D. Wis 1994), *aff'd* 41 F.3d 1190 (7th Cir. 1994). *See also*, SATZ, *supra* note 10, at 101-124.

[24]*See* SATZ, *supra* note 10, at 100.

[25]State of Wisconsin's Acceptance of Judge Barbara Crabb's Final Judgment, Statement by Attorney General James E. Doyle, Jr., May 20, 1991, *reprinted in* SATZ, *supra* note 10, at 195.

To be sure, as GLIFWC hopes that this testimony shows, the exercise of tribal sovereignty through natural resource management programs provides great overall public value. But, in the words of one prominent scholar who examined the situation in Wisconsin,

> [T]here is a last, and truest, reason why Chippewa rights . . . . should endure forever in Wisconsin. That reason – which goes beyond the wise use of public funds, good conservation practices, the community good will that flows from cooperation and even the fact that the air will no longer be tinged with racism – is that these rights are organic and grew out of a context that has dignity and deserves to be honored. This transcends the pervasive principle of our legal system that promises ought to be kept. Even more than that, on their merits these were fair promises, fair when made, even fairer today given that most of their companion promises have been torn away.
>
> Indian people have an ability to stretch their minds, to search far back and far ahead. The Chippewa were thinking in those terms at treaty time-thinking of the long procession back ten thousand years or more, thinking of an equally long procession out ahead. Those treaties were signed amid the din of a collision of cultures, but the Chippewa held firm to their world view, as best as they could.
>
> That world view was lodged in federal treaties – it became law. It matters that the world view is now law. But it matters, too, that this law is a wise law, a just law, with roots deep in history, minority rights, land title, sovereign prerogatives and a historical trust obligation. The Chippewa negotiators did the right thing, they looked across the prairie and felt the summer in the spring, and we should honor that view by reaffirming our promise that it may continue, with the full and welcoming support of the state and federal governments, forever.[26]

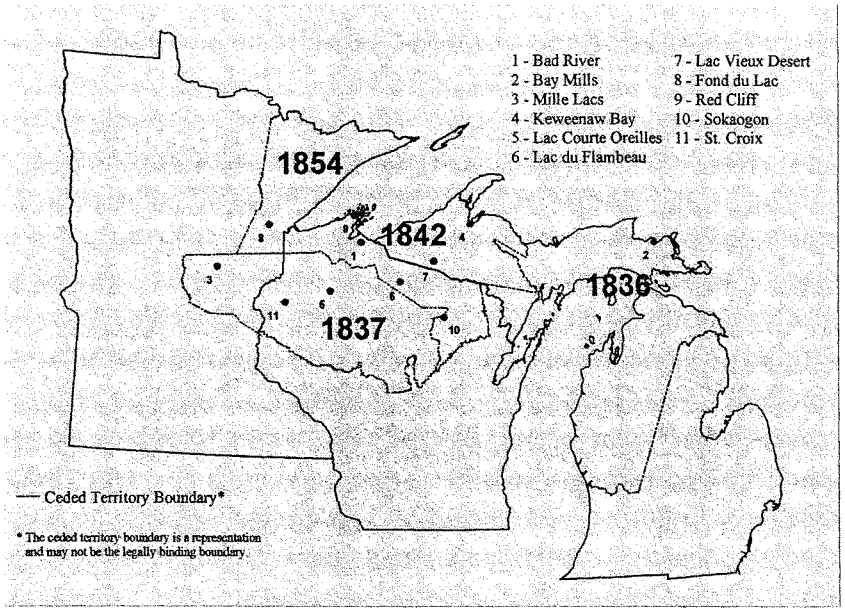
---

[26]Charles F. Wilkinson, *To Feel the Summer in the Spring: The Treaty Fishing Rights of the Wisconsin Chippewa*, 1991 WIS. L. REV. 375, 413-414 (1991).

ATTACHMENT 1

GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION

MEMBER TRIBES AND CEDED TERRITORIES



TO THE HONORABLES CO-CHAIR U.S. SENATOR DANIEL K INOUYE, CO-CHAIR U.S. SENATOR BEN NIGHTHORSE CAMPBELL, AND COMMITTEE MEMBERS:

A Report to the Committee Hearing on the Impacts on Tribal Fish and Wildlife Management Programs in the Pacific Northwest.

Presented 2:00PM, June 4, 2003
Room 485
Russell Senate Office Building

Alaska Private Land

Wildlife Habitat in Crisis

Presented by:

ALASKA VILLAGE INITIATIVES
NEW HORIZONS FOR RURAL ALASKA

1577 C Street, Suite 304
Anchorage, AK 99501

Phone: (907) 274-5400 ♦ FAX: (907) 263-9971 ♦ Email: taharris@akvillage.com ♦ Web page: www.akvillage.com

May 27, 2003

The Honorable U.S. Senator Daniel K. InouyeCo-Chairman
U.S. Senate Committee on Indian Affairs
http://indian.senate.gov
testimony@indian.senate.gov
Room 485 Russell Senate Office Building
Washington, DC 20510-6450

To the Honorables Co-Chair U.S. Senator Daniel K Inouye, Co-Chair U.S. Senator Ben Nighthorse Campbell, and Committee Members:

SUBJECT:
A Report to the Committee Hearing on the Impacts on Tribal Fish and Wildlife Management Programs in the Pacific Northwest.

Alaska□s Private Land Wildlife Habitat in Crisis

On behalf of Alaska Village Initiatives, its statewide membership, Officers, Directors and Staff, we thank you for the opportunity to provide testimony for consideration by the Senate Committee on Indian Affairs. Alaska Village Initiatives is Alaska□s oldest and largest statewide Community Development Corporation, and one of the few remaining CDC□s nationwide, created in 1968 during President Johnson□s War on Poverty. Our mission is to improve the economic well being of America□s rural communities in Alaska. Our membership and board are composed of 95% Alaska Native Tribes and ANCSA Corporations representing some of America□s largest aboriginal communities still subsisting on our ancestral lands.

I am a member of the Taantakwaan Teikweidee or the Bear Clan of the Tongass Tlingit Tribe from the Ketchikan area. With us today is the Chairperson of Alaska Village Initiatives, Roseann Demmert, from Klawock, AVI Director, Katherine Andersen, who is the Chair of Village Wildlife Conservation Consortium from Cordova, and Dr. Bruce Borup, formerly the head of the Business Department for Alaska Pacific University, and most recently the new CEO of Cape Fox Corporation, the ANCSA Village Corporation

for Saxman, Alaska.

Our mission today is to share with you one critical issue affecting Alaska Native Tribes and Corporations in the management of Alaskan wildlife and wildlife habitat.

1. **The Crisis at Hand.** From an Alaskan Native perspective, Alaska's wildlife habitats and populations are facing the greatest survival challenge in our history. We, as Alaskan Natives and as a State, need your help. At no time in Alaska's history has the demand been greater for wildlife. This demand comes from predation, from recreational hunting, fishing and viewing, and from subsistence use as the primary economy in Rural Alaska. The greatest new pressure is from tourism, which doubled in the last seven years and is positioned to double again in the next seven years as more American's reach for retirement and their Alaskan Wildlife experience.

Alaska's wildlife habitat is not prepared to meet this demand, with decreasing wildlife populations on many public and private lands. Please consider the following:

a. **Alaska has no comprehensive statewide wildlife habitat management plan.** In spite of the fact that Alaska Native Claims Settlement Act is now more than 30 years old, there is, as of yet, no comprehensive statewide plan, either with the State of Alaska or any U.S. Agency, on the effective and cooperative management of wildlife habitat on nearly 40 million acres of Alaska Native private lands.
b. **Alaska has no comprehensive wildlife census.** In spite of the availability of the modern technology of heat detecting cameras that track and record urban criminals, small birds and animals from an altitude of 2000 feet, the State of Alaska primarily relies on an observer looking out the window of a small plane trying to count animals through the trees 500 feet. No one truly knows what Alaska's wildlife census is.
c. **Alaska has no unifying leadership.** As a result of our reliance on unaudited and unverifiable wildlife census figures, there are endless discrepancies and debates, spanning decades, over fallen harvest levels and who is to blame. Environmentalists blame the hunting, oil, mining and timber industries. Hunters blame rural residents and Alaskan Native Subsistence Users. Hunters and Subsistence Users blame predators that are the favored species of Environmentalists, and the whole thing starts all over again.
d. **Alaska has no comprehensive scientific approach applied to public and private lands.** Alaska has millions of acres of dead and dying forests that now are over-maturing and disease ridden. Without occasional forest fires or prescribed burns to promote new growth, there is less food for

wildlife. Without food, the current ecosystem collapses. Starve it and it dies. As a comparison, the Scandinavian nations on less habitat acreage produce 26 times Alaska□s capacity as a result of a highly productive habitat that produces higher quality and quantity feed for moose.

e. **Alaska has no capacity for increased control or enforcement.** The State of Alaska no longer has the capacity to meet the exponential growth in the demand for Alaska□s wildlife. One Alaskan Fish and Game officer oversees an area the size of California, with no administrative support.

f. **America/Alaska are not fully aware of the current crisis.** Despite having one of the leading wildlife harvest management systems in the country, Alaska□s wildlife production level on a per acre basis, ranks last, among all U.S. states. In fact, based on the 2001 records, it appears that four times more grazing wildlife was harvested from the lands within 100 miles of where we sit today, here in Washington, D.C., than was harvested in all of Alaska□s 365 million acres. As demand to increase access to Alaska□s wildlife habitat grows, so does this paradox of the image the world has of Alaska as □The Last Frontier□, and America□s last and best hope for the protection of wildlife and wildlife habitat.

g. **Alaska□s wildlife and subsistence economies are in jeopardy.** Remote areas such as the Upper Kuskokwim have seen as much as a 97% reduction in moose population in the last decade. The Alaska Department of Fish & Game estimated replacement cost of that 800 lb. moose in winter□s protein is $3 to$5 per pound, or $2,400 to $4,000. For communities with a per capita income of just $13,000 annually, that is far beyond the capacity of most Alaska Native and Non-Native rural families alike, placing greater reliance on food stamps and depleted subsistence salmon harvests.

2. **There is however hope and good news.** The hope and good news is we now know that our Lower 49 sister states have had more successful wildlife production due to an economic resource tool that not only helped them restore wildlife habitat, but also enabled them to access the tourism market in a sustainable and ecologically stable manner. Until very recently, this funding was not available to Alaska.

   That economic resource tool is the USDA Natural Resource Conservation Service (NRCS), which provides funding nationwide to private landowners for the purpose of conserving and restoring wildlife habitat on privately owned lands. USDA also conducts the Natural Resource Inventory which provides data USDA utilizes to plan its funding formula to landowners. In 2001 USDA NCRS provided

more than $355 million for this purpose.

However there are challenges:

a. **Alaska is excluded.** The 1997 Natural Resource Inventory specifically excludes all federal lands and Alaska. The December 2000 revision of the Natural Resource Inventory reports no data for Alaska. Alaska is the only state to be so excluded and only recently began receiving a small amount of habitat funding from NRCS.
b. **Alaska receives a token amount of habitat funding**. USDA provided $523,000 to Alaskan landowners in 2001 or 0.15% of the NCRS budget. In comparison, one Lower 49 state alone, received over $19 million, more than 5% of the NCRS budget. Only Rhode Island received less overall funding than Alaska, however, on a per acre basis Alaska received only 2% of what Rhode Island received. Only a fraction of the $523,000 NCRS funds actually impacted the habitat on Alaskan Native lands.
c. **Local USDA Directors** are aware of this disparity and are doing what little they can to address this obvious inequity. The Natural Resources Inventory has been conducted every five years since 1982 and after 20 years no correction of Alaska□s omission has been proposed or planned.

3. **Alaska Village Initiatives respectfully requests** rapid action by this Committee and USDA, on behalf of Alaska□s wildlife habitat, to help Alaska Native communities recover and Alaska, as a State, to better prepare for the ever increasing demands of our fellow Americans who are coming to participate and experience Alaska□s wildlife habitats, as part of our national heritage.

   Alaska Village Initiatives is an economic tool created by this Congress to serve our citizens and our country in this small way. It has been our duty, and our joy, to serve in this capacity for over thirty five years. It is our hope that by providing this testimony, we have been of service here today. Our members and our board, as the Aboriginal Tribes and Native Corporations of Alaska, have been taught to care for the land as for each other. However, the growing demand for access to Alaska□s precious wildlife resource now exceeds our humble abilities to provide that access without incurring further damage to that habitat. Economic hardship has forced many Native Allotment landowners to sell out, and we are seeing signs that ANCSA lands may soon be for sale to the highest bidder. Our Tribes and Corporations culturally welcome visitors, however the demand is now so great that we now are asking for and needing your help. As Americans, we don□t want to be shamed by having to turn away our own, for we ourselves understand what it is to be turned away.

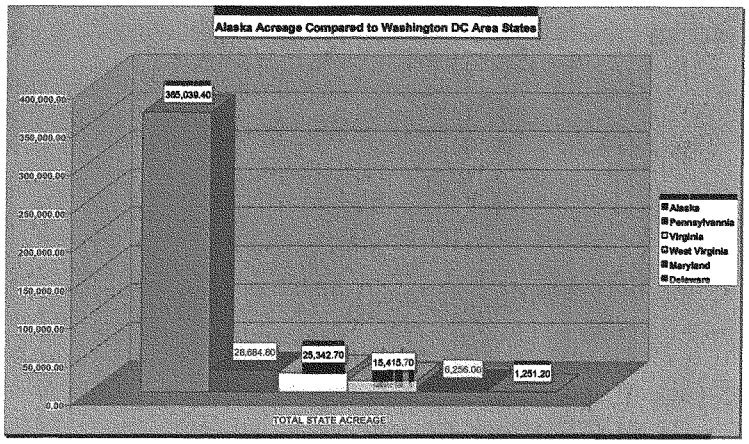
> Alaska□s wildlife habitat is indeed America□s national treasure, whether it is in a national park or on private lands. This is America□s challenge of how best to provide for the protection of and access to Alaska□s premier wildlife habitat in a safe and sane manner. This Congress saw fit to protect that resource on private lands in the Lower 49 states, as their habitats were impacted with an increase in visitors. We respectfully request that Alaska now be included as a full participant in the protection of wildlife habitat on private lands, as provided to all other states.

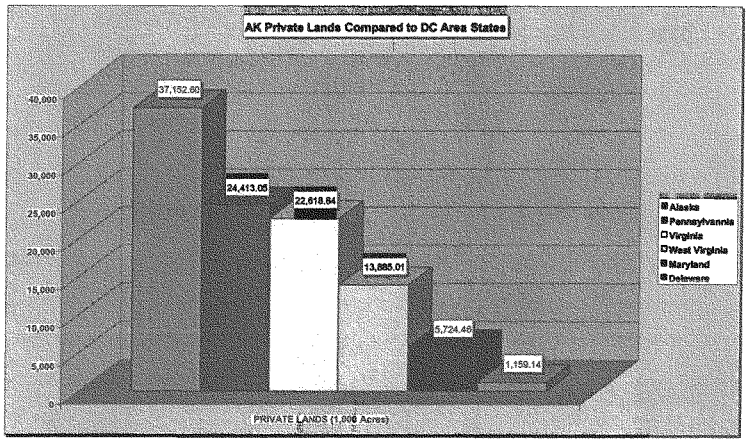
We thank you for your time and kind attention. If we at Alaska Village Initiatives may be of any service, please call on us. On behalf of all our Tribes and Members, Gunaalcheesh, Quyana, Anabasi, Howa, and Thank You.

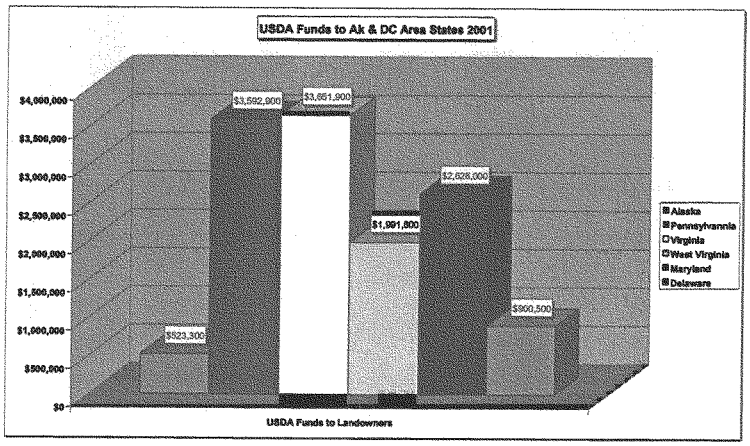
Sincerely,

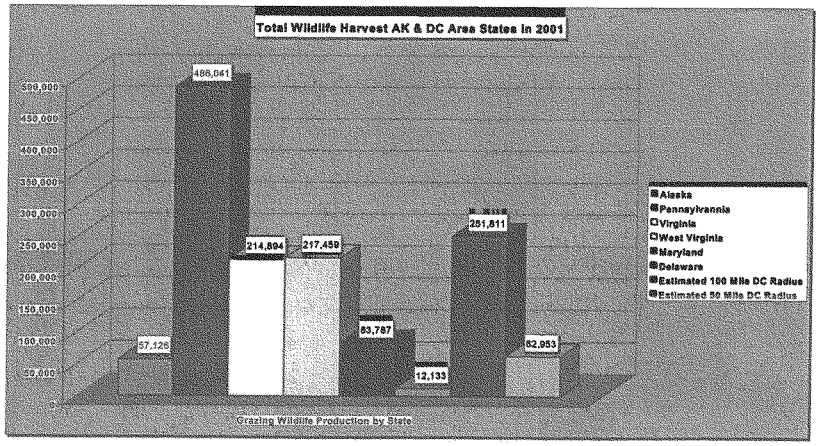
Tom Harris
President/CEO
Alaska Village Initiatives, Inc.
1577 C Street, Suite 304
Anchorage, Alaska 99501
(907) 274-5400
(907) 263-9971 (Fax)
taharris@akvillage.com
http://www.akvillage.com

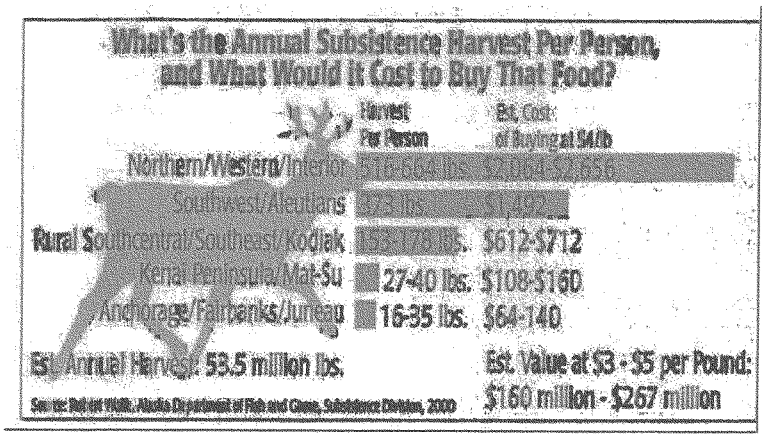
This e-mail and any attachments transmitted with it are confidential and are intended solely for the use of the individual or entity to whom they are addressed. This communication may contain material protected by the attorney-client privilege. If you are not the intended recipient or the person responsible for delivering the e-mail to the intended recipient, be advised that you have received this e-mail in error and that any use, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please immediately notify the administrator via e-mail at taharris@akvillage.com.

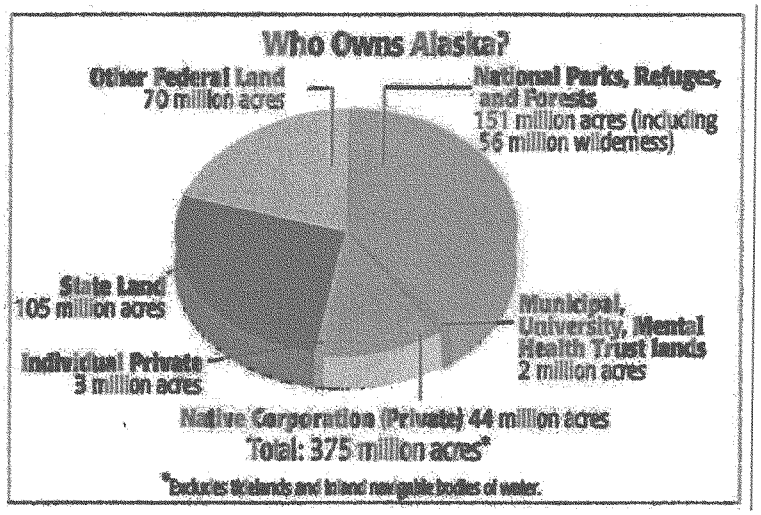

Alaska Acreage Compared to Washington DC Area States
400,000.00
350,000.00
300,000.00
250,000.00
200,000.00
150,000.00
100,000.00
50,000.00
0.00
365,039.40
28,684.60
25,342.70
15,415.70
6,256.00
1,251.20
TOTAL STATE ACREAGE
Alaska
Pennsylvannia
Virginia
West Virginia
Maryland
Delaware

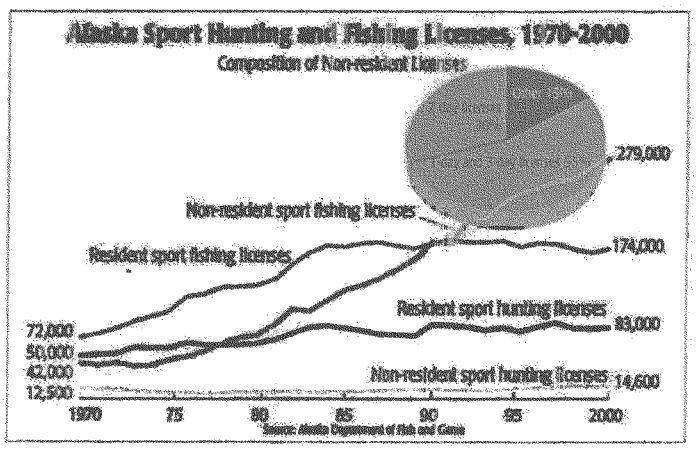

AK Private Lands Compared to DC Area States
40,000
35,000
30,000
25,000
20,000
15,000
10,000
5,000
0
37,152.60
24,413.05
22,618.84
13,885.01
5,724.46
1,159.14
PRIVATE LANDS (1,000 Acres)
Alaska
Pennsylvannia
Virginia
West Virginia
Maryland
Delaware

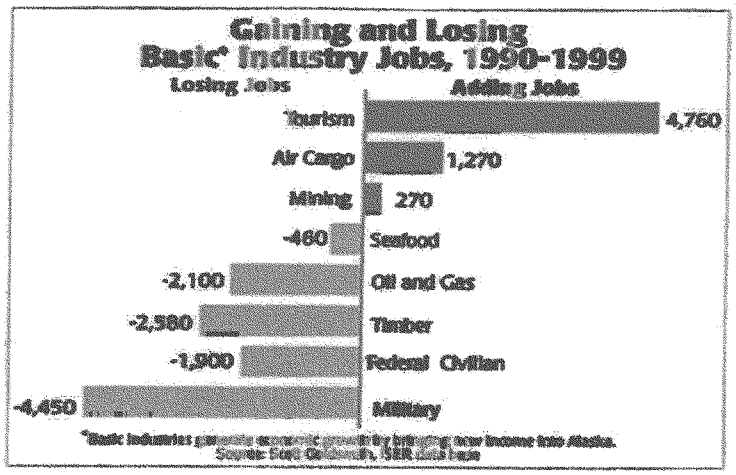

USDA Funds to Ak & DC Area States 2001
$4,000,000
$3,500,000
$3,000,000
$2,500,000
$2,000,000
$1,500,000
$1,000,000
$500,000
$0
$523,300
$3,592,900
$3,651,900
$1,991,800
$2,628,000
$960,500
Alaska
Pennsylvannia
Virginia
West Virginia
Maryland
Delaware
USDA Funds to Landowners

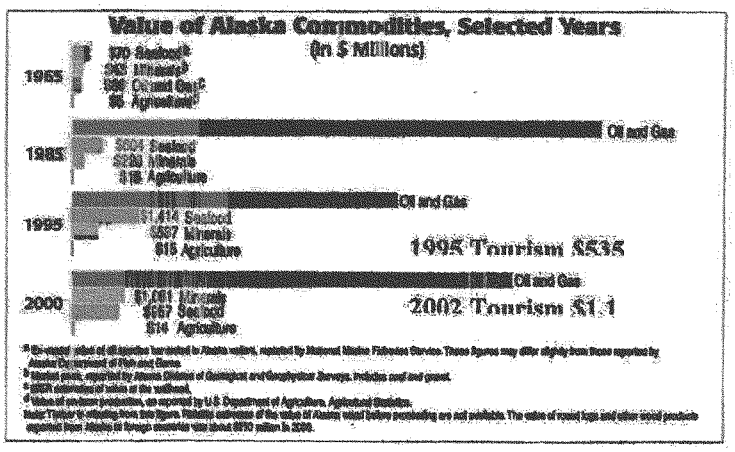

Total Wildlife Harvest AK & DC Area States in 2001
500,000
450,000
400,000
350,000
300,000
250,000
200,000
150,000
100,000
50,000
0
57,126
486,041
214,894
217,459
83,787
12,133
251,811
82,953
Alaska
Pennsylvannia
Virginia
West Virginia
Maryland
Delaware
Estimated 100 Mile DC Radius
Estimated 50 Mile DC Radius
Grazing Wildlife Production by State

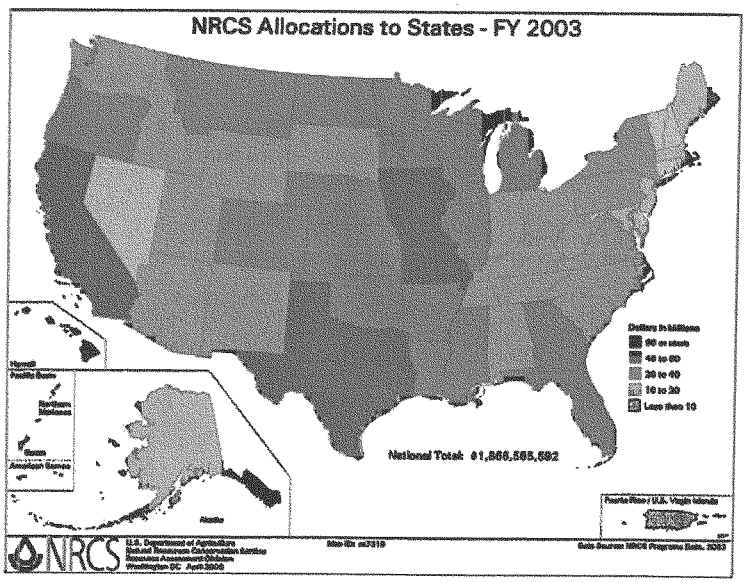

What's the Annual Subsistence Harvest Per Person, and What Would It Cost to Buy That Food?
Harvest Per Person
Est. Cost of Buying at $4/lb
Northern/Western/Interior
Southwest/Aleutians
Rural Southcentral/Southeast/Kodiak
153-178 lbs.
$612-$712
Kenai Peninsula/Mat-Su
27-40 lbs.
$108-$160
Anchorage/Fairbanks/Juneau
16-35 lbs.
$64-140
Est. Annual Harvest: 53.5 million lbs.
Est. Value at $3 - $5 per Pound:
$160 million - $267 million


Who Owns Alaska?
Other Federal Land
70 million acres
National Parks, Refuges, and Forests
151 million acres (including 56 million wilderness)
State Land
105 million acres
Municipal, University, Mental Health Trust lands
2 million acres
Individual Private
3 million acres
Native Corporation (Private) 44 million acres
Total: 375 million acres*
*Excludes tidelands and inland navigable bodies of water.


Alaska Sport Hunting and Fishing Licenses, 1970-2000
Composition of Non-resident Licenses
279,000
Non-resident sport fishing licenses
Resident sport fishing licenses
174,000
Resident sport hunting licenses
83,000
72,000
50,000
42,000
12,500
Non-resident sport hunting licenses
14,600
1970
75
80
85
90
95
2000


Gaining and Losing
Basic* Industry Jobs, 1990-1999
Losing Jobs
Adding Jobs
Tourism
4,760
Air Cargo
1,270
Mining
270
-460
Seafood
-2,100
Oil and Gas
-2,380
Timber
-1,900
Federal Civilian
-4,450
Military


Value of Alaska Commodities, Selected Years
(In $ Millions)
1965
1985
1995
2000
Oil and Gas
Seafood
Minerals
Agriculture
1995 Tourism $535
2002 Tourism $1.1


NRCS Allocations to States - FY 2003
Dollars in Millions
National Total: $1,866,565,592
NRCS

Cowlitz Indian Tribe

05-30-2003

United States Senate
Committee on Indian Affairs
Washington, DC 20510-6450

Dear Committee on Indian Affairs,

We thank you for the invite for our testimony on Tribal Fish and Wildlife Programs. The Cowlitz Indian Tribe since recent Federal Recognition and Acknowledgement, is in the beginning stages of development for our Tribal Fish and Wildlife programs. We have always expressed our concerns over environmental issues within our Tribal Usual and Accustomed Territory (U&A). Our Tribal U&A comprises mainly the Cowlitz and Lewis River drainages of Southwest Washington State. Our historical territory also includes much of the Lower Columbia River Region.

Over the past century, SW Washington has endured a significant amount of growth in industrialization, and resource utilization. This has taken great tolls upon the fish and wildlife in our area. Both the Cowlitz and the Lewis Rivers are heavily utilized through hydroelectric projects with no volitional passage ways for salmon. This has denied salmon from hundreds of miles of habitat for natural spawning for over 70 years. Currently our tribe is working hard to cooperate and coordinate with Federal and State agencies in trying to gain volitional passages for both river drainages, in hopes to revitalize what has been lost for so long. Also, we are looking to identify and develop sound scientific ways to rehabilitate and maintain healthy salmon runs. Salmon is an important part of our cultural past, present, and future.

Our Tribe also has a deep concern over the health and welfare of the State and National Forests within our U&A. Our Tribe feels that the forest is in poor condition due to the lack of species diversity. Much of the forest is becoming a monoculture due to targeted replanting of fast growing trees for harvest. Our tribe believes that this is adversely impacting wildlife in our area. We are currently trying to cooperate and coordinate with the Gifford Pinchot National Forest on addressing this issue, and to try and assist them in identifying adaptive management alternatives for a healthier forest.

It is the strong desire of our Tribe in developing our fish and wildlife program with the best available science and technology. We also believe that success of our program will be made through successful cooperation and coordination with all applicable agencies and corporations in our area.

A big concern our Tribe has, is that we operate on little to no funds. We believe through more federal funding to our program, success will be attained. Due to our demographics, we believe that concentrated efforts would have a high success rate. Our development also will be adaptive towards cost efficiency incentive objectives when trying to attain the same environmental goals. I thank you for allowing our Tribe to speak. We are an Indian Tribe who are deeply concerned and committed towards reaching a desired end goal of a healthy environment for our future. Please feel free to contact me or our Natural Resource Committee Chairman, Mike Iyall, for additional information using the below contact information.

Sincerely Yours,

The Honorable John Barnett, Chairman

P.O. Box 2547 - Longview, WA 98632-8594 - (360) 577-8140 - Fax (360) 577-7432 - E-MAIL cowlitztribe@tdn.com

STATEMENT OF THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON

UNITED STATES SENATE COMMITTEE ON INDIAN AFFAIRS
HEARING REGARDING
THE STATUS OF TRIBAL FISH AND WILDLIFE MANAGEMENT PROGRAMS

JUNE 3, 2003 – WASHINGTON, D.C.

This is the statement of the Confederated Tribes of the Warm Springs Reservation of Oregon submitted for the record to the United States Senate Committee on Indian Affairs for the Committee's hearing regarding "the Status of Tribal Fish and Wildlife Management Programs" held on June 3, 2003, in Washington D.C.

The Confederated Tribes of the Warm Springs Reservation of Oregon is the successor in interest to the Treaty with the Tribes of Middle Oregon of June 25, 1855, 12 Stat. 963 (1855 Treaty). In the 1855 Treaty, our forefathers – the chiefs and headmen of seven bands of Wasco and Sahaptin speaking Indians who lived along the Columbia River and its Oregon tributaries – ceded to the United States title and control to 10 million acres of north central Oregon. However, our forefathers reserved in that treaty the right to continue to hunt, gather roots and berries and graze livestock outside the new reservation on all "open and unclaimed lands." Our forefathers also reserved in the 1855 Treaty the right to leave the reservation to fish at all of our "usual and accustomed" fishing places along the Columbia River and its tributaries. In addition to reserving these important off-reservation rights, our 1855 Treaty reserved for our exclusive use the land and waters of the Warm Springs Indian Reservation, including the Deschutes and Metolius Rivers, which form the eastern and southern boundaries of our reservation.

Outside the reservation, where the 1855 Treaty secures our off-reservation hunting, food gathering, and fishing rights, our sovereignty includes management authority over the fish and wildlife resources that are the basis of our treaty rights. On-reservation, our fish and wildlife management authority is based on our exclusive use of the 640,000-acre Warm Springs Indian Reservation and the fish and wildlife resources that inhabit our reservation, including andromous fish, residence fish, big game animals such as mule deer, Rocky Mountain elk, and big horn sheep, and numerous other fish and wildlife species.

Based on our Tribe's extensive fish and wildlife management authority – over both on-reservation and off-reservation fish and wildlife resources subject to our 1855 Treaty rights – we have necessarily developed a large and very professional natural resources staff. Our tribal fish and wildlife management program operates under the policies and guidance of the Warm Springs Tribal Council and pursuant to established tribal natural resources management strategies, such as our Integrated Resource Management Plans (IRMPs) for the reservation. Protection and enhancement of our fish and wildlife resources, which form the foundation of our spiritual traditions and our Indian way of life, are accorded the highest priority by our tribal government. However, operating the tribal fish and wildlife program we currently have in place puts a severe strain on our tribe's limited resources. Nonetheless, we have made the commitment to manage our fish and wildlife resources with the highest degree of professional skill because of the importance of these resources to our people and our way of life.

Currently, our tribal fish and wildlife program within the Warm Springs Department of Natural Resources is funded with tribal-appropriated dollars, which is largely derived from the use of our natural resources, such as our timber and hydroelectric capacity, P.L. 93-638 contract dollars through the Bureau of Indian Affairs (BIA), and through a series of grants and projects funded by the Bonneville Power Administration (BPA) under the Northwest Power Planning Council's Fish and Wildlife Program. This patchwork of funding is particularly uncertain right now because of BPA's current financial crisis. Nonetheless, we remain totally committed to protect our 1855 Treaty rights by fully exercising our sovereign authority to manage the fish and wildlife resources that are the subject of those treaty rights. We must be true to our forefathers who sacrificed much of their traditional territory in exchange for the United States Government's promise to protect our sovereignty with respect to both on-reservation and off-reservation fish and wildlife resources.

To summarize the status of the tribal fish and wildlife program at Warm Springs, we can say that our tribe is fully exercising all of the sovereign authority our forefathers reserved under the 1855 Treaty with respect to the management of both on-reservation and off-reservation fish and wildlife resources. We are committed to the protection and enhancement of all of the fish and wildlife resources that are the subject of our 1855 Treaty hunting and fishing rights. To exercise this authority, however, requires financial resources that we are finding more and more difficult to obtain. Accordingly, we ask the federal government as our trustee to help us in fulfilling the promise of our 1855 Treaty with respect to hunting and fishing rights. We believe that this help can be provided two ways. First, Congress can revisit the Indian Fish and Wildlife Resources Management legislation considered by Congress a decade ago, which would provide a trust responsibility framework for the delivery of federal programs and federal assistance to tribes with respect to their fish and wildlife resources. Second, Congress can provide sufficient and stable financial resources through Public Law 93-638 contracts and self-governance grants to permit tribes to fully exercise their sovereign authority to protect and enhance their fish and wildlife resources.

We urge the Committee to revive and reintroduce the 1993 Indian Fish and Wildlife Resources Management Act. We also respectfully request that the Committee provide adequate financial assistance to tribes pursuant to the federal government's trust responsibility so that tribes can fully exercise their sovereign and treaty-reserved authority to manage their own fish and wildlife resources.

Thank you very much.

Written Testimony of:

Albert Teeman
Chairman, Burns Paiute Tribe

Before:

United States Senate
Committee on Indian Affairs

Hearing on:

The Status of Tribal Fish and
Wildlife Management Programs

Date:

May 30, 2003

The Honorable Ben Nighthorse, Chairman
The Honorable Daniel K. Inouye, Vice Chairman
Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Campbell, Vice Chairman Inouye, and members of the Committee,

Mr. Chairman, Members of the Committee, I appreciate the opportunity to submit these comments to you on the Status of Tribal Fish and Wildlife Management Programs in the Columbia River Basin.

The Wadatika (Burns Paiute Tribal forbearers) are the modern day descendants of the Snake or Northern Paiute Indians who lived throughout a 5,250 square mile area covering eastern Oregon, Idaho, northern Nevada and north eastern California. The name Wadatika came from the wada seeds that our ancestors collected along the shores of the Malheur Lake to use for food. The Malheur Subbasin is a Middle Snake province of the Northwest Power Planning Council (Council) 2000 Fish and Wildlife Mitigation Program (Program) under the Northwest Power Act (Act).

For a brief period in history a treaty reserved most of the Malheur Subbasin, 1.79 million acres, as a reservation for the Burns Paiute Tribe. In 1883 the U.S. government terminated the Malheur Reservation. In 1935, our Tribe purchased 760 acres of homestead and submarginal land with loan funds under the National Indian Recovery Act. We repaid the loan with money earned from leases. In 1972, the Burns Paiute Tribe was federally recognized by executive order and a 770-acre reservation was established in Harney County, Oregon. This land, along with 10 acres (an old dump site for the City of Burns donated to the Tribe), is held in trust by the federal government as the Burns Paiute Reservation. The Tribe's reservation is located outside of the Malheur Subbasin, however, the Tribe owns and manages significant lands within the Subbasin that part of the Program. The Logan Valley Ranch located in the Upper Malheur, consists of 1,760 deeded acres, and the Jones Ranch, consists of 6,385 deeded acres along the Mainstem Malheur.

Traditionally, my people relied on the resources of the Snake River and its tributaries for economic and cultural survival. My ancestors traveled east along the Malheur to the Snake River several times each year to gather and store plants for food, medicine, and materials for household goods. Fishing these rivers and hunting of large and small game were essential economic and cultural activities of the Wadatika. One vital economic and cultural activity during these travels involved the intensive catching, drying, and storing of salmon. The North Fork and Upper Malheur River that drain from Castle Rock and the Strawberry Mountains, respectively, were probably the most important spawning and rearing tributaries in the Subbasin for most anadromous salmonids.[1] Area residents and Tribal elders recall spearing salmon in the Logan Valley area of the upper Malheur River and ethnographic studies described the Wadatika people salmon fishing with other tribes in several areas of the Malheur River near Ontario, Oregon.[2]

The Tribe was able to enjoy salmon resources until the Federal Columbia River Power System (FCRPS) and subsequent dam construction on the Snake River and its tributaries. Today, much of the river flow that remains in the Malheur Subbasin is controlled by reservoirs and by a complex system of diversions, canals and siphons that radically alter stream flow patterns in the Subbasin.[3] The FCRPS and subsequent impoundments blocked anadromous salmonids from the Malheur River and irrevocably altered the ecosystem in the Malheur Subbasin, leaving redband trout and bull trout as the major focus of fisheries management in the Subbasin.[4]

Over the last six years, the Burns Paiute Tribe and Bonneville Power Administration (BPA) have contracted to acquire land for fish and wildlife habitat and operate and maintain mitigation projects in the Malheur Subbasin that conform to the Program. Because the Malheur Subbasin is an area where fish and wildlife habitat is irreversibly lost and no opportunities exist to rebuild certain species, in our case salmon, the Tribe's recovery efforts focus on substitution of alternative fish species as replacement for lost anadromous species. The Program policy favors resident fish substitution projects for areas of the Columbia River Basin where anadromous fish are extinct.[5]

One of our contracts focuses on evaluating the health and life history characteristics of the bull trout and other salmonids in the Malheur Subbasin, Contract No. 199701900 - Evaluate Life History of Native Salmonids in the Malheur River Subbasin. The goal of this contract is to increase our understanding of the status and life history of bull trout, an endangered species, and redband trout, a sensitive species under Oregon law, in the Malheur River Subbasin. This BPA-funded contract provides funds to complete habitat surveys, genetic tissue samples, radio telemetry, and spawning surveys and monitor fish entrainment over dams and migration and distribution of fish. The Tribe, through its Fish & Wildlife Department staff, has identified critical habitat for bull trout, documented the seasonal use and migratory patters of adult bull trout, identified changes to dam operations to favor bull trout, changes to state law on harvest of bull trout and land use practices of federal agencies in bull trout waters. This data is critical to the development and implementation of the Malheur River Bull Trout Recovery Plan and to identify and prioritize future land acquisitions important to native fish species of the Malheur River Subbasin. This contract is consistent with the Program policy for mitigation in areas blocked to salmon by the FCRPS to favor resident fish substitution projects where in-kind mitigation cannot occur.[6]

This contract illustrates what is wrong with the BPA contracting processes under the Program. Before BPA's funding crisis, BPA funded this contract as part of the Program, a framework that seeks to accomplish restoration of natural ecological function, habitats and biological diversity of the Columbia River Basin as a whole ecosystem. The Council would not recommend this contract for funding until a provincial review process was completed, including reviews by: the Columbia Basin Fish and Wildlife Authority, the Independent Scientific Review Panel (ISRP), the Middle Snake Provincial Review, the U.S. Fish and Wildlife Service (USFWS) and the Northwest Power Planning Council Fish and Wildlife Committee. After these reviews, the Council recommended this contract for funding noting that "[b]ecause the ISRP comments were not critical of the work or its conclusions, and the USFWS believe that the work has ESA utility, the [Council] staff recommends support for this on-going project. *Bonneville has apparently found the FCRPS connection that it requires for funding this project to date and this should not be an issue in light of that history.*"[7] (Emphasis added). The Council's funding recommendation was full funding for 2003 with a 3.4% increase for 2004 and 2005.

BPA, however, opposed the Council recommendation advocating a "no fund" position because the Tribe had not established an FCRPS linkage to the contract. This is unacceptable to the Tribe. There is no question that the FCRPS irrevocably altered the fish and wildlife habitat of the Columbia River Basin, including extinction of the once abundant anadromous fish runs in the Malheur River Subbasin. BPA's "no fund" position on this contract is a violation of the Act and its federal trust responsibility to the Burns Paiute Tribe. The Act mandates a fish and wildlife program as a core statutory mission of BPA that cannot be abandoned, even temporarily. BPA violated its own tribal policy that calls for consultation whenever BPA decisions affect the Tribe's lifestyle, culture, religion or economy.[8]

BPA's financial mismanagement not only jeopardizes the basinwide framework adopted by the Program but also undermines the collaborative efforts of all regional fish and wildlife managers associated with this Program. In the last couple of years BPA's funding target keeps moving downward at the expense of the region's natural resources. In December 2001, the target budget for the Program was $186 million ($150 million for expensed projects and $36 million for capitalized projects).[9] One year later, BPA's financial condition deteriorated to the point that Program funds were capped at $139 million which required the Council to cut $41 million from the Program budget. In 2003, BPA precipitously adopted a new accounting practice called an "accrual method" and dictated it to all project sponsors, including the Tribe without any consultation. This new practice essentially transforms the Tribe's multi-year mitigation projects into annual programs. With respect to the Tribe's fish contract described above, this contract is now a monthly program entering its third month of extension. This is totally unacceptable to the Tribe.

BPA is supposed to estimate Program costs at the time it sets rates and then collects rates to meet those estimated obligations. BPA management, not the Council, the Tribe or the Program, is to blame for the abrupt and intolerable financial forecast. The Program budget has stayed within planned levels and all of the Tribe's contracts have stayed within budgeted levels. BPA failed to match its obligations with funds. BPA did not set aside any cash reserves to anticipate a cash flow deficit, knowing that drought and associated spending increases could converge to create a poor economic situation.

The Tribe asks the Committee to:

- order BPA to complete a financial and management audit of BPA's implementation of the Fish and Wildlife Program, and

- explore the feasibility of directing BPA to establish a separate and distinct Fish and Wildlife Fund, within BPA's general fund, that at all times is sufficient to meet outstanding obligations that are recommended by the Council or some other federal agency, and

- if no separate and distinct Fish & Wildlife Fund with sufficient funds to meet outstanding obligations, then direct BPA to recognize and adopt accounting standards and practices that treat the Program as a substantial, multi-year program sustained over time, and

- direct BPA to immediately reform its contracting processes to prohibit month-to-month extensions of annual contracts, and

- require BPA to use its capital budget for land and water acquisitions and remove BPA's prohibition on use of carry over funds from year to year, and

- reaffirm BPA's commitment to meet its federal trust responsibility to Tribes and direct BPA to abide by its tribal consultation policy, identify and set aside Program funds for fiscal years 2004 through 2011, and

- increase BPA's borrowing authority provided that BPA establish a separate, distinct Fish & Wildlife Fund adequate to meet existing and future contract obligations under the Program, federal statutes and court decisions that impact Program implementation, and

- Mandate that BPA provide equitable funding for both Bi-Op related projects as well as resident fish and wildlife projects deemed necessary in areas where no RPA's exist, and

- Advocate that the agencies responsible for the detrimental effects on the natural resources of our Tribe, Bonneville Power Administration, Idaho Power and the Bureau of Reclamation provide mitigation for those losses.

In closing, fishing, hunting and gathering in and around the Snake, John Day and Malheur Rivers remain important activities for the Tribe. Without meaningful opportunities for Tribal members to engage in these activities, the transmission of our traditional life ways between generations becomes very difficult. The continued operation of the FCRPS impacts the resources and cultural traditions of the Tribe. The FCRPS impacts the habitat and migration patterns of fish, wildlife and plant resources available to the Tribe in the Columbia River Basin.

Thank you for your attention on this matter.

Sincerely,

THE BURNS PAIUTE TRIBE

Albert L. Teeman
Chairman

ENDNOTES

[1] Draft Malheur Subbasin Summary, October 19, 2001, page 20.
[2] Ethnographic Survey of the Burns Paiute Indians, Volume I, Marilyn Couture, page 36
[3] Draft Malheur Subbasin Summary, October 19, 2001, page 11.
[4] Id. at 20.
[5] Northwest Power Planning Council, 2000 Columbia River Fish & Wildlife Program, page 6, Biological Objectives.
[6] Northwest Power Planning Council, 2000 Columbia River Fish & Wildlife Program at page 5, Biological Objectives.
[7] Issue summary for Northwest Power Planning Council's Lower Columbia, Estuary, Columbia Cascade, Middle Snake and Upper Snake provincial review. Council approved version September 11, 2002.
[8] BPA Tribal Policy, April 1996.
[9] Northwest Power Planning Council, Press Release, December 20, 2002.

UPPER COLUMBIA UNITED TRIBES
UCUT
910 N. Washington, Suite 107
Spokane, Washington 99201
(509) 838-1057

*Colville * Coeur d'Alene * Kalispel * Kootenai * Spokane*

WRITTEN TESTIMONY OF THE
UPPER COLUMBIA UNITED TRIBES
TO THE U.S. SENATE COMMITTEE ON INDIAN AFFAIRS
JUNE 4, 2003
REGARDING IMPACTS ON TRIBAL FISH AND WILDLIFE MANAGEMENT
PROGRAMS IN THE PACIFIC NORTHWEST

Mr. Chairman and Honorable Committee Members, the Upper Columbia United Tribes (UCUT) thank you for this opportunity to share with you some of the impacts on our member Tribes' fish and wildlife programs, as well as some of our suggested solutions to the problems we have faced, particularly over the past couple of years. The Upper Columbia United Tribes are the Coeur d'Alene Tribe of Idaho, Colville Confederated Tribes, Kalispel Tribe of Indians, Kootenai Tribe of Idaho, and Spokane Tribe of Indians.

The five UCUT Tribes appreciate the BPA ratepayer and other federal dollars they have received over the years for their Tribal programs, and have a good track record of putting those dollars to efficient and productive use, accomplishing a great deal of resource restoration and protection, to the benefit of the entire Northwest region. UCUT is concerned, however, that it and its member Tribes' progress may be stymied by BPA's budget cuts and an agency culture that has ignored the proper role of the Tribes.

Other witnesses will describe BPA's current financial plight and the reasons both within and beyond BPA's control. One point UCUT wants to underscore with the Committee is that neither the Tribes nor the Northwest Power Planning Council's Fish and Wildlife Program caused BPA's financial crisis. The Fish and Wildlife budget is one budget that was actually under-spent. BPA has not spent many millions of previously-committed dollars on fish and wildlife recovery and mitigation. This failure to meet financial obligations has had significant adverse impacts on UCUT's member Tribes, fish and wildlife resources, and the communities and local economies surrounding our rural reservations. One positive aspect of BPA's institutional behavior has been that the Tribes' determination to solve the problem has been

solidified. During this opportunity for written testimony, UCUT would like to focus on **suggested actions** to avoid such adverse impacts in the future.

Restore Government-to-Government Relationships

Much of the problem the Committee is here to address today can be attributed to BPA's failure to acknowledge the sovereign status of Tribes and to fulfill its trust obligations. Although the Department of Energy and BPA adopted formal Indian policies several years ago, it was only at the May 20, 2003 meeting of the Affiliated Tribes of Northwest Indians that the current BPA Administrator acknowledged these Indian policies and admitted that his agency has not complied with them.

UCUT member Tribes rely upon the solemn promises made by the United States in Treaty and Executive Order language, reinforced by well-established federal law confirming the trust obligations of the United States government. It is our impression that BPA does not understand its trust obligations and the requirement that the agency interact with the Tribes on a government-to-government basis. The Tribes cannot accept this lack of understanding from BPA or any other federal agency, and respectfully request the Committee to direct BPA and the other federal agencies to comply with the United States' solemn promises.

If UCUT and its member Tribes had been engaged by BPA in ongoing government-to-government communications as BPA's financial crisis emerged, we could have anticipated and fended off some of the more devastating impacts. What happened, instead, was that BPA handed down arbitrary, already-made decisions and expected the Tribes to accept them. Without any prior notice or discussion, BPA adopted a series of changes in "policy" that unexpectedly halted all habitat acquisitions and left many Tribal programs in jeopardy. Although the non-Indian political constituency may have been somewhat pacified by BPA's cuts to Fish and Wildlife, the agency's trust obligations were trampled and government-to-government relationships were severely damaged. A comparison of BPA's treatment of its utility and industry colleagues with its treatment of Tribes indicates that BPA lacks comprehension of its trust responsibilities.

UCUT would like to remind the Committee that BPA heavily subsidizes vast acres of irrigated farmland and a barging industry that turned Lewiston, Idaho, into an inland port. BPA's low rates have enabled a booming non-Indian economy in the Pacific Northwest for decades. During the Enron fiasco, the region (and BPA) suffered from profiteering on a grand scale. Who made the big sacrifices that allowed all these other interests to profit? The Tribes. We lost o lands, our natural resources, our clean water and air, the burial grounds of our ancestors, and our river-centered ways of life. The UCUT Tribes' lands lie both above and immediately below Grand Coulee Dam. Grand Coulee completely blocked all salmon runs but became the "cash

cow" for the entire Columbia River Basin, generating the largest percentage of electricity of all the federal dams and serving as the check valve on the system for flood control and irrigation.

The meager dollars that BPA set aside to offset some of these damages have been slashed to ridiculously low levels while BPA's customers and subsidized industries continued to enjoy millions of dollars in benefits. Consider how investor-owned utilities have negotiated special deals with BPA, and how BPA's industrial customers have re-sold cheap federal power to their own profit. Consider BPA's premature Treasury payment and its refinancing of its nuclear-plant debt. There is another side of "rate increases" that the Committee should recognize, and not allow dramatized accounts of "poor folks unable to pay their power bills" to distract you from the vast and ongoing taking of Tribal assets.

Tribes and Tribal members pay for their electricity, too, despite high unemployment and poverty among our people. Yet, we fully recognize that minor increases in the rates of retail consumers are more than offset by the stream of benefits that ecosystem restoration projects generate in the region, particularly in rural economies in the vicinity of our Reservations. UCUT is disturbed by BPA's encouragement of a regional misperception of the costs and benefits of Tribal fish and wildlife programs. Meeting trust obligations and rebuilding natural resources will result ultimately in net economic gain for the region, for BPA, and for the U.S. Treasury. UCUT and its members Tribes believe that when we work side-by-side with our federal trustee - instead of in opposition to our trustee's unilateral pronouncements - both the perception and the reality will improve for the Tribes and for BPA.

For this reason, **UCUT suggests** to the Committee that, as a fundamental and immediate fix, you **direct BPA and all other federal agencies** involved in fish and wildlife management in the Pacific Northwest **to take seriously their trust responsibilities** to the Tribes, to acknowledge and appreciate the Tribes' sovereign status, **and to engage with us in meaningful dialogue** to address the agencies' management responsibilities in coordination with the Tribes. UCUT and its member Tribes see this as an essential first step to regain some of the ground lost during the past several years. Our Tribes are committed to improving our working relationships with BPA and the other agencies, so long as the agencies are likewise committed to work with us.

2. Recognize the Balanced Public Purposes of the Federal Hydropower System

Northwest Tribes and some members of this Committee were instrumental in the drafting and passage of the Northwest Power Act in the early 1980's. This legislation was enacted in the wake of hugely damaging, unmitigated impacts of damming the entire Columbia River and running it as a gigantic power plant. The Act requires a balancing of power production with

equitable treatment for fish and wildlife, with the original intent of avoiding the listing of species under the Endangered Species Act. BPA's recent actions - particularly its drastic caps and cuts to fish and wildlife spending - seem to undermine the balancing required by law.

Recommendations for mitigation and recovery projects to be funded by BPA are thoroughly reviewed in a public process with intense independent scientific scrutiny. Only the highest priority and most suitable projects make it to BPA's door. BPA should fund those projects as a cost of doing business. Most of the projects managed by UCUT member Tribes are either mitigation for severe damage suffered under construction and operation of the dams, or preventive measures to avoid future ESA listings. We do not see BPA recognizing that its mitigation and restoration responsibilities are equally as important - and as legally enforceable - as its responsibility to generate electricity.

We ask this Committee to **remind BPA of its mandate to achieve an equitable balance, and to monitor BPA's compliance with this clear directive in the future.**

3. Provide Tribes a Formal Role in Decision-Making

Last fall, when BPA declared its financial crisis and announced its decisions to further reduce spending on fish and wildlife and cultural resources, regional decision-making on funding shifted almost entirely to the Northwest Power Planning & Conservation Council. Members of this Council are appointees of the governors of Washington, Idaho, Oregon and Montana, funded by BPA dollars, but without any Tribal representation. UCUT member Tribes have engaged in good faith, as much as possible, in the Council's process for prioritizing projects for BPA funding. However, the Council's decisions are driven by State gubernatorial priorities and do not address BPA's direct trust responsibility to the Tribes.

The process for approving fish and wildlife funding is only one process in which the Tribes are shut out. Another aspect of BPA's Fish and Wildlife Program - operation of the dams, themselves - is embedded in another process from which our Tribes are excluded. BPA operates the dams to generate revenue. The Army Corps of Engineers and Bureau of Reclamation operate the dams as flood-control devices and reservoir valves. While the Tribes acknowledge the importance of these interests and share the same concerns, to the Tribes, dam operations also mean land under water, fish killed in turbines, contaminated water in flux, burial remains washed downstream, and Tribal enterprises (such as marinas and houseboats) adjusting to changing lake and river levels. While these operational impacts clearly imply Tribal involvement, the Committee might be surprised to know that the Tribes do not have a voice in operational decisions, either.

So here is the underlying substantive problem: Tribes have to work through a federal workgroup (chaired by NOAA fisheries) to request that impacts of dam operations be minimized, and through a state-compact entity to receive funding to mitigate for operation of the dams. This is an untenable situation and we ask the Committee to **direct BPA, the Corps and Reclamation to proceed quickly to negotiate a formal and comprehensive role** for our member Tribes in decision-making processes where so much Tribal value is at stake.

4. Written Commitment to a Fish and Wildlife Budget

BPA has argued that Tribes should not complain about budget cuts because BPA's Fish and Wildlife funding has actually increased drastically in the current rate period over the previous rate period. However, if you examine actual expenditures, not budget targets, UCUT member Tribes have suffered large cuts. BPA's accountability has been hampered by its inability to produce accurate and up-to-date financial reports, and its unwillingness to account for large sums of money that should be applied to fish and wildlife costs, such as: over $200 Million carry-over from the 1996-2001 MOA, income from "emergency" power operations during the summer of 2001, and money not spent during periods of contract delay and renegotiation.

While the region has worked hard to develop multi-year, multi-species fish and wildlife management plans, BPA has insisted on one-year contracts without carryover. Some of UCUT's Tribes have suffered lost opportunities, and some of our co-management relationships with surrounding local and state governments and private citizens have been damaged because BPA is unwilling to fund projects developed over many months of community collaboration.

BPA has refused to fund some of our member Tribes' pending land purchases since Fiscal Year 2001, causing immeasurable lost opportunities. UCUT and its member Tribes supported a recent increase in BPA's federal borrowing authority, based on BPA's indication that it needed the debt ceiling lifted in order to capitalize and proceed with habitat acquisitions. However, BPA will not commit to actually use the borrowing authority to buy habitat, nor will it discuss with the Tribes the agency's intentions for other uses of the federal debt.

These situations have further eroded trust and jeopardized significant investments of time, effort and money by many regional stakeholders.

Accountability and transparency are essential to getting BPA's Fish and Wildlife budget back on track. A funding MOA that expired September 2001 should have been extended. Although it had its flaws and BPA failed to fully comply with its terms, at least that MOA provided a basic framework for allocating limited funds across a defined set of needs. Without

a commitment from BPA, the region remains vulnerable to sudden changes in BPA's fiscal practices.

Solutions we suggest to this Committee include:

- **Direct BPA to negotiate, within the next two months, a binding commitment to a Fish and Wildlife Funding Program** for the balance of the current rate period (with anticipated renewal for the next rate period beginning in 2006), and to engage Tribes and other federal trustees in the negotiations; and,
- **Direct BPA to designate a regionally-negotiated and definite percentage of its federal borrowing authority to land purchases**, to immediately get the habitat acquisition portion of its obligations back on track.

5. Total Federal Funding Commitment

UCUT and its member Tribes are fully cognizant of the impacts of BPA's financial plight on the regional economy. We recognize the unpopularity of rate increases, and we believe the U.S. Congress can play a crucial role in minimizing rate impacts. While BPA needs to set rates adequate to meet its full obligations - including F&W and Tribal trust obligations - other responsible agencies also must contribute their fair share to fish and wildlife management in the Columbia River basin.

A recent exercise by the region's federal fishery and hydrosystem managers to develop a "cross-cut budget" demonstrated that Congressional appropriations are inadequate to meet the fish and wildlife obligations of NOAA Fisheries, U.S. Fish and Wildlife Service, Bureau of Reclamation and Army Corps of Engineers. Budget shortfalls within these agencies are shifted either onto BPA ratepayers or onto the fish and wildlife.

While many benefits of regional sacrifices to the Federal Columbia River Hydropower System have been shipped out of the region, the region has seen very little return from the American taxpayers to mitigate for endangered species, polluted water, damaged cultural sites, and so forth. We urge this Committee to **track the budgets of other pertinent federal agencies, and support adequate funding for each of them during the annual appropriations process.**

6. Certainty for Tribal Management Programs

Under the current scenario, Tribes must beg and plead, through a State-controlled process, for BPA to not cut any more funding from already-meager Tribal budgets. Most of our Tribes' funding requirements are continuous, long-term needs, for project performance

evaluation, operations and maintenance, and retention of core personnel. The annual BPA contracting process leaves our programs - and the fish and wildlife that depend on them - highly uncertain.

While UCUT has mentioned several improvements that can be made at BPA, we also encourage this Committee to consider a longer-term fix. Comprehensive Indian Fish and Wildlife Legislation, with assured long-term funding, would allow the UCUT and its member Tribes to maintain core program funding without relying on uncertain support from BPA and other regional entities.

UCUT and its member Tribes also would like to remind this Committee that our inter-Tribal organization, the Upper Columbia United Tribes, relies on annual Congressional appropriations to maintain our vital coordinating functions for the five Tribes in the upper Basin. While our combined management territories and fish and wildlife responsibilities are comparable to those of the Columbia River Inter-tribal Fish Commission or the Northwest Indian Fisheries Commission, the UCUT funding is miniscule and has not kept pace with inflation. It is important that all organizations in the interconnected Columbia River Basin and Northwest ecosystem receive adequate funding in order to ensure that activities in one area of the region are balanced with activities in other areas. We ask the Committee to support increased funding for UCUT, as well as for federal programs that benefit the fish and wildlife management efforts of our individual member Tribes.

←→

In summary, we urge this Committee and the U.S. Congress to:

Direct BPA to respect Tribal sovereignty, improve its government-to-government relationships, and quickly negotiate with us to provide a formal role in decision-making.

2. Not allow BPA to fix its financial problems by reducing the Fish and Wildlife budget; rather, to monitor BPA's balancing of its fish and wildlife responsibilities with power production.

3. Support Congressional appropriations for other regional agencies to make their own financial contributions to fish and wildlife and habitat in the Columbia Basin, where such costs should not be charged to BPA.

4. Give BPA a deadline to get back on track with habitat acquisitions, and to use its federal borrowing authority for this purpose.

5. Give BPA a deadline to execute a written commitment to a clear, well-defined funding program for Fish and Wildlife and Cultural Resources, and to include Tribes in developing the funding agreement.

6. Support comprehensive Indian Fish and Wildlife Management legislation and funding for the Upper Columbia United Tribes.

UCUT thanks you again for your time and attention to these matters of serious concern to our Tribes.

Upper Columbia United Tribes
910 N. Washington, Ste. 107
Spokane, WA 99201
Phone: 509-838-1057; FAX: 509-838-1292

○