

**INDIAN FISH AND WILDLIFE RESOURCE
ENHANCEMENT ACT OF 1993**

HEARING
BEFORE THE
SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
OF THE
COMMITTEE ON NATURAL RESOURCES
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

H.R. 2874

TO IMPROVE THE MANAGEMENT OF INDIAN FISH AND WILDLIFE
RESOURCES ON INDIAN LANDS, AND FOR OTHER PURPOSES

HEARING HELD IN WASHINGTON, DC, OCTOBER 8, 1993

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H.R. 2874, TO IMPROVE THE MANAGEMENT OF INDIAN FISH AND WILDLIFE RESOURCES ON INDIAN LANDS, AND FOR OTHER PURPOSES

FRIDAY, OCTOBER 8, 1993

HOUSE OF REPRESENTATIVES,
COMMITTEE ON NATURAL RESOURCES,
SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to call, at 2:25 p.m. in Room 1324, Longworth House Office Building, Hon. Bill Richardson (chairman of the subcommittee) presiding.

STATEMENT OF HON. BILL RICHARDSON

Mr. RICHARDSON. The committee will come to order. Today we will be taking testimony on H.R. 2874, the Indian Fish and Wildlife Resource Enhancement Act.

This bill provides for the preservation, protection, and enhancement of Indian fish and wildlife resources. It also reaffirms the Federal trust responsibility for the management of these resources by the United States and the tribes as co-managers.

As we near the end of this century, there are still many tribes across the land that depend on hunting, fishing, and gathering for their livelihoods. Many tribal people have chosen this traditional lifestyle. Others use the fish and wildlife resources of the tribe to supplement their diets.

As with all other areas of Indian life, the Federal Government has a trust responsibility to protect the resources which the tribes harvest in their hunting and fishing activities. The United States has a general responsibility to ensure that tribal resources are managed with the highest and best management techniques.

In spite of this trust obligation, the management of Indian fish and wildlife is frequently not on a par with other Federal programs.

The Federal trust responsibility for the management of Indian fish and wildlife resources stems from the treaty obligations and Federal statutes. This bill delineates these duties in an effort to ensure that the Secretary and the tribes co-manage these resources in a prudent, efficient and productive manner.

It provides a statutory framework for the Secretary to carry out his responsibility to tribes for fish and wildlife resources.

The bill establishes an Indian Fish and Wildlife Resource Management Program within the BIA. It provides that all Department

actions affecting Indian fish and wildlife resources are to be done with tribal consultation.

It also establishes an Indian fish hatchery program within the BIA, as well as an Indian Bison Conservation Program.

Finally, the bill provides for internships, cooperative education programs, and a scholarship program to be established with the Department of Interior. All of these education programs would be for Indian students in an effort to bring more Native Americans into technical and leadership positions in the area of fish and wildlife management.

The bill reflects the issues and concerns that you brought to the attention of this subcommittee back in February.

I appreciate all your thoughtful comments as I look forward to working with you to see this bill signed into law. At this time, I ask unanimous consent that the bill be printed, background, and section-by-section analysis be made part of the record.

I would also ask that all witnesses summarize their statements in five minutes. Your full written statements will be made part of the record, which will be open for two weeks.

[Text of the bill, H.R. 2874, and section-by-section analysis follow:]

103D CONGRESS
1ST SESSION

H. R. 2874

To improve the management of Indian fish and wildlife resources on Indian lands, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 4, 1993

Mr. RICHARDSON (for himself and Mr. THOMAS of Wyoming) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To improve the management of Indian fish and wildlife resources on Indian lands, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Indian Fish and Wild-
5 life Resource Enhancement Act of 1993".

6 **SEC. 2. FINDINGS.**

7 The Congress finds and declares that—

8 (1) the United States and Indian tribes have a
9 government-to-government relationship;

1 (2) the United States has a trust responsibility
2 to protect, conserve, and enhance Indian fish and
3 wildlife resources consistent with its fiduciary obliga-
4 tion to and its unique relationship with Indian
5 tribes. This trust responsibility extends to all Fed-
6 eral agencies and departments and absent a clear ex-
7 pression of congressional intent to the contrary, the
8 United States has a duty to administer Federal fish
9 and wildlife conservation laws in a manner consist-
10 ent with the treaty rights of Indian tribes;

11 (3) Federal statutes and regulations affecting
12 Indian fish and wildlife resources and tribal resource
13 management activities shall be interpreted in accord-
14 ance with the trust responsibility set forth in this
15 Act;

16 (4) fish and wildlife resources located on Indian
17 lands and treaty-ceded territory continue to provide
18 a resource base for the subsistence, cultural enrich-
19 ment, and economic support of Indian tribes and in-
20 dividual Indians;

21 (5) Indian tribes have jurisdiction over Indian
22 and non-Indian hunting and fishing activities on In-
23 dian reservations and function as comanagers with
24 tribal, States, and Federal authorities to carry out
25 shared management responsibilities for fish and

1 wildlife resources arising from treaties, statutes, or
2 court orders;

3 (6) the United States has an obligation to pro-
4 vide assistance to Indian tribes to monitor and regu-
5 late Indian hunting and fishing activities, to protect
6 and conserve populations and habitats of tribal fish
7 and wildlife resources, and to maintain fish hatch-
8 eries and other facilities required for the prudent
9 management, enhancement, and mitigation of fish
10 and wildlife resources; and

11 (7) increased and improved management of In-
12 dian fish and wildlife resources will yield increased
13 economic returns, enhance Indian self-determination,
14 promote employment opportunities, and improve the
15 social and economic well-being of Indian and sur-
16 rounding communities.

17 **SEC. 3. PURPOSES.**

18 The purposes of this Act are—

19 (1) to reaffirm and protect Indian hunting,
20 fishing, and gathering rights and to provide for the
21 conservation, prudent management, enhancement,
22 orderly development and use of the resources upon
23 which the meaningful exercise of such rights depend;

24 (2) to maximize tribal capability and flexibility
25 in managing fish and wildlife resources for the con-

1 tinuing benefit of Indian people, and in comanaging
2 shared resources for the benefit of the Nation, in a
3 manner consistent with Indian trust and rights pro-
4 tection responsibilities;

5 (3) to support Indian self-determination and
6 tribal self-governance by authorizing and encourag-
7 ing government-to-government communications and
8 cooperative agreements between Federal, State, and
9 local governments and to foster tribal participation
10 in multijurisdictional fish and wildlife resource deci-
11 sionmaking; and

12 (4) to establish an Indian Fish and Wildlife Re-
13 source Management Education Assistance Program
14 within the Bureau of Indian Affairs to promote and
15 develop full tribal capability and multidisciplinary
16 competence in managing fish and wildlife resource
17 programs.

18 **SEC. 4. DEFINITIONS.**

19 For the purposes of this Act:

20 (1) The term "Bureau" means the Bureau of
21 Indian Affairs within the Department of the Inte-
22 rior.

23 (2) The term "Indian fish hatchery" means any
24 multi- or single-purpose facility owned or operated
25 by an Indian tribe or the Bureau, or by the United

1 States Fish and Wildlife Service on an Indian res-
2 ervation, which is engaged in the spawning, hatch-
3 ing, rearing, holding or caring for or stocking of
4 fish, including any related research and diagnostic
5 fish health facility.

6 (3) The term "fish hatchery maintenance"
7 means work that is required at periodic intervals to
8 prolong the life of a fish hatchery and its compo-
9 nents and associated equipment.

10 (4) The term "fish hatchery rehabilitation"
11 means work that is required to address the physical
12 deterioration or functional obsolescence of a fish
13 hatchery building, structure or other facility compo-
14 nent, or to repair, modify, or improve a fish hatch-
15 ery building, structure or other facility component.

16 (5) The term "forest land management activ-
17 ity" has the same meaning given to such term by
18 section 304(4) of the Indian Forest Resources Man-
19 agement Act (25 U.S.C. 3103(4)).

20 (6) The term "Indian fish and wildlife re-
21 source" means any species of animal or plant life lo-
22 cated on Indian reservations or in which Indians
23 have a right protected by Federal law to fish, hunt,
24 trap, or gather for subsistence, ceremonial, rec-
25 reational or commercial purposes, or for which an

1 Indian tribe has management or comanagement re-
2 sponsibilities.

3 (7) The term "Indian" means a member of an
4 Indian tribe as defined in section 4 of the Indian
5 Self-Determination and Education Assistance Act
6 (25 U.S.C. 450b).

7 (8) The term "Indian land" means land, the
8 title to which is held by—

9 (A) the United States in trust for an In-
10 dian or Indian tribe; or

11 (B) an Indian or Indian tribe, and is sub-
12 ject to restrictions against alienation.

13 (9) The term "Indian reservation" includes res-
14 ervations established pursuant to treaties, Acts of
15 Congress or Executive orders, and public domain In-
16 dian allotments, and former Indian reservations in
17 the State of Oklahoma.

18 (10) The term "Indian tribe" means any Indian
19 tribe, band, nation, pueblo, or other organized group
20 or community which is recognized as eligible for the
21 special programs and services provided by the Unit-
22 ed States to Indians because of their status as Indi-
23 ans.

24 (11) The term "integrated resource manage-
25 ment plan" means the plan developed pursuant to

1 the process used by tribal governments to assess
2 available resources and to provide identified holistic
3 management objectives that include quality of life,
4 production goals and landscape descriptions of all
5 designated resources that may include (but not be
6 limited to) water, fish, wildlife, forestry, agriculture,
7 minerals, and recreation, as well as community and
8 municipal resources, and may include any previously
9 adopted tribal codes and plans related to such re-
10 sources.

11 (12) The term “resource management activi-
12 ties” means all activities performed in managing In-
13 dian fish and wildlife resources. This term shall not
14 include forest land management activities.

15 (13) The term “Secretary” means the Secretary
16 of the Interior.

17 (14) The term “treaty ceded territory” means
18 the land ceded to the United States by treaty upon
19 which the ceding tribe or tribes retain hunting, fish-
20 ing, and gathering rights.

21 (15) The term “tribal organization” has the
22 meaning given to such term by section 4 of the In-
23 dian Self-Determination and Education Assistance
24 Act (25 U.S.C. 450b).

1 **SEC. 5. INDIAN FISH AND WILDLIFE RESOURCE MANAGE-**
2 **MENT PROGRAM.**

3 (a) **MANAGEMENT OBJECTIVES.**—Consistent with
4 the provisions of the Indian Self-Determination and Edu-
5 cation Assistance Act (Public Law 93-638), the Secretary
6 shall provide for the management of Indian fish and wild-
7 life resources to achieve the following objectives:

8 (1) To protect, conserve, and enhance fish and
9 wildlife resources that are important to Indian tribes
10 for subsistence, cultural enrichment, and economic
11 development and to promote the development of
12 these resources for the benefit of Indian tribes and
13 their members.

14 (2) To protect Indian hunting, fishing, and
15 gathering rights guaranteed to Indian tribes by the
16 United States through treaty, statute, or Executive
17 order.

18 (3) To provide for the development and en-
19 hancement of the capacities of Indian tribes to man-
20 age Indian fish and wildlife resources.

21 (4) To selectively develop and increase produc-
22 tion of certain fish and wildlife resources in order to
23 provide for the subsistence, economic, and employ-
24 ment needs of Indian tribes.

25 (5) To manage Indian fish and wildlife re-
26 sources consistent with integrated resource manage-

1 ment plans in order to protect and maintain other
2 values such as Indian forest resources, Indian agri-
3 cultural resources, cultural resources, aesthetics,
4 recreation, and other traditional values.

5 (b) **MANAGEMENT PROGRAM.**—(1) The Secretary, in
6 full consultation with Indian tribes, shall establish the In-
7 dian Fish and Wildlife Resource Management Program in
8 order to achieve the objectives set forth in subsection (a).

9 (2) The Secretary shall promote and provide assist-
10 ance for the tribal management of Indian fish and wildlife
11 resources through contracts, cooperative agreements, or
12 grants under the Indian Self-Determination Act (25
13 U.S.C. 450 et seq.).

14 (3) The Secretary, upon the request of any Indian
15 tribe or tribal organization, shall enter into a contract with
16 the tribe or tribal organization to plan, conduct, and ad-
17 minister any program within the Department of the Inte-
18 rior which affects Indian fish and wildlife resources and
19 is currently administered by the Secretary.

20 (c) **MANAGEMENT ACTIVITIES.**—Indian fish and
21 wildlife resource management activities carried out under
22 the program established under subsection (b) may include
23 —but shall not be limited to)—

1 (1) the development, implementation, and en-
2 forcement of tribal codes, ordinances, and regula-
3 tions;

4 (2) the development and implementation of re-
5 source and management plans, surveys, and inven-
6 tories;

7 (3) conducting fish and wildlife population and
8 life history investigations, habitat investigations,
9 habitat restoration, harvest management, and use
10 studies;

11 (4) fish production and hatchery management;

12 (5) the development of tribal conservation pro-
13 grams, including employment and training of tribal
14 conservation enforcement officers; and

15 (6) participation in joint or cooperative man-
16 agement fish and wildlife resources on a regional
17 basis with Federal, State, Tribal, and local authori-
18 ties.

19 (d) ASSISTANCE.—The Secretary is authorized to
20 provide financial and technical assistance to enable Indian
21 tribes to—

22 (1) conduct a review of existing tribal codes, or-
23 dinances, and regulations governing the management
24 of fish and wildlife resources;

1 (2) update and revise tribal codes, ordinances,
2 and regulations governing tribal fish and wildlife re-
3 source protection and use;

4 (3) determine and document the need for tribal
5 conservation officers, tribal fisheries and wildlife bi-
6 ologists, and other professionals to administer In-
7 dian fish and wildlife resource management pro-
8 grams;

9 (4) provide training to and develop curricula for
10 Indian fish and wildlife resource personnel, including
11 tribal conservation officers, which incorporate law
12 enforcement, fish and wildlife conservation, identi-
13 fication and resource management principles and
14 techniques; and

15 (5) determine and document the condition of
16 the Indian fish and wildlife resources.

17 (e) INDIAN FISH AND WILDLIFE RESOURCE MAN-
18 AGEMENT PLANS.—(1) To meet the management objec-
19 tives set forth in subsection (a), an Indian fish and wildlife
20 resource management plan shall be developed and imple-
21 mented as follows:

22 (A) Pursuant to a self-determination contract
23 or self-governance compact under the Indian Self-
24 Determination Act, an Indian tribe may develop or
25 implement an Indian fish and wildlife management

1 plan. Subject to the provisions of subparagraph (C),
2 the tribe shall have broad discretion in designing
3 and carrying out the planning process.

4 (B) If a tribe chooses not to contract the devel-
5 opment or implementation to plan, the Secretary
6 shall develop or implement the plan in close con-
7 sultation with the affected tribe.

8 (C) Whether developed directly by the tribe or
9 by the Secretary, the plan shall—

10 (i) determine the condition of fish and
11 wildlife resources and habitat conditions,

12 (ii) identify specific tribal fish and wildlife
13 resource goals and objectives,

14 (iii) establish management objectives for
15 the resources,

16 (iv) define critical values of the Indian
17 tribe and its members and provide identified ho-
18 listic management objectives,

19 (v) be developed through public meetings,

20 (vi) use the public meeting records, exist-
21 ing survey documents, reports, and other re-
22 search from Federal agencies and tribal com-
23 munity colleges, and

24 (vii) be completed within three years of the
25 initiation of activity to establish the plan.

1 (2) Indian fish and wildlife management plans devel-
2 oped and approved under this section shall govern the
3 management and administration of Indian fish and wild-
4 life resources by the Bureau and the Indian tribal govern-
5 ment.

6 **SEC. 6. TRIBAL CONSULTATION.**

7 The Secretary, in any departmental action which af-
8 fects Indian fish and wildlife resources, shall fully consult
9 with and seek the participation of Indian tribes in a man-
10 ner consistent with the Federal trust responsibility and
11 the government-to-government relationship between In-
12 dian tribes and the Federal Government.

13 **SEC. 7. INDIAN FISH HATCHERY PROGRAM.**

14 (a) ESTABLISHMENT.—The Secretary, with the full
15 and active participation of Indian tribes, shall establish
16 and administer an Indian Fish Hatchery Program within
17 the Bureau of Indian Affairs to produce and distribute
18 to Indian tribes a variety of species of fish to assist Indian
19 tribes to develop tribal hatcheries and enhance fish re-
20 sources on the reservation.

21 (b) NEEDS REPORT.—Within one year after the date
22 of enactment of this Act, the Secretary, with the full and
23 active participation of Indian tribes, shall transmit a re-
24 port to the Congress identifying the facilities which com-
25 prise the Indian Fish Hatchery Program, the mainte-

1 nance, rehabilitation, and construction needs of such fa-
2 cilities, and providing a plan for their administration and
3 cost-effective operation.

4 **SEC. 8. INDIAN BISON CONSERVATION PROGRAM.**

5 (a) **GENERAL AUTHORIZATION.**—The Secretary is
6 authorized to enter into contracts with or make grants to
7 Indian tribes and tribal organizations to develop and
8 maintain an Indian Bison Conservation Program to meet
9 tribal subsistence, ceremonial, commercial, and resource
10 needs.

11 (b) **REQUIRED CONTENT.**—An Indian Bison Con-
12 servation Program established under this section shall pro-
13 vide for the preservation, restoration, production, care and
14 management of bison.

15 (c) **USE OF FUNDS.**—Funds provided under this sec-
16 tion may be used to—

- 17 (1) develop and implement bison management
18 plans, surveys, and inventories;
- 19 (2) conduct research on bison populations and
20 habitat;
- 21 (3) undertake habitat restoration; and
- 22 (4) develop range ecology and conservation pro-
23 grams.

1 **SEC. 9. EDUCATION IN FISH AND WILDLIFE RESOURCE**
2 **MANAGEMENT.**

3 (a) FISH AND WILDLIFE RESOURCES INTERN PRO-
4 GRAM.—(1) The Secretary shall establish a Fish and Wild-
5 life Resources Intern Program within the Bureau, for at
6 least 20 Indian fish and wildlife intern positions. Such po-
7 sitions shall be in addition to the forester intern positions
8 authorized in section 314(a) of the National Indian Forest
9 Resources Management Act (25 U.S.C. 3113(a)). Individ-
10 uals selected as interns shall be enrolled full-time in ap-
11 proved post-secondary or graduate schools in curricula
12 leading to advanced degrees in fish and wildlife resource
13 management related fields.

14 (2) The Secretary shall pay all costs for tuition,
15 books, fees, and living expenses incurred by Indian fish
16 and wildlife interns while attending approved study pro-
17 grams.

18 (3) An Indian fish and wildlife resource intern shall
19 be required to enter into an obligated service agreement
20 to serve in a professional fish and wildlife management
21 related capacity with an Indian tribe or tribal organiza-
22 tion, or with the Bureau of Indian Affairs or the United
23 States Fish and Wildlife Service serving or benefiting In-
24 dian lands for one year for each year of education that
25 the Secretary pays the intern's educational costs under
26 paragraph (1).

1 (4) An Indian fish and wildlife resource intern shall
2 be required to report for service to his employing entity
3 during any break in attendance at school of more than
4 3 weeks duration. Time spent in such service shall be
5 counted toward satisfaction of the intern's obligated serv-
6 ice agreement.

7 (b) COOPERATIVE EDUCATION PROGRAM.—(1) The
8 Secretary shall maintain, through the Bureau of Indian
9 Affairs, a cooperative education program for the purpose
10 of recruiting promising Indian students who are enrolled
11 in secondary schools, tribally controlled community col-
12 leges, and other postsecondary or graduate schools for em-
13 ployment as professional fisheries and wildlife biologists,
14 or other related professional with an Indian tribe, tribal
15 organization, or with the Bureau or with the United
16 States Fish and Wildlife Service serving or benefiting In-
17 dian lands.

18 (2) Under this program, the Secretary shall pay all
19 costs for tuition, books and fees of an Indian student who
20 is enrolled in a course of study at an education institution
21 with which the Secretary has entered into a cooperative
22 agreement and who is interested in a career with an In-
23 dian tribe, tribal organization, or the Bureau or with the
24 United States Fish and Wildlife Service serving or benefit-
25 ing Indian lands.

1 (3) A recipient of assistance under this program shall
2 be required to enter into an obligated service agreement
3 to serve as a professional fish or wildlife biologist or other
4 related professional position with an Indian tribe, tribal
5 organization, the Bureau, or the United States Fish and
6 Wildlife Service for one year for each year that the Sec-
7 retary pays the recipient's educational costs pursuant to
8 paragraph (2).

9 (c) SCHOLARSHIP PROGRAM.—(1) The Secretary is
10 authorized to grant fish and wildlife management scholar-
11 ships to Indians enrolled in accredited programs for post-
12 secondary and graduate fish and wildlife resource manage-
13 ment related fields of study as full-time students.

14 (2) A recipient of a fish and wildlife management
15 scholarship shall be required to enter into an obligated
16 service agreement in which the recipient agrees to accept
17 employment following completion of the recipient's course
18 of study with an Indian tribe, a tribal organization, the
19 Bureau, or the United States Fish and Wildlife Service
20 for one year for each year the recipient received a scholar-
21 ship.

22 (3) The Secretary shall not deny scholarship assist-
23 ance under this subsection solely on the basis of an appli-
24 cant's scholastic achievement if the applicant has been ad-

1 mitted to and remains in good standing in an accredited
2 post-secondary or graduate institution.

3 (d) FISH AND WILDLIFE EDUCATION OUTREACH.—
4 The Secretary shall conduct, through the Bureau of In-
5 dian Affairs, with the full and active participation of In-
6 dian tribes, a fish and wildlife resource and education out-
7 reach program to explain and stimulate interest in all as-
8 pects of fish and wildlife management and to generate in-
9 terest in careers as fisheries and wildlife biologists.

10 (e) POSTGRADUATE RECRUITMENT.—The Secretary
11 shall establish and maintain a program to attract profes-
12 sional Indian fish and wildlife biologists who have grad-
13 uated from post-secondary or graduate schools for employ-
14 ment by Indian tribes, tribal organizations, the Bureau,
15 or the United States Fish and Wildlife Service, in ex-
16 change for the assumption by the Secretary of all or a
17 portion of the outstanding student loans of the employee,
18 depending upon the period of employment involved.

19 (f) ADEQUACY OF PROGRAMS.—The Secretary shall
20 administer the programs described in this section until a
21 sufficient number of personnel are available to administer
22 tribal fish and wildlife resource management programs on
23 Indian lands.

24 (g) OBLIGATED SERVICE.—Where an individual en-
25 ters into an agreement for obligated service in return for

1 financial assistance under any provision of this section,
2 the Secretary shall adopt such regulations as are nec-
3 essary to provide for an offer of employment to the recipi-
4 ent of such assistance as required by such provision.
5 Where an offer of employment is not reasonably made, the
6 regulations shall provide that such service shall no longer
7 be required.

8 (h) BREACH OF CONTRACT.—Where an individual
9 fails to accept a reasonable offer of employment in fulfill-
10 ment of such obligated service or unreasonably terminates
11 or fails to perform the duties of such employment, the Sec-
12 retary shall require a repayment of the financial assistance
13 provided, pro rated for the amount of time of obligated
14 service that was performed, together with interest on such
15 amount which would be payable if at the time the amounts
16 were paid they were loans bearing interest at the maxi-
17 mum legal prevailing rate, as determined by the Secretary
18 of the Treasury.

19 **SEC. 10. REGULATIONS.**

20 Except as otherwise provided by this Act, the Sec-
21 retary shall promulgate final regulations for the imple-
22 mentation of the Act within 18 months from the date of
23 its enactment. All regulations promulgated pursuant to
24 this Act shall be developed by the Secretary with the full
25 and active participation of Indian tribes.

1 **SEC. 11. SEVERABILITY.**

2 If any provision of this Act, or the application of any
3 provision of this Act to any person or circumstance, is held
4 invalid, the application of such provision or circumstance
5 and the remainder of this Act shall not be affected there-
6 by.

7 **SEC. 12. TRUST RESPONSIBILITY.**

8 Nothing in this Act shall be construed to—

9 (1) diminish or expand the trust responsibility
10 of the United States toward Indian fish and wildlife
11 resources, or any legal obligation or remedy result-
12 ing therefrom; or

13 (2) abrogate, restrict, modify, alter, or diminish
14 any treaty-reserved right of any Indian tribe, or any
15 other rights of Indian tribes under existing Federal
16 laws.

17 **SEC. 13. AUTHORIZATION OF APPROPRIATIONS.**

18 There are authorized to be appropriated such sums
19 as may be necessary to carry out the purposes of this Act.

August 24, 1993

**SECTION BY SECTION ANALYSIS OF H.R. 2874,
THE INDIAN FISH AND WILDLIFE RESOURCE
ENHANCEMENT ACT OF 1993**

SECTION 1

Section 1 cites the short title of the Act as the " Indian Fish and Wildlife Resource Enhancement Act of 1993."

SECTION 2

Section 2 sets out the findings of the Congress.

SECTION 3

Section 3 provides that the purposes of the Act are to reaffirm and protect Indian hunting, fishing, and gathering rights, to provide for the conservation and management of Indian fish and wildlife resources, and to promote Indian self-determination by encouraging cooperative agreements between Federal, state, and local governments.

SECTION 4

Section 4 sets out the definitions used in the Act.

SECTION 5

Subsection (a) provides that the Secretary shall provide for the management of Indian fish and wildlife resources to protect, conserve, and enhance Indian fish and wildlife resources, to protect Indian hunting and fishing treaty rights, to provide for the development and enhancement of the capacity of Indian tribes to manage Indian fish and wildlife resources, and to manage Indian fish and wildlife resources consistent with integrated resource management plans.

Subsection (b) provides that the Secretary shall establish the Indian fish and wildlife resource management program, in full consultation with Indian tribes. The Secretary shall provide assistance for the tribal management of Indian fish and wildlife resources through contracts and grants under the Indian Self-Determination Act. It also provides that the Secretary shall enter into a contract with an Indian tribe or tribal organization to administer any program within the Department of the Interior which affects Indian fish and wildlife resources.

Subsection (c) provides that Indian fish and wildlife program activities may include the development and enforcement of tribal codes, the development and implementation of resource management plans, the development of tribal

conservation programs and participation in cooperative management of fish and wildlife resources on a regional basis.

Subsection (d) authorizes the Secretary to provide financial and technical assistance to Indian tribes to review and revise existing tribal codes and ordinances regarding management of fish and wildlife resources, to determine and document the need for tribal conservation officers and other professionals to administer fish and wildlife resource management programs, and to determine and document the condition of Indian fish and wildlife resources.

Subsection (e) provides that an Indian tribe may develop or implement an Indian fish and wildlife management plan, pursuant to the Indian Self-Determination Act, to meet the management objectives under the Act. It further provides that if an Indian tribe chooses not to develop a fish and wildlife management plan then the Secretary shall develop the plan in close consultation with the Indian tribe. A plan shall determine the conditions of fish and wildlife resources, identify tribal fish and wildlife management objectives, and define critical tribal values. Plans shall be completed within three years of the initiation of activity to establish the plan. Indian fish and wildlife management plans shall govern the management and administration of Indian fish and wildlife resources by the Bureau of Indian Affairs and the Indian tribe.

SECTION 6

Section 6 provides that the Secretary shall fully consult with Indian tribes regarding any departmental action which affects Indian fish and wildlife resources consistent with the Federal trust responsibility.

SECTION 7

Subsection (a) provides for the establishment of the Indian Fish Hatchery Program within the Bureau of Indian Affairs to produce and distribute to Indian tribes a variety of species of fish and to assist in the development of tribal fish hatcheries.

Subsection (b) requires the Secretary to transmit a report to the Congress a report to the Congress identifying the facilities which compromise the Indian Fish Hatchery Program, the maintenance and construction needs of the facilities, and a plan to administer these facilities.

SECTION 8

Subsection (a) authorizes the Secretary to enter into contracts with or make grants to Indian tribes to develop and maintain an Indian Bison Conservation

Program to meet tribal subsistence, ceremonial, and resource needs.

Subsection (b) provides that an Indian Bison Conservation Program shall provide for the preservation, restoration, care, and management of bison.

Subsection (c) provides that funds may be used to develop and implement bison management plans, surveys, and inventories, to conduct research on populations and habitat, to undertake habitat restoration and to develop range ecology and conservation programs.

SECTION 9

Subsection (a) authorizes the Secretary to establish in the Bureau of Indian Affairs at least 20 Indian fish and wildlife intern positions. It provides that the Secretary shall pay costs of tuition, books, fees, and living expenses of an intern. It further provides that an Indian fish and wildlife intern shall be required to enter into an obligated service agreement to serve as an employee of an Indian tribe, the Bureau of Indian Affairs or the U.S. Fish and Wildlife Service for one year for each year that their educational costs are paid.

Subsection (b) requires the Secretary to maintain a cooperative education program in the Bureau of Indian Affairs to recruit Indian students for employment in professional fisheries and wildlife biologists or other related professional positions within the Bureau of Indian Affairs, the U.S. Fish and Wildlife Service or an Indian tribe.

Subsection (c) authorizes the Secretary to grant scholarships to Indians for postsecondary or graduate programs in the area of fish and wildlife resource management. Scholarship recipients shall be required to enter into an obligated service agreement to serve as an employee with an Indian tribe, the Bureau of Indian Affairs, or the U.S. Fish and Wildlife Service for one year for each year the recipient received a scholarship.

Subsection (d) authorizes the Secretary to conduct a fish and wildlife resource and education outreach program for Indian youth.

Subsection (e) requires the Secretary to establish and maintain a postgraduate recruitment program to attract professional fish and wildlife biologists for employment by Indian tribes, the Bureau of Indian Affairs, or the U.S. Fish and Wildlife Service.

Subsection (f) requires the Secretary to administer these programs until there is an adequate supply of professionals to administer tribal fish and wildlife resource management programs on Indian lands.

Subsection (g) provides that the Secretary shall adopt regulations to provide for an offer of employment to an individual who receives financial assistance in exchange for a service obligation under the Act. It further provides that where an offer of employment is not reasonably made, the regulations shall provide that such service is no longer required.

Subsection (h) provides that where an individual fails to accept a reasonable offer of employment, unreasonably terminates, or fails to perform their duties, the Secretary shall require repayment of the prorated amount with interest calculated at the maximum legal prevailing rate, as determined by the Treasurer of the United States.

SECTION 10

Section 10 requires the Secretary to promulgate final regulations implementing this Act within 18 months of the date of enactment with the full and active participation of Indian tribes.

SECTION 11

Section 11 provides that if any provision of the Act is held to be invalid, the remainder of the Act shall remain valid and not be affected thereby.

SECTION 12

Section 12 provides that nothing in the Act shall be construed to diminish or expand the trust responsibility of the Federal government for Indian fish and wildlife resources and that nothing in the Act shall be construed to abrogate, restrict, alter or diminish any treaty-reserved right of any Indian tribe.

SECTION 13

Section 13 authorizes to be appropriated such sums as may be necessary to carry out the purposes of the Act.

BACKGROUND FOR SEPTEMBER 8TH HEARING ON
H.R. 2874, THE INDIAN FISH AND WILDLIFE
RESOURCE ENHANCEMENT ACT OF 1993

HISTORY

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

Traditionally, the Courts have interpreted Indian hunting, fishing and gathering rights very broadly. Tribal rights to hunt, fish and gather have been recognized by the courts to exist in ceded territories, aboriginal lands and on reservation areas. Similarly, courts have recognized the importance of tribal hunting, fishing and gathering rights to tribal self-sufficiency. Economic interests in tribal fishing rights as well as subsistence interests were considered by the courts in several cases in the northwest.

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

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

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

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

H.R. 2874, THE INDIAN FISH AND WILDLIFE RESOURCE ENHANCEMENT ACT OF 1993

H.R. 2874 recognizes the Federal government's trust responsibility to protect and conserve Indian fish and wildlife resources. This bill provides for the improvement of tribal capacities to manage Indian fish and wildlife resources through the development of Indian fish and wildlife management programs. It also provides for the increased production of fish and wildlife resources to provide for the subsistence, economic, and employment needs of Indian tribes. The bill provides badly needed resources to Indian tribes to develop tribal codes, resource management plans, and fish and wildlife population investigations. It provides funds to Indian tribes to improve and restore fish and wildlife habitats and to develop tribal conservation programs. Finally, the bill will ensure that the management of Indian fish and wildlife resources is consistent with tribal integrated resource

management plans. H.R. 2874 provides the statutory framework to ensure the proper exercise of the Federal government's trust responsibilities for the management of Indian fish and wildlife resources.

HEARING

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

The Committee will receive testimony from wide range of Indian tribes from very distinct regions of the country. The tribal witnesses will provide testimony on their ongoing efforts to improve fish and wildlife habitat, to cooperatively manage these resources with states and other Indian tribes, to increase native fish and wildlife populations and to undertake conservation efforts on these lands. In addition, tribes will testify about the federal trust responsibilities to enhance Indian fish and wildlife resources. The Committee will receive comments and recommendations from the witnesses regarding H.R. 2874, the Indian Fish and Wildlife Resource Enhancement Act.

Mr. RICHARDSON. I would like to welcome our first witness Mr. Patrick Hayes, director, Office of Trust Responsibilities, BIA, and he will be accompanied by Mr. Gary Rankel. While Mr. Hayes and Mr. Rankel step up to the dais, let me just very briefly take a telephone call.

I will be right back.

[Recess.]

Mr. RICHARDSON. Mr. Hayes, please proceed.

STATEMENT OF PATRICK A. HAYES, DIRECTOR, OFFICE OF TRUST RESPONSIBILITIES, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY GARY RANKEL, CHIEF, BRANCH OF FISH, WILDLIFE AND RECREATION

Mr. HAYES. Thank you, Mr. Chairman. Good afternoon.

As the Chair has indicated, I do have a summary statement which accompanies the written statement, which I have submitted for the record. I am pleased to be here this afternoon to represent the views of the Department of the Interior on H.R. 2874, a bill to improve the management of Indian fish and wildlife resources on Indian lands, and for other purposes.

I am accompanied today by Mr. Gary Rankel, who is the chief of our Branch of Fish, Wildlife and Recreation. I have asked Gary to accompany me so that we will be able to provide you with full, complete, and accurate information for any questions you may ask.

Mr. Chairman, I am extremely gratified to appear before you and be able to take a position in strong support of this bill. We have had involvement as this legislation was being developed and have worked closely with the tribes and tribal organizations on this legislation.

This legislation brings a recognition which has long been lacking to this critically important aspect of a tribe's existence. There are few things as important to tribes across Indian country as hunting, fishing, and gathering.

Mr. Chairman, with the bill currently before us, we do have a few concerns which are detailed more fully in the list of recommendations which is attached to my submitted written statement. We believe that those areas which we have identified and the suggestions we have made will address those concerns and will strengthen and clarify the bill.

Fish and wildlife is a critical thread in the fabric of everyday Indian life. Generations of Indian people have lived in harmony with a fishing and hunting existence. This harmony continues today with many, many Indian people relying on this activity for their sustenance, as well as strengthening their cultural identity.

Also, in many circumstances, this activity supports a strong economic base for tribes and for individual Indians.

Tribes administer hunting and fishing programs on well over 100 reservations across the country. At least 23 States are aware of the management capabilities of tribes to operate these programs. These programs cover tens of millions of acres of prime wildlife habitat and lakes.

There are thousands of miles of streams and rivers within Indian country over which tribes manage the resource. There are also

many instances where tribes and their members enjoy rights to off-reservation hunting and fishing, and tribes participate in the management of that resource.

Tribes for a large part are involved in the enforcement of managing the resource and do so through enforcement of tribally-enacted codes, ordinances and regulations. We are aware, however, that there are a large number of tribes that do not have these codes, ordinances and regulations, and who do not have the personnel to enforce or to manage the resource.

Assistance is needed to help monitor and regulate public use, as well as tribal member use, of this hunting and fishing activity.

Tribes are closely involved in all aspects of decision making about the fish and game resource in wild areas of treaty-ceded territory. They do so through a highly competent cadre of personnel assembled by the intertribal organizations and within the respective tribes themselves.

They are the co-managers of a multi-jurisdictional fish and wildlife resource and in this regard share not only the decision making, but also the responsibility for those decisions. They have done an excellent job with the staff capacity, which has been stretched extremely thin.

In regard to fishery facilities in Indian country, there are more than 100 facilities which tribes operate and maintain. They are involved in rearing, production, and aquaculture, and releases from these hatcheries benefit both Indian and non-Indian commercial and sport fisheries.

These releases help to assure that subsistence and traditional ceremonial needs are met. They help to assure the existence of recreational opportunities for sports fishermen. Some hatcheries are used to address Endangered Species Act concerns.

It needs to be pointed out that tribes are dependent upon Federal appropriations to support their hunting and fishing resource management programs. They are not eligible to receive direct funding and Federal aid from the Sport Fish and Wildlife Restoration and the Land and Water Conservation accounts.

States, territories, and the District of Columbia receive direct funding from these accounts. Tribes, however, can only access these accounts via applications submitted to the respective State agencies, a process most tribes find objectionable.

The primary source through which Federal appropriations are made available to tribes is the Bureau's Fish and Wildlife and Recreation Program. This program is funded at approximately \$35 million annually and provides funds for activities we call rights protection implementation activities.

These support those tribal rights which have been adjudicated, such as in western Washington with the Boldt tribes or the Michigan fisheries settlement or in support of tribal rights in the U.S.-Canada Pacific Salmon Treaty and so forth.

Other activities include fish hatchery operations, fish hatchery maintenance, fish hatchery rehabilitation, and tribal management development programs. This latter program supports generally the tribe's specific applications, such as game code development, enforcement enhancement and so forth.

It also supports the Native American Fish and Wildlife Society and the Tribal Bison Herd Development Program.

I probably should have mentioned a little earlier in discussing Federal appropriations, Mr. Chairman, that our fish and wildlife program is about 98 percent contracted. The program supports very few Bureau staff. Almost all of the dollars are going directly to tribes themselves to maintain their staffs and operations, and the program is running just fine.

Mr. Chairman, I would like to conclude by re-emphasizing the importance that tribes place on their hunting and fishing rights and resources. Tribes are critical players in the conservation, management, and development of fish and wildlife resources upon which the meaningful exercise of treaty hunting and fishing rights depend.

Their lands and waters are prime, key habitat for the recovery of many listed endangered species and are essential for the conservation of major fish, big game, migratory birds, and other populations.

We are of the opinion that this legislation will help ensure that Indian tribes are at the table when resource decisions are made.

That concludes my summary statement, Mr. Chairman. We would be happy to answer any questions you may have.

Mr. RICHARDSON. Thank you, Mr. Hayes.

[Prepared statement of Mr. Hayes follows.]

STATEMENT OF PATRICK HAYES, DIRECTOR, OFFICE OF TRUST RESPONSIBILITIES, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, BEFORE THE HOUSE NATURAL RESOURCES SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS, ON H.R. 2874, THE "INDIAN FISH AND WILDLIFE ENHANCEMENT ACT OF 1993".

October 8, 1993

Mr. Chairman and Members of the Committee, I am here today to present the views of the Department of the Interior on H.R. 2874, a bill "To improve the management of Indian fish and wildlife resources on Indian lands, and for other purposes."

We strongly support H.R. 2874. We commend the Committee in their efforts to improve Indian fish and wildlife management. Legislation to improve the management of Indian fish and wildlife resources, and authorizing appropriations to carry out its purposes is long overdue. However, we do have some concerns with the bill, as well as a general concern that the bill could create expectations for expanded service that cannot be presently fulfilled under current budget constraints. Attached to my statement is a list of recommendations which will address those concerns as well as strengthen and clarify the provisions in H.R. 2874.

Generations of American Indians have developed life styles, cultures, religious beliefs and customs around their relationships with fish and wildlife. Historically, these resources provided food, shelter, clothing and tools, and were traded for a variety of goods. They continue to provide a base of sustenance, cultural enrichment and economic support for many tribes, and help maintain tribal social structure and stability by permitting gainful employment in traditional and desirable occupations.

The scope of BIA and tribal fish and wildlife resource management authority, jurisdiction and responsibility varies on a case-by-case basis depending on land ownership and status, and language contained in a host of treaties, Executive Orders, court rulings, statutes, and other legal instruments. Indian reservations contribute significantly toward meeting the growing national demand for outdoor recreation and tourism, accounting for millions of public hunting and fishing days annually. A recent BIA report reveals that tribes administer more than 50 and 70 public hunting and fishing programs, respectively, on Indian reservations nationwide. These trust lands also provide habitat critical to the recovery of more than 40 species listed as threatened or endangered, including the bald eagle and grizzly bear, and are necessary for the conservation of other nationally significant fish, big game, migratory bird and other populations.

Fish, wildlife and related outdoor recreation management activities are conducted on more than 125 reservations in 23 states, containing approximately 1.6 million acres of lakes and impoundments, more than 15,000 miles of perennial streams and rivers, and tens of millions of acres of prime wildlife habitat. In some cases, tribal fish and game codes, ordinances and regulations are in place, and reasonable numbers of enforcement and resource management personnel are available. Information compiled by the BIA reveals, however, that numerous reservations are in need of fish and game codes, ordinances and regulations. Many tribes also require resources to implement existing codes and ordinances, to monitor and regulate public use and tribal hunting and fishing activity, and to manage and conserve associated populations and habitats at levels comparable to those provided by Federal and state authorities.

Reaffirmation of off-reservation Indian hunting and fishing rights, and the

recognition of associated resource management roles and responsibilities, has accelerated the development of tribal management programs in treaty ceded territory in recent years. In this capacity, tribes, frequently working through intertribal fish and wildlife organizations, function as co-managers of multi-jurisdictional fish and wildlife resources, and work closely with other authorities in fulfilling shared roles and responsibilities. The functioning of intertribal fish and wildlife organizations, and the administration of programs required for the meaningful exercise of Indian hunting, fishing and gathering rights, entails additional tribal staffing and resources.

Tribes operate and maintain more than 100 facilities, ranging from single-purpose structures to large state-of-the-art complexes, engaged in fish production, aquaculture and/or rearing programs on more than 30 Indian reservations, primarily through P.L. 93-638 contracts with the BIA. Salmon and steelhead releases from tribal hatcheries in the Pacific Northwest benefit Indian and non-Indian commercial and sport fisheries in the United States and Canada. Returning spawners help satisfy subsistence and ceremonial needs, and are distributed to the elderly and poor. Throughout the rest of the country, recreational opportunities created by the stocking of catchable trout, walleye and other species attract sport fishermen, and promote the development of tribal economies. Some tribal hatcheries are used to help recover species listed under the Endangered Species Act.

Fish and wildlife program staffs of tribes function in much the same manner as state departments of fish and game in carrying out resource management roles and responsibilities, including the enforcement of fish and game laws on reservations. However, unlike states, United States territories and the District of Columbia, Indian tribes are not eligible to receive direct funds from the Federal Aid in Sport Fish and Wildlife Restoration Accounts, and the Land and Water Conservation

Account, do not generate tax revenues, and, with few exceptions, do not receive income through the sale of hunting and fishing permits capable of supporting resource management staffs and operations. Consequently, tribes are dependent on Federal appropriations to support resource management programs.

The primary mechanism through which the Federal Government supports programs to fulfill tribal fish and wildlife resource management roles and responsibilities is the Fish, Wildlife and Recreation Program administered by the BIA, funded through the Wildlife and Parks budget at approximately \$35 million annually. The goal of this program is to fulfill and execute the Federal Government's trust responsibilities relating to fish, wildlife and related resources, to protect Indian hunting and fishing rights, and to promote the conservation, orderly development and prudent use of fish and wildlife resources for the maximum benefit of Indians.

More than 98 percent of wildlife and parks funds are distributed through P.L. 93-638 contracts, allowing tribes and inter-tribal fish and wildlife organizations to staff up and carry out programs that would otherwise be performed by the BIA, the Fish and Wildlife Service or other Federal agency. The program promotes the development of tribal capabilities, facilitates inter-tribal communications and dispute resolution, permits multi-tribal participation in addressing shared resource issues, and assists in achieving a variety of tribal objectives, including satisfying subsistence and ceremonial needs, creating jobs, generating revenue and realizing self-sufficiency. Hundreds of tribal biologists, technicians, statisticians, hydrologists, conservation enforcement officers, and other professionals throughout the United States participate in the development and implementation of a variety of population, habitat and harvest management programs.

This concludes my prepared statement. I would be happy to answer any questions the Committee may have.

Attachment: October 8, 1993 Hearing on:
H.R. 2874, the "Indian Fish and Wildlife Resource Enhancement Act of 1993."

Section 2

Finding (3), line 14, delete the term "responsibility" and insert in lieu thereof: "*and rights protection responsibilities*".

Tribes have hunting and fishing rights both on and off reservation lands. Trust responsibilities is too restrictive and does not adequately cover the hunting and fishing rights of the tribes off trust held lands. The additional language would clarify that the tribes have hunting and fishing rights both on and off the reservations.

Finding (4), line 18, delete the word "resource".

Finding (5), line 24, delete the word "tribal," and the "," after States.

Finding (5), lines 1 and 2, delete "or court orders;" and insert in lieu thereof: "*and other legal instruments:*"

Finding (6), lines 3 through 10 be amended to read as follows:

"the United States has an obligation to *support tribal efforts* to monitor and regulate Indian *and non-Indians* hunting and fishing activities, to protect and conserve tribal fish and wildlife resources *and habitats*, and to maintain fish hatcheries and other facilities required for the prudent management, enhancement, and mitigation of fish and wildlife resources: and"

Section 3

Purpose (1), line 22 insert before "use" the word "*wise*".

Purpose (3), lines 8 and 9, be amended to read as follows:

"cooperative agreements *with* Federal, State, and local *jurisdictions* and to foster tribal participation"

Section 4

Definition (2), be amended to read as follows:

"(2) The term "Indian fish hatchery" means any multi- or single-purpose facility owned or operated by an Indian tribe or the Bureau, which is engaged in the spawning, hatching, rearing, holding, caring for or stocking of fish, including any related research and diagnostic fish health facility, *and any other Federal fish hatchery facility located on an Indian reservation, the operation of which is contracted by an Indian tribe for Indian purposes.*"

Definition (6), line 20, insert "*or tribal*" after "Indian".

Definition (14), line 17, insert "*including 'usual and accustomed' and 'in common with' areas*" after "treaty ceded territory".

Section 5

Section 5(b)(3), lines 14-19: We recommend that language be inserted that would distinguish between (1) Interior programs which are intended to provide technical fish and wildlife assistance or serve the fish and wildlife resource needs of tribes, and should, therefore, be readily contractible, and (2) Interior programs which, while serving other purposes, may impact Indian fish and wildlife resources or Indian hunting and fishing rights, and, therefore, require review and consultation with tribes.

We recommend that section 5(b)(3) be deleted in its entirety and the following language be inserted in lieu thereof:

"(3) The Secretary, upon the request of any Indian tribe or tribal fish and wildlife organization, shall enter into a contract *transferring resources and permitting such* tribe or tribal organization to plan, conduct and administer any program, *operation or facility* within the Department of the Interior managed primarily to provide technical fish and wildlife assistance to tribes, or to otherwise serve the fish and wildlife resource needs of tribes, and *which* is currently administered by the Secretary."

"(4) *The Secretary, upon the request of any Indian tribe or tribal fish and wildlife organization, shall review any program, operation or facility administered within the Department of the Interior alleged to impact Indian fish and wildlife resources or the exercise of Indian hunting, fishing and gathering rights, shall report his findings to the requesting tribe or tribal organization, and, shall take appropriate*

actions to minimize associated impacts."

Section 5(c)(6) be amended to read as follows:

"participation in joint or cooperative management of *shared* fish and wildlife resources *between tribes*, on a regional basis with Federal, State, and local authorities, *and in international settings.*"

Section 5(d)(4), line 12, insert "*species*" before "identification".

Section 5(e)(1)(B), line 5, delete "to" and insert "*of a*".

Section 6

Section 6, line 8, insert "*or the exercise of Indian hunting, fishing or gathering rights, or in any program or operation conducted on an Indian reservation,*" after "resources,".

Section 7

Section 7(a), line 18, insert a ", " after "fish".

Section 7(a), lines 19 and 20 amended to read as follows:

"tribes to develop tribal hatcheries, and *to enhance tribal fisheries resources on Indian reservations, and in treaty ceded territories.*"

Section 7(b), Line 25, insert "*identifying*" after "Program,".

Section 8

Section 8(c)(3)-(4), lines 21-23 amended to read as follows:

"(3) *develop suitable pasture; and*

(4) *develop adequate containment and watering facilities, food supplies, and health maintenance programs required for herd maintenance success.*"

Section 9

Section 9(a)(3), lines 22 and 23, amended to read as follows:

"or with the Bureau of Indian Affairs, or *with the United States Fish and Wildlife Service in a program serving or benefiting*"

Section 9(b)(2), lines 22-25, delete "and who is interested...or benefiting Indian lands." and insert in lieu thereof: "*pursuant to paragraph (1).*"

Section 9(c)(2), lines 19-21, amended to read as follows:

"Bureau, or *with the United States Fish and Wildlife Service in a program serving or benefiting Indian lands* for one year for each year the recipient received a scholarship."

Section 9(e), line 15, amended to read as follows:

"or *with the United States Fish and Wildlife Service in a program serving or benefiting Indian lands, in exchange*"

Section 9(f), line 21, insert "*Indian*" after "of".

Section 9(g), line 23, delete the "." and insert in lieu thereof: ", *and in treaty ceded territories.*"

Mr. RICHARDSON. How would you provide access to a Land and Water Conservation account to Indian tribes? Could this be accomplished administratively or through regulations?

Mr. HAYES. Mr. Chairman, we think not. We think that probably the most appropriate mechanism to allow tribes access to that account plus the other accounts which I mentioned in my testimony would be primarily through legislation.

Mr. RICHARDSON. Now, so then you would favor legislation that would provide tribal access to this account?

Mr. HAYES. The Bureau of Indian Affairs probably would favor that, yes, sir.

Mr. RICHARDSON. The Bureau would support that. Now, it sometimes seems, based on some of these legal conflicts, the *Voigt* decision, the *Boldt* decision, that the tribe has to win a case in Federal court before the BIA provides any kind of enforcement or any kind of management funds for hunting and fishing.

Do you think that is an accurate statement?

Mr. HAYES. The cases you reference, Mr. Chairman, are cases which have addressed primarily off-reservation rights.

The Bureau of Indian Affairs, through our fish and wildlife program, supports on-reservation activities as well, not necessarily only at the instigation or at the direction of a court decision.

The tribal management and development program which I reference very briefly in my testimony is testament to that fact. There are a number of tribes which receive fiscal assistance, and it is not at the direction of a court order.

Mr. RICHARDSON. Now, how many programs in other bureaus within the Department of Interior have been contracted under the P.L. 93-638 arrangements?

Mr. HAYES. I am not aware of a specific number, Mr. Chairman. I would be happy to survey some of the other agencies within Interior and provide that information for the record, if that is what you would like.

Mr. RICHARDSON. Yes, please do, because that is an essential part of the data we are trying to correct.

[EDITOR'S NOTE.—This information was not received at the time of printing.]

Mr. RICHARDSON. Now, what is the view of the Department regarding tribes contracting for the functions of the Fish and Wildlife Service or the BLM under these Indian self-determination acts?

Mr. HAYES. The Bureau of Indian Affairs is very, very supportive of tribes contracting these programs, and we have been involved in that for a number of years now.

With the passage of the amendments to P.L. 93-638, other bureaus within the Department of the Interior have been involved in assisting to develop the regulations for implementation. I am sure that, while I can't speak positively, I would assume and could probably say that the Secretary is very supportive of other bureaus participating in 638, but I think the embrace from those other bureaus to the 638 self-determination contracting concept varies within the Department.

Mr. RICHARDSON. Now, some of the testimony that we have received on this issue indicates that for amounts available under wildlife and parks, as little as 2 percent is available for manage-

ment of big game and bird populations. If you compute this, it is about 2 cents per acre.

Does this seem to be an accurate figure, and how does this compare to the amounts expended for management on other Federal lands?

Mr. HAYES. Mr. Chairman, if you don't have any objection, I would like to ask Mr. Rankel to respond to that.

Mr. RICHARDSON. That is fine.

Mr. HAYES. He works a little more closely with this issue.

Mr. RICHARDSON. Go ahead, Mr. Rankel.

Mr. RANKEL. Thank you. I am not sure if the 2 percent figure is accurate or not, but I would certainly think it is at least less than 5 percent. It could be 2 or 3 percent.

I think the answer to why it is so low basically relates to the way the Bureau's wildlife and parks budget has evolved.

As I think you indicated earlier, it has been very much in response to court cases. I would think 70, 75 percent of our budget is probably related to the settlement of some of these court cases and basically all of those have involved fish, the Pacific salmon, and the Great Lakes fishery issues.

In regard to the on-reservation programs, most of the tribes have gone into and most of the money has gone into, fish hatcheries and public fishing programs, et cetera, et cetera. There is only a relatively small number of tribes, primarily in the Southwest, that are actively engaged in big game hunting programs, so that explains the percentage.

I am not familiar with how they compare to other Federal agencies. We have not done that kind of analysis.

Mr. RICHARDSON. Okay, but let's say those figures are accurate and it is 2 percent. Two percent, 2 cents per acre.

How would this compare with other arrangements with Federal lands? Would you have any idea?

Mr. RANKEL. No, I don't. I don't know what the Fish and Wildlife Service would be paying per acre for the refuges or the Park Service for parks.

I am not familiar with any kind of surveys that have been done to generate that.

Mr. RICHARDSON. Okay. How much funding would be required to bring Indian lands up to a comparable level of funding in your judgment, or Mr. Hayes?

Mr. HAYES. Could I refer that one also to Mr. Rankel?

Mr. RICHARDSON. Okay.

Mr. RANKEL. Again, that would be a difficult answer to come up with. We have never really done a survey asking the 150 or 180 tribes that have the potential for fish and wildlife programs what their needs would be to bring everybody up to standard, both on-reservation and in the off-reservation areas.

I can cite that on an annual basis when the tribes come back here and testify, and we have to prepare capability statements for their testimony, we are dealing with \$60 million to \$80 million of requests for add-ons. Those are just the requests of the tribes who are able to make it back here and express their needs; certainly the overall need would be greater than that.

Mr. RICHARDSON. Mr. Hayes, how does the Bureau feel about being deemed a co-manager of the fish and wildlife resources? Is this a new concept or has this been in place and we are simply codifying it?

Does co-management require any legal responsibilities, legal meaning in your view, and finally, does it at all change the trust relationship in your judgment?

Mr. HAYES. Mr. Chairman, I would say that the codification of a co-management responsibility is probably more appropriate for the codification to be directed toward Indian tribes.

As the committee is aware, co-management is not necessarily a new idea. It has been around for a number of years now, essentially started with the *Boldt* decision where Judge Boldt indicated that the tribes should be co-managers of the resource.

And the focus has thus far been on identifying the tribes as the co-managers of the resource as opposed to the Bureau of Indian Affairs, and we are supportive of that.

In regard to the trust responsibility question, I would say that the trust responsibility is not broadened or lessened by virtue of the legislation that is before us. The trust responsibility currently exists.

The Bureau of Indian Affairs, on behalf of the Federal Government, recognizes that, and we take our actions relative to that trust responsibility accordingly.

Mr. RICHARDSON. Now, it has come to the committee's attention that a number of States are challenging the authority of tribal officers to enforce tribal conservation laws.

It has always been this committee's position that Indian tribes have that inherent authority to establish tribal law enforcement programs and, at the same time, hire and train tribal law enforcement officers.

We have addressed this in the Indian Law Enforcement Reform Act, in the context of legislation where we affirmed and acknowledged these inherent rights. Has the BIA taken any position on this? What are your views on this matter?

Mr. HAYES. We have, Mr. Chairman. The Office of Trust Responsibilities has initiated a task force, a working group, if you will, between our offices that are program offices and the office of law enforcement, to talk about fish and wildlife game enforcement as opposed to criminaltype enforcement.

We are working to develop a training package. We are working to develop a division of responsibilities and authorities in that regard, in cooperation with one another.

We are supportive of the comment you made earlier in your question about the authority of Indian tribes to enforce fish and game codes on their reservations. We believe that to be a true fact, and as a result of our working group with law enforcement, we have asked our solicitor for their views on the scope and effect of the Act which you mentioned, as to our authorities.

Mr. RICHARDSON. Okay, Mr. Hayes. Once again, thank you for your testimony. It is nice to see you again. It is nice that you are supporting the bill so enthusiastically.

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

PANEL CONSISTING OF DELVIS HEATH, CHIEF, WARM SPRINGS TRIBE, AND MEMBER, TRIBAL COUNCIL OF CONFEDERATED TRIBES OF WARM SPRINGS, ACCOMPANIED BY HON. NELSON WALLULATUM, CHIEF, WASCO TRIBE, AND MEMBER, TRIBAL COUNCIL OF CONFEDERATED TRIBES OF WARM SPRINGS, OR, AND HOWARD G. ARNETT, TRIBAL ATTORNEY; HARRISON TALGO, SR., CHAIRMAN, SAN CARLOS APACHE TRIBE, ARIZONA; JULIA DAVIS, VICE CHAIRPERSON, NEZ PERCE TRIBAL EXECUTIVE COMMITTEE, LAPWAI, ID; GEORGE DUPUIS, VICE CHAIRMAN, FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA, CLOQUET, MN; BILL FRANK, JR., CHAIRMAN, NORTHWEST INDIAN FISHERIES COMMISSION, OLYMPIA, WA; DON WEDLL, COMMISSIONER OF NATURAL RESOURCES, MILLE LACS BAND OF OJIBWE INDIANS, ONAMIA, MN; AND MARK HECKERT, EXECUTIVE DIRECTOR, INTERTRIBAL BISON COOPERATIVE, RAPID CITY, SD

Mr. RICHARDSON. We will now move on to panels two and three. We are going to combine these panels because I have been informed by the staff that several members of the third panel have 5 o'clock planes to catch, and I want to respect that and make sure they make their flights. So I would like to step up to the witness table to have Delvis Heath, Chief of Warm Springs Tribe, and tribal council member for the Confederated Tribes of Warm Springs; Mr. Howard G. Arnett, tribal attorney; Hon. Harrison Talgo, chairman, San Carlos Apache Tribe; the Hon. Julia Davis, vice chairperson of the Nez Perce Tribal Executive Committee in Lapwai, Idaho, Honorable George Dupuis, vice chairman, Fond du Lac Band of Lake Superior Chippewas, Cloquet, Minnesota; Mr. Billy Frank, chairman, Northwest Indian Fisheries Commission, Olympia, Washington; Mr. Don Wedll, commissioner of natural resources, Mille Lacs Band of Ojibwe Indians, Onamia, Minnesota; and Mr. Mark Heckert, executive director, InterTribal Bison Cooperative, Rapid City, South Dakota.

I do want to get into the questions and I do want to make sure you all catch your flights. So with that, I would like to have the Hon. Delvis Heath, please start. Mr. Heath.

STATEMENT OF DELVIS HEATH

Mr. HEATH. Good afternoon, Mr. Chairman, members of the committee.

My name is Delvis Heath. I am the Chief of the Warm Springs Tribe and Nelson Wallulatum is also accompanying me. He is Chief of the Wasco Tribe, and also a lifetime member of the Warm Springs Tribal Council.

We are here today to testify on behalf of the Warm Springs Tribal Council in support of H.R. 2874, the Indian Fish and Wildlife Resources Enhancement Act of 1993.

With your permission, Chairman, and in the interest of time, a lot of the things that you said before are of interest to the Warm Springs Tribal Council. We have some issues, but instead of reading the whole statement that I am supposed to read, I would like to submit the written statement and summarize our statement so everyone can get a chance to speak.

Thank you.

Mr. RICHARDSON. Thank you very much, Mr. Chairman, that is very generous of you and we welcome you to this subcommittee.

[Prepared statement of the tribes of the Warm Springs Reservation follows:]

TESTIMONY OF THE CONFEDERATED TRIBES OF THE
WARM SPRINGS RESERVATION OF OREGON
CONCERNING H.R. 2874, THE INDIAN FISH AND
WILDLIFE RESOURCE MANAGEMENT ACT OF 1993

United States House of Representatives
Natural Resources Committee
Subcommittee on Native American Affairs
Washington, D.C.
October 8, 1993

Good morning, Mr. Chairman and members of the Committee. My name is Nelson Wallulatam and I am Chief of the Wasco Tribe and a lifetime member of the Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon. With me is Delvis Heath, Chief of the Warm Springs Tribe and also a lifetime member of the Warm Springs Tribal Council. We are here today to testify on behalf of the Warm Springs Tribal Council in support of H.R. 2874, the Indian Fish and Wildlife Resource Management Act of 1993. With your permission, Mr. Chairman, we are submitting a written statement for the record, which I will briefly summarize at this time.

The Warm Springs Tribal Council believes that the H.R. 2874 provides an excellent framework for carrying out the federal government's trust responsibility to protect and preserve Indian

fish and wildlife resources. We are very pleased to see that H.R. 2874 addresses many of our comments concerning national Indian fish and wildlife legislation presented in our testimony before this subcommittee on February 18, 1993. At that time, we expressed our belief that the legislation should be the centerpiece of the federal government's trust responsibility in the area of Indian fish and wildlife resources. In our view, H.R. 2874 provides that centerpiece by offering a flexible foundation for defining the trust responsibility and the government-to-government relationship in this area.

With respect to the "Findings" section of H.R. 2874, we are very pleased to see that the legislation contains a clear statement that the trust responsibility extends to all federal agencies and departments, and that, absent a clear expression of congressional intent to the contrary, federal fish and wildlife conservation laws must be administered in a manner consistent with Indian treaty rights. These findings are a statement of well-established judicial rules in this area, and their restatement is an important part of this legislation. This is also true of the finding concerning the role of the trust responsibility in interpreting federal statutes and regulations effecting Indian fish and wildlife resources and tribal resource management activities. Again, this is simply a statement of established case law.

Concerning the Section 4 "Definitions," we are generally pleased with these definitions and, in particular, support the definition of "resource management activities," which separates forest land management activities from fish and wildlife management activities. This distinction is important because it keeps H.R. 2874 from inadvertently overlapping with the National Indian Forest Resources Management Act (P.L. 101-630). H.R. 2874 is very much in the spirit of the Indian forestry act, as well as the proposed American Indian Agricultural Act (H.R. 1425), and it is important that congressional legislation defining the government's trust responsibility in these distinct areas of Indian resource management do not conflict with one another.

With respect to the Section 5 "Indian Fish and Wildlife Resource Management Program," we approve of the way that individual tribes are provided the option to contract with the Secretary of Interior through the Assistant Secretary for Indian Affairs to develop the Indian Fish and Wildlife Resource Management Program and Plan called for in the Act. We are especially pleased to see that H.R. 2874 provides for improved tribal enforcement of tribal and other laws governing the use and management of these resources. Earlier Senate drafts of this legislation proposed a federal police force that would enforce federal conservation laws on Indian lands. In our testimony before the Senate Select Committee on June 15, 1993, we objected to the imposition of a new federal law enforcement agency into our reservation and urged, instead, that the

legislation provide the opportunity for tribes to contract with the Secretary of Interior to improve their own enforcement capability with respect to tribal conservation laws and regulations. Happily, that is precisely what H.R. 2874 does.

One of our few criticisms of H.R. 2874 concerns the Section 7 "Indian Fish Hatchery Program." We are interested in this section because the U.S. Fish and Wildlife Service operates the Warm Springs National Fish Hatchery on our reservation. The language of this section is unclear as to whether the Tribe has the option of having the Fish and Wildlife Service turn over the hatchery to the Bureau of Indian Affairs. In our view, the decision to transfer an Indian fish hatchery operated by the U.S. Fish and Wildlife Service to the Bureau of Indian Affairs should be a tribal government decision, or a federal decision subject to tribal approval. We hope that section 7 will be changed to clearly express this tribal authority.

With respect to the Section 9 educational programs, we strongly support this aspect of the legislation. Warm Springs is a reservation rich in fish and wildlife resources. Moreover, because of our treaty-secured off-reservation fishing, hunting and other food gathering rights many of our young people are naturally inclined toward careers in fish and wildlife management. We think that the intern, cooperative education and scholarship programs set out in Section 9 will provide a much needed boost to those of our

young people who are considering a professional career in fish and wildlife management.

In addition, we have the following drafting and other specific comments concerning H.R. 2874:

Page 5, lines 8, 12, and 14: The words "an Indian" should be inserted in front of "fish hatchery" to comport with the definition of an "Indian fish hatchery" on page 4, line 25.

Page 6, line 7: The definition of "Indian land" only applies to trust and restricted lands, and not fee land inside the reservation. However, the term "Indian land" only appears on page 2, line 16, and in the education provisions on page 15, lines 23-24, and page 16, line 25.

Page 7, line 17: The definition of "treaty ceded territory" should indicate that treaty-reserved hunting, fishing and gathering rights are not necessarily restricted to a tribe's ceded territory. For example, with respect to off-reservation treaty fishing rights in the Pacific Northwest, these rights extend to "all usual and accustomed" fishing places, even if those places are located outside of a tribe's treaty ceded territory.

Page 8, line 9: The language of this section appears to limit Secretarial protection, as well as conservation and enhancement

activities, to fish and wildlife resources deemed "important" to tribes. Was that the intent? Could such a limitation be interpreted as a restriction of the trust? Who is responsible for determining which resources are "important" and which are not?

Page 10, line 19 through page 11, line 16: This section contains a specific listing of the purposes for which the Secretary is authorized to provide technical assistance money to tribes for fish and wildlife management. Technical assistance projects which do not fall within this listing would not be eligible for funding. Perhaps the language should be expanded to encompass a broader range of projects.

Page 11, line 19: This language refers to "an Indian fish and wildlife resource management plan" in the singular, as if it is to be a single, perhaps national plan. However, as depicted in the remainder of the subsection and noted on page 13, line 1, where "fish and wildlife management plans" (plural) are mentioned, separate management plans are to be developed for various tribes. This should be clarified.

Page 12, line 5: "implementation to plan" is grammatically incorrect and should read "implementation of a plan," and perhaps adding "for that tribe."

Page 13, line 2: Management plans are to be "approved," but the bill does not say by whom or under what circumstances. Presumably, the intention is that the Secretary is to approve these plans. This should be clarified.

Page 13, line 18: A comma should be inserted between "fish" and "to."

Page 15, lines 23-24: The purpose of the education program is to get more Indian professionals serving the fish and wildlife needs of tribes. That is why the obligated service for internship recipients is limited to U.S. Fish and Wildlife Service activities "serving or benefiting Indian lands." Yet, the cooperative education program on page 17, line 6, and the scholarship program on page 17, line 19, fail to require Indian-related service when doing obligated service with U.S. Fish and Wildlife Service under these programs. This is contrary to the purpose of the education section of the bill. Similarly, in postgraduate recruitment on page 18, line 15, Indian-related service is not required when an Indian is recruited into the U.S. Fish and Wildlife Service in exchange for payment of scholastic expenses.

Page 18, line 12: The postgraduate recruitment effort should be directed to Indian professionals in all fish and wildlife related fields, and not just biologists, as the provision now reads.

In summary, we support H.R. 2874 as an excellent statutory framework for definition and implementation of the federal government's trust responsibility to Indian tribes in the area of fish and wildlife resource management. The legislation is flexible enough to accommodate individual tribal choices with respect to how certain aspects of the trust responsibility should be carried out, as well as permitting further definition of the trust responsibility and additional programs through future statutory enactments. Accordingly, we commend the Committee and its staff for their work in developing this legislation, as well as their careful and thoughtful consultation with the Warm Springs tribal government in the development of this bill. We urge the Committee to approve this legislation, with the suggestions we have made, and pass it on to the full House for action.

Thank you.

Mr. RICHARDSON. We will now hear from the Hon. Harrison Talgo.

Mr. Chairman, welcome.

STATEMENT OF HARRISON TALGO, SR.

Mr. TALGO. Thank you. Mr. Chairman, my name is Harrison Talgo, Sr. I am the Chairman of San Carlos Apache Tribe of Arizona. I have submitted a statement for the hearing record which I will summarize now.

H.R. 2874 focuses attention on one of the most neglected subjects of Federal trust management of Indian lands and their resources. I thank you for sponsoring the measure.

Your interest in these matters and longstanding commitment to a better day for Indian tribes in New Mexico and the Nation are deeply appreciated. I welcome this opportunity to testify in strong support of H.R. 2874 and to suggest certain changes.

The San Carlos Apache Reservation consists of more than 1.8 million acres of land in eastern Arizona. We invite you to visit our homeland. We will show you one of the most diverse biological communities in the United States.

Enactment of H.R. 2874 will enable us to greatly improve the management of our fish and wildlife resources since it is based on the conviction that the only sure path to enhancing fish and wildlife management on Indian lands is through the Indian people themselves, who are the first trust stewards of these lands.

Section 5(a) of H.R. 2874 directs the Secretary of the Interior to conduct the Department's management of Indian fish and wildlife resources in accordance with five objectives. These objectives are consistent with the San Carlos Apache Tribe's own management objectives.

However, we recommend that a sixth objective be added to section 5(a).

That objective should be to manage Indian fish and wildlife resources in accordance with standards at least as high as those of other Federal land management agencies and to provide the human and financial resources necessary to attain those standards.

Past funding for wildlife management activities is too low to meet reasonable standards. The Bureau of Indian Affairs funding for fiscal year 1993 provides \$28 million for wildlife and parks. Of the Interior \$28 million, less than 2 percent is available for management of big game and bird population of approximately 51 million acres of trust land. This works out to less than 2 cents per acre.

It is our understanding that other land management agencies of the Federal Government with comparable land and wildlife resources spent as much as 10 times more money on wildlife management per acre than the BIA makes available for management on San Carlos Apache Reservation.

We recommend that section 5(b) be amended by adding a new paragraph to require the Secretary to transmit a needs report to Congress detailing the financial and personnel resources necessary to achieve the objectives specified in section 5(a).

Section 5(e) requires that an Indian fish and wildlife management plan be developed and implemented to meet the objectives of

section 5(a). It provides that if a tribe elects not to develop its own plan, then the Secretary, in close consultation with the affected tribe, must develop and implement a management plan.

Here in section 5(e) we recommend that the Secretary's discretion be tempered with statutory language requiring that any management plan developed by the Secretary must be consistent with tribal objectives and afford a tribe the right and opportunity to challenge the Secretary's plan.

We are concerned that pressures from within and without the Interior Department could result in Secretarial plans that may not be in the best interest of Indian tribes. In this regard, we are also concerned that the language in this section regarding public meetings could have the unintended result of vast Indian parties that are neither tribal nor Federal having a statutory interest in conduct of on-reservation fish and wildlife activities.

Section 7 deals with the needs of tribal hatchery facilities. It is our understanding that it is intended to cover only existing tribal facilities. My tribe and others in the Southwest hope to obtain funds to construct new facilities. We suggest that this section be amended to cover new facilities.

As the former director of the San Carlos Apache Head Start program, I especially welcome the provisions of section 9 relating to education in fish and wildlife resource management.

Mr. Chairman, this concludes my testimony. I appreciate the opportunity, and I thank you.

[Prepared statement of Mr. Talgo follows:]

THE SAN CARLOS APACHE TRIBE

San Carlos Avenue
P.O. Box 0
San Carlos, Arizona 85550
(602) 475-2361
Fax (602) 475-2567

Harrison Talgo, Sr.
Tribal Chairman



Raymond Stanley
Tribal Vice Chairman

STATEMENT OF HARRISON TALGO SR, CHAIRMAN, SAN CARLOS APACHE TRIBE, REGARDING H.R. 2874, THE INDIAN FISH AND WILDLIFE RESOURCE ENHANCEMENT ACT OF 1993, BEFORE THE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS, COMMITTEE ON NATURAL RESOURCES.

OCTOBER 5, 1993

Mr. Chairman, my name is Harrison Talgo, Sr. I am Chairman of the San Carlos Apache Tribe of Arizona. H.R. 2874, the Indian Fish and Wildlife Resource Enhancement Act of 1993, focuses attention on one of the most neglected subjects of Federal trust management of Indian lands and their resources. I thank you for sponsoring the measure. Your interest in these matters and long-standing commitment to a better day for Indian tribes in New Mexico and the Nation are deeply appreciated.

On February 18 of this year, I appeared before this subcommittee to comment on problems encountered by the San Carlos Apache Tribe in its efforts to manage its wildlife populations for the protection of endangered and threatened species, for subsistence hunting by members of the Tribe, and for sports hunting by visitors to our Reservation. I welcome this opportunity to testify in general support of H.R. 2874 and to propose certain changes.

The San Carlos Apache Reservation consists of 1,800,000 acres of land in eastern Arizona. Our land varies in elevation from 1,900 to 8,300 feet above mean sea level. This corresponds with plant communities varying from the lower Sonoran desert to mixed conifer forest. We invite you to visit our homeland. We will show you one of the most diverse biological communities in the United States. About 75 species of mammals and 250 species of birds are found, including ten big game species, eight small game species (not including waterfowl), and dozens of neo-tropical bird species. Of special importance, our Reservation is the home of six species which are listed, or are candidates for listing, as endangered or threatened under the Endangered Species Act. These species are: the bald eagle; peregrine falcon; Mexican

spotted owl northern goshawk, Mohave desert tortoise, and the Gila topminnow.

Enactment of H.R. 2874 will enable us to greatly improve the management of our fish and wildlife resources.

Section 5(a) of H.R. 2874 directs the Secretary of the Interior to conduct the Department's management of Indian fish and wildlife resources in accordance with five exemplary objectives. These objectives are comprehensive in scope and acknowledge the cultural, traditional, and economic values, including subsistence, of the fish and wildlife resources on Indian lands and waters. They are consistent with the San Carlos Apache Tribe's own management objectives as developed by the Tribal Council and the Tribe's own Recreation and Wildlife Department.

The bill's objectives also recognize the Federal trust obligations to Indian tribes with respect to hunting, fishing, and gathering rights guaranteed by the United States through treaties, statutes, and court orders. The objectives include the development or enhancement of the tribes' own capacities to manage Indian fish and wildlife resources, consistent with the Federal and tribal policy of Indian self-determination and the government-to-government relationship between the tribes and the United States. And the objectives acknowledge the importance of integrated resource management in order to protect and maintain other values such as Indian forestry and agricultural values.

The San Carlos Apache Tribe recommends that a sixth objective be added to section 5(a). That objective should be--
To manage Indian fish and wildlife resources in accordance with standards at least as high as those of other Federal land management agencies and to provide the human and financial resources necessary to attain those standards.

We would expect that other provisions of the legislation would result in an assessment of reservation needs and the development and implementation of plans to meet this sixth objective.

Past funding for wildlife management activities has been nowhere near adequate to meet reasonable standards. The Bureau of Indian Affairs funding for FY 1993 provides \$28 million for Wildlife and Parks. Of this amount approximately two-thirds is dedicated for use off-reservation in connection with treaty fishing-rights obligations, chiefly in the Northwest and Great Lakes regions. Of the remaining \$9.5 million, \$2.5 million is for tribal hatchery O&M, leaving \$7.0 million for Tribal Management/Development Programs (TMDP). TMDP funds are available, under 638 contracts, to enable tribes to: develop codes, ordinances, and regulations for conserving fish and wildlife resources on millions of acres of trust land; develop the multi-disciplinary competence and professional expertise of tribes and intertribal fish and wildlife organizations; create job- and income-producing programs; and manage public use and tourism. Of the entire \$28 million, less than 2% is available for management of big-game and bird populations on approximately 51 million acres of trust land. This works out to less than 2 cents per acre. The way the BIA structures its budget obscures the fact that very little of its

wildlife and parks funding goes to on-reservation wildlife management. We suggest that the Subcommittee consult with the BIA to arrive at a budget structure that more clearly displays how its funds are deployed to meet its several important on-reservation missions and to the extent feasible distinguish funding for fish, on the one hand, and all other species, on the other.

The San Carlos Apache Tribe receives \$65,000 of TMDP funds for wildlife management on its 1.8 million-acre Reservation (the fourth largest in the nation) or about 3 1/2 cents per acre. The Tribe also has allocated approximately \$55,000 of other BIA funds to wildlife management at the cost of reduced funding for programs under the BIA's tribal priority system for allocation of appropriated funds. As a measure of the Tribe's concern for its wildlife resources, it contributes about \$696,000 of its Tribal funds, although it is one of the most impoverished tribes in the nation. The Tribe's wildlife funding needs and management structure are described in the statement of the San Carlos Apache Recreation and Wildlife Department which I furnished to the Subcommittee at its February 18 hearing and submit again for the files of this hearing.

It is our understanding that other land management agencies of the Federal government with comparable land and wildlife resources spend as much as 10 times more money on wildlife management per acre than the BIA makes available for management on the San Carlos Apache Reservation. We suggest that the Subcommittee ask the Department of the Interior and Forest Service to provide figures on comparative levels of funding.

We believe the primary source of Federal funds for tribal wildlife management should be the same source that provides funds for other Federal land management agencies--appropriated funds from the Treasury.

Section 5(b) of H.R. 2874 directs the Secretary to establish the Indian Fish and Wildlife Resources Management Program in order to achieve these objectives. We recommend that section 5(b) be amended by adding a new paragraph to require the Secretary to transmit a Needs Report to Congress detailing the financial and personnel resources necessary to achieve the objectives specified in section 5(a), as amended to include the standards provision we suggest above.

Section 5(c) outlines, for illustrative purposes, some of the management activities which may be carried out under this program. We are pleased to see included as one of these activities "participation in joint or cooperative management [of] fish and wildlife resources on a regional basis with Federal, State, Tribal, and local authorities." Our Reservation is adjacent to vast areas of land under the jurisdiction of the U.S. Forest Service and the Bureau of Land Management.

Section 5(d) authorizes the Secretary to provide financial and technical assistance to enable Indian tribes to: revise tribal codes, ordinances, and regulations governing tribal fish and wildlife resource protection and use; assess the need for tribal professional personnel to administer Indian fish and wildlife resource management programs; provide training to these

personnel; and determine the condition of Indian fish and wildlife resources.

Section 5(e) requires that an Indian fish and wildlife management plan be developed and implemented to meet the objective of section 5(a). A tribe may develop its own plan, pursuant to a self-determination contract or self-governance compact. If a Tribe elects not to, then the Secretary, in close consultation with the affected Tribe, must develop and implement a management plan.

Here, in section 5(e), we recommend that the Secretary's discretion be tempered with statutory language that requires that any management plan developed by the Secretary must be consistent with tribal objectives and afford a tribe the right and meaningful opportunity to challenge the Secretary's plan when, in the judgement of the affected tribe, the plan is not consistent with tribal values and goals. We are concerned that pressures from within and without the Interior Department could result in Secretarial plans that may not be in the best interests of Indian tribes, might impair their sovereignty, and could weaken the Federal trust responsibility.

In this regard, we are also concerned that the language regarding public meetings in section 5(e)(v) and 5(e)(vi) could have the unintended result of vesting in parties that are neither tribal nor Federal a statutory interest in the conduct of on-reservation fish and wildlife activities.

Section 7 establishes an Indian Fish Hatchery Program within the Bureau of Indian Affairs to produce and distribute to Indian tribes a variety of species of fish and to assist tribes to develop tribal hatcheries and enhance fish resources on the reservation. We suggest the program purpose in section 7(a) be broadened to include the distribution of fish to Federal, State, and local agencies. Section 7(b) calls for a Needs Report to Congress to identify the maintenance, rehabilitation, and construction needs of tribal hatchery facilities. It is our understanding that the language of section 7 is intended to cover only existing tribal facilities. My Tribe and others in the Southwest hope to obtain funds to construct new facilities. We suggest sections 7(a) and (b) be amended to cover new facilities.

Income and employment from fishing activities on San Carlos Lake are vital to our economy. The lake is stocked by fish produced at a Fish and Wildlife hatchery, and we support the continuation of this service. In cooperation with the Fish and Wildlife Service, the Tribe has developed plans and a budget for a tribal warm-water hatchery at Talkalai Lake. The proposed new hatchery would produce and distribute species of fish other than those produced by the Fish and Wildlife hatchery and would serve lakes and streams on our Reservation and throughout the region. We will furnish a copy of our proposal.

We wholeheartedly endorse the provisions of section 9 relating to Education in Fish and Wildlife Resource Management. The importance of such targeted education programs has been convincingly demonstrated by the education provisions of the Indian Health Care Improvement Act.

Mr. Chairman, this concludes my testimony. Thank you.

Mr. RICHARDSON. The Hon. Julia Davis. It's nice to see you again.

STATEMENT OF JULIA DAVIS

Ms. DAVIS. Thank you. Good afternoon. Taasts haluxpt. That means good afternoon in Nez Perce. As you know, my name is Julia Davis. I am vice chairperson of the Nez Perce Tribe.

I commend the committee for their leadership in taking the initiative in developing this legislation to improve the management of Indian fish and wildlife resources on Indian lands.

I welcome the opportunity to testify before this committee in support of H.R. 2874.

We have submitted written testimony and what I would like to do at this time is just summarize. I was looking through the bill, section-by-section and the Nez Perce Tribe is encouraged that H.R. 2874 is promoting the government-to-government relationship regarding the consultation of tribes.

I think that is a very important part in the bill and I think all the tribes are in agreement with that, and promoting the Indian self-determination. The development enhancement of the capacity of Indian tribes to manage Indian fish and wildlife resources is very, very important.

The funding issue regarding the development and enforcement of tribal codes is crucial not just to the Nez Perce, but to many other tribes as well. This is in section 5(c).

The Nez Perce Tribe has been working diligently on updating the law and order code and to see the wording to provide financial and technical assistance to Indian tribes to review and revise existing tribal codes and ordinances regarding the management of fish and wildlife is very refreshing.

It is something that we have been looking for for a long time. It has been a long time coming. We have asked many different agencies for help regarding this, getting our tribal law and order codes updated.

The Nez Perce is very supportive towards section 7 regarding the establishment of Indian fish hatchery program within the Bureau of Indian Affairs, and to assist the development of tribal fish hatcheries.

I think as the tribes in the Northwest, not just the Nez Perce, we have been looking for assistance from Federal agencies, whether it be BPA or whoever, on getting fish hatcheries established on our reservations.

We, as one of the tribes, have been working the past five years with the Bonneville Power Administration, and we have constantly run into barriers. No, there is no funding there, and it has been very discouraging for the tribe to be constantly told, no, we can't do it this year, maybe next year.

I attended what they call it a CFWA meeting, Columbia Fish and Wildlife meeting, and at that time we were discussing fish hatcheries. The Nez Perce Tribe was very adamant in our position that they help us in trying to get a fish hatchery established on the reservation.

We are still working on that, but it is so good to see that finally through this bill that something is going to be written in there.

I also agree with the gentleman from San Carlos. We fully support the cooperative education program for the BIA to recruit Indian students for employment as professional fisheries and wildlife biologists. This is a very crucial part of the Indian tribal government goal of having your own people come back and work with your programs.

We have established a student intern program within our fisheries department, and that has been working very, very well. We went out on a helicopter tour this past summer and saw some of our interns out working in the streambeds. It really made us feel good as tribal leaders to see that they were working for the tribe and learning more from the wildlife.

The final comment I would like to make is on the section 10. Section 10 requires the Secretary to promulgate final regulations implementing this act within 18 months. I think this is excellent, and you also have in there full and active participation of Indian tribes. I can't emphasize enough how important that is to have the tribes involved.

Thank you.

Mr. RICHARDSON. Thank you, very much.

[Prepared statement of Ms. Davis follows:]



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

P.O. BOX 305 • LAPWAL, IDAHO 83540 • (208) 843-2253

TESTIMONY OF
 JULIA DAVIS, VICE CHAIRPERSON
 NEZ PERCE TRIBAL EXECUTIVE COMMITTEE

Before the
 Native American Affairs Sub-Committee
 October 8, 1993
 on the

"Indian Fish and Wildlife Resource Enhancement Act of 1993"

Good afternoon, Chairman Richardson. My name is Julia Davis, Vice Chairperson of the Nez Perce Tribal Executive Committee. On behalf of the Nez Perce Tribe of Idaho, I commend the chairman and the committee for their leadership in taking the initiative in developing this legislation to improve the management of Indian fish and wildlife resources on Indian lands. I welcome the opportunity to testify before this committee in support of HIR 2874.

Tribal Background

The Nez Perce Tribe had exclusive use and occupancy on over thirteen million acres of land in what is now north central Idaho, southeastern Washington state, and northeastern Oregon. In addition to these lands, the Nez Perce people extended their hunting, fishing, trading, and gathering westward down the Columbia River and eastward into Montana.

We depended on the land and its creatures for physical and spiritual sustenance. Our daily activities reflected our understanding and relationship with the natural cycles of the land and river's fish, wildlife and plants.

In our 1855 and 1863 treaties - we ceded to the U.S. government a vast portion of our land leaving a reservation of 750,000 acres, of which only 12 percent is currently held by the Nez Perce Tribe and individual tribal members. In the 1855 treaty we reserved the right to hunt, gather and pasture livestock on open and unclaimed lands and to take fish at all usual and accustomed places outside our reservation.

Comments

With a diminished land base and a vast treaty area, this legislation is vital to supporting our continual struggle to affirm our authority on our reservation and affirm the U.S. government's trust responsibility throughout our treaty area. In addition, the bill will elevate the status of fish and wildlife management and begin to put it in on par with other natural resource programs.

The Nez Perce Tribe is not simply another "interested party." In addition to the provisions contained in our treaty we have also demonstrated we have the scientific and technical capabilities to be wise resource managers. However, at times we face barriers in dealing with the state and federal agencies as a co-manager of the regions resources. We support the language recognizing our rights as it will strengthen our ability to bring our expertise to the table to resolve critical issues impacting our fish and wildlife resources.

Under "Section 6 Tribal Consultation", the Secretary is required to consult and seek participation of tribes when departmental action affects their resources. However, under Finding 2 it is recognized that the trust responsibility and government to government relationship extends to all federal agencies. Therefore, we encourage the Committee to include all federal agencies actions and not just those actions in the Department of Interior.

The Nez Perce Tribe has already shown leadership in managing their wildlife and fish resources. The Indian Fish Hatchery Program can extenuate our existing efforts in helping to restore fish populations. To enhance our efforts we need operation and maintenance support that will

be provided by this legislation to improve fish and wildlife habitat, and focus efforts on the critical areas associated with the diminishing fish and wildlife populations. In addition, this will improve our monitoring and evaluation efforts as well as assist us in coordinating with other fish and wildlife managers of other tribes in Oregon and Washington state as well as state and federal managers.

Summary

The Nez Perce Tribe appreciates the opportunity to offer our views on this legislation to improve the management of Indian fish and wildlife resources on Indian lands. We offer our commitment to you to establish and maintain a healthy population and habitat for the fish and wildlife resources that we all enjoy in our region.

Mr. Chairman, thank you again for this opportunity to appear before your committee and for your well recognized efforts on behalf of Native Americans.

Mr. RICHARDSON. Mr. George Dupuis.

STATEMENT OF GEORGE DUPUIS

Mr. DUPUIS. Good afternoon. My name is George Dupuis, vice chairman of the Fond du Lac Reservation. I do appreciate the time that was given here for oral testimony. I realize you do have written testimony up there, and I would reserve my time and turn it over to the next member.

Mr. RICHARDSON. Thank you.

[Prepared statement of Mr. Dupuis follows:]

Fond du Lac Reservation Business Committee

105 University Road,
Cloquet, MN 55720
Phone (218) 879-4593
Fax (218) 879-4146

October 5, 1993



Chairman
Robert B. Pesock

Secretary/Treasurer
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Dist. I Councilman
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Dist. II Councilman
Herman Wise

Dist. III Councilman
George Dupuis

Executive Director
L. Jean Mulder

U.S. House of Representatives
Subcommittee on Native American Affairs
Committee on Natural Resources

Re: Written Testimony on the Indian Fish and Wildlife Resource Enhancement Act of 1993
(H.R. 2874)

Mr. Chairman, Members of the Committee, my name is George Dupuis. I am Vice Chairman of the Fond du Lac Band of Lake Superior Chippewa. I wish to express my appreciation for this opportunity to present our testimony on the Indian Fish and Wildlife Resource Enhancement Act of 1993 (H.R. 2874), to the Subcommittee on Native American Affairs of the House Committee on Natural Resources.

The Fond du Lac Reservation is a sovereignty, created by the Treaty of September 30, 1854, 10 Stat. 1109. The Fond du Lac Band of Lake Superior Chippewa is one of three Chippewa Bands which retain specific Treaty rights within the territory ceded by the Treaty of 1854. We are also one of six bands within the Minnesota Chippewa Tribe. The Fond du Lac Reservation is a member of the Great Lakes Indian Fish and Wildlife Commission and the Native American Fish and Wildlife Society. Our Reservation is located about 20 miles west of Duluth, Minnesota, and encompasses about 100,000 acres. There are presently some 4,200 Fond du Lac Band Members.

The Indian Fish and Wildlife Resource Enhancement Act of 1993 is an important Act which reaffirms the trust responsibility of the United States to "protect, conserve, and enhance the Indian fish and wildlife resources". The Fond du Lac Reservation is committed to the protection and enhancement of the Fond du Lac Bands fish and wildlife resources. The Fond du Lac Conservation Enforcement Department, Natural Resources Program, Forestry Program, Ceded Territory Conservation Enforcement Program, and the Ceded Territory Fisheries Biologist are professionally staffed conservation enforcement and natural resource management programs which protect and manage the fish and wildlife resources of the Fond du Lac Band. The Fond du Lac Community College is a Tribal college which is planning to expand its current capabilities in educating Native American students in the natural sciences and natural resource protection and management. This Act would assist Tribes in their efforts to better manage the natural resources that are so important to the Native American culture and livelihood. The recognition, in Sec. 2, Finding (5), that "Indian tribes have jurisdiction over Indian and non-Indian hunting and fishing activities on Indian reservations and function as comanagers with tribal, States, and Federal authorities to carry out shared management responsibilities for fish and wildlife resources arising from treaties, statutes, or court orders;" is very important to the Fond du Lac Band to protect the fish and wildlife resources of the Band. In order to strengthen and improve the Act to accomplish its full potential, we offer the following additional comments and recommendations.

The House bill clearly reaffirms the Indian hunting, fishing, and gathering rights, and supports and strengthens the Tribal conservation enforcement and natural resource management programs. When implemented, this Act will improve the protection and enhancement of these resources, so that these rights can be exercised in a meaningful way. The establishment of an Indian Fish and Wildlife Resource Management Program within the Bureau of Indian Affairs (BIA), which would include conservation enforcement, is the proper way to manage these programs which have basically the same goals and objectives. The emphasis within the bill on Education in Fish and Wildlife Resource Management is good, however it could be expanded, and we will be suggesting some specific recommendations on this concern.

Section 2, Findings: The reaffirmation of trust responsibility of the United States "to protect, conserve, and enhance the Indian fish and wildlife resources" is clearly stated, and it is proper that it extends to all Federal agencies. The rest of Section 2 is well constructed, except for the following recommended changes.

- The proposed Finding (4) should begin with the following wording in addition to the existing text, and would then become Finding (1):

Since time immemorial Indians have developed cultures, religious beliefs and customs around their relationships with fish and wildlife resources, and have relied on these resources for food, shelter, clothing, tools and trade.

This language expresses the relationship that Native Americans have with the natural world, and is the wording contained within the draft Senate bill. This would renumber the other Finding accordingly.

- The proposed Finding (2) should have the words "fish and wildlife conservation" from lines 8 and 9 of page 2 deleted, so that the text would read as follows on lines 5 through 10:

... This trust responsibility extends to all Federal agencies and departments and absent a clear expression of congressional intent to the contrary, the United States has a duty to administer Federal laws in a manner consistent with the treaty rights of Indian tribes;

Trust responsibility is a broad based responsibility and should be consistently interpreted by Congress in its broadest terms. The statement is clear in that trust responsibility extends to all Federal agencies. There are many Federal laws that have an affect on the protection and management of natural resources, and therefore all Federal laws should be administered to be consistent with our treaty rights.

- The proposed Finding (5) is a very important statement which clarifies and confirms that:

"Indian tribes have jurisdiction over Indian and non-Indian hunting and fishing activities on Indian reservations and function as comanagers with tribal, States, and Federal authorities to carry out shared management responsibilities for fish and wildlife resources arising from treaties, statutes, or court orders;"

The language in this statement will help clarify this government to government relationship and the wording should not be changed. The language in Finding (6) is also appropriate and will affirm the support needed to carry out the conservation enforcement and natural resource management.

Section 4 Definitions This section is generally well written and helps clarify these important terms, although there are some important definitions which need clarification.

- The proposed Definition (8) regarding "Indian Land" should have the words "and is subject to restrictions against alienation" deleted. Therefore, line 11 on page 6 should read:

(B) an Indian or Indian tribe

This will ensure that tribes have primary control of the natural resources within their jurisdiction.

- The proposed Definition (11) which defines the term "integrated resource management plan" states that these plans, or IRMP's, will "provide identified holistic management objectives". This term, holistic management objectives, should be defined in order to clarify this term as we understand it. We offer the following definition: Holistic management objectives will be developed using the Indian cultural values and scientific understanding of the ecosystem approach. The objectives should be determined in keeping with the traditional Indian beliefs which recognizes and understands the need to honor and protect the integrity of ecosystems, the importance of preserving the biodiversity of fish and wildlife species, and the need for protecting and properly managing the aquatic and terrestrial ecosystems, which the fish and wildlife, and we, need to survive. Therefore, holistic management objectives should be based on these cultural values and scientific principles.

The natural resources, as well as our cultural traditions and values, have been taken from us or are often mismanaged to provide the raw materials for "progress". That is why the tribes need as much latitude as possible in determining these "holistic management objectives", based on cultural values as well as scientific knowledge, which now confirms the wisdom of the cultural values of our ancestors. This understanding must not be underestimated. A scientific and anthropological study, presented to the American Association for the Advancement of Science some years ago, compared and examined the environmental impacts of various cultures that have developed on the earth. The study determined that the "hunter / gatherer" culture, such as that of our ancestors, was the only culture that could survive indefinitely, without destroying the ecosystems and depleting the natural resources of this planet. We should realize the wisdom of our ancestors and learn how to protect and better manage these essential and finite natural resources. Hopefully, this Act will help us work together to accomplish this worthy goal.

- The proposed Definition (11) regarding "integrated resource management plans" should have the following additional wording, "cultural values, biodiversity", included on line 4 of page 7. Definition (11) should also have the words "traditional wild crops and medicinal plants" inserted in line 6 of page 7, and would read as follows:

(11) The term "integrated resource management plan" means the plan developed pursuant to the process used by tribal governments to assess available resources and to provide identified holistic management objectives that include quality of life, cultural values, biodiversity, production goals, and landscape descriptions of all designated resources that may include (but not be limited to) water, fish, wildlife, forestry, traditional wild crops and medicinal plants, agriculture, minerals, and recreation, as well as community and municipal resources, and may include any previously adopted tribal codes and plans related to such resources.

The proposed Definition (6) as worded would include wild rice, which is an important naturally occurring plant in our region. We feel that the addition of the above terms is necessary to stress the importance of these traditional wild crops and medicinal plants. Wild rice lakes in our region are declining and need extraordinary management efforts to maintain or restore them. Other wild crops and traditional medicinal plants do not receive the protection they deserve either.

- The proposed Definition (12) states that "forest land management activities" shall not be included in "resource management activities". We understand why this language is used, but it should be clarified that wildlife management and other natural and cultural resource management must be considered in planning and carrying out forest activities. This also fits within our understanding of holistic management objectives.

Section 5 Indian Fish and Wildlife Resource Management Program

This section confirms that the "Secretary shall provide for management of Indian fish and wildlife resources" under the "provisions of the Indian Self-Determination and Education Assistance Act (Public Law 93-638)". This section is well written except that this Act should be referred to in this bill by the U.S. Code cite of 25 U.S.C. Sect. 450 *et seq*. This would include all the amendments to the Act. The other minor changes are:

- The proposed Sec. 5(a)(1) should have the words integrity of the ecosystem, biodiversity, inserted into the text on line 10 of page 8. This is necessary to make a broader and more appropriate range of considerations regarding natural resource protection and management.
- The proposed Sec. 5(a)(4) should have the words "selectively develop and" and "certain" deleted, in order to make the meaning more clear, while still retaining the intent of the passage. It would then read:

(4) To increase production of fish and wildlife resources in order to provide for the subsistence, economic, and employment needs of Indian tribes.

- The proposed Section 5(b) confirms the authority for the Dept. of Interior to establish an "Indian Fish and Wildlife Resource Management Program", however we feel that a large bureaucracy should not be developed to administer this Program. In order to avoid this pitfall we recommend the following additional language (underlined) in this section:

The Secretary, full consultation with Indian tribes, shall establish the Indian Fish and Wildlife Resource Management Program in order to achieve the objectives set forth in subsection (a). The Secretary shall efficiently administer this Program in a manner that maximizes the transfer of financial resources to tribal fish and wildlife resource management programs.

- The proposed Section 5(c) Management Activities, should include language which covers the essential management activities of: fisheries and wildlife population and habitat protection and enhancement projects, carried out by tribal natural resource and conservation enforcement programs. This should be included as item Sec. 5(c)(7), and would be included as follows:

(7) conducting fisheries and wildlife population and habitat protection and enhancement projects, carried out by tribal natural resource and conservation enforcement programs.

- The proposed Section 5(d) Assistance, should have language which clearly establishes that assistance will be provided for the many fish and wildlife population and habitat protection and enhancement projects that are conducted and need to be developed for tribal natural resources. In order to accomplish these tasks we recommend that a clause Sec. 5(d)(6) be established to provide for consistency and adequacy of support for these program functions. The wording could be as follows:

(6) for conducting fish and wildlife population and habitat protection and enhancement projects by tribal natural resource and conservation enforcement programs.

- The proposed Section 5(e)(1)(B) under the Indian Fish and Wildlife Resource Management Plans, the words and by approval of, so that the text reads:

(B) If a tribe chooses not to contract the development or implementation to plan, the Secretary shall develop or implement the plan in close consultation with, and by approval of, the affected tribe.

This is essential in order for tribes to have the right of sovereign control over their natural resources.

- The proposed Section 5(e)(2) on page 13, should have the words upon review and authorization by the tribal resource and tribal government. This statement would read as follows:

(2) Indian fish and wildlife management plans developed and approved under this section shall govern the management and administration of Indian fish and wildlife resources by the Bureau and the Indian tribal government, upon the review and authorization by the tribal natural resource program and tribal government.

This is necessary again for tribal government to have plans reviewed by their own natural resource programs and to have final authorization of these important management plans.

Section 9. Education in Fish and Wildlife Resource Management

This Section is very timely and much needed to increase our efforts at having well educated staff for our conservation enforcement and natural resource programs. The Fond du Lac Reservation has a very accomplished and renowned Tribal college, the Fond du Lac Community College, in Cloquet, Minnesota. We strongly recommend that in Section 9 (a)(4)(b) Cooperative Education Program the following wording be included on line 17, page 16:

, and to assist tribal community colleges develop curricula and programs for natural resource, environmental, and conservation enforcement education and training.

I wish to thank the Chairman and the Committee Members for this opportunity to present this testimony on this important Act.

Mi gwtich

Mr. RICHARDSON. Chairman Billy Frank.

STATEMENT OF BILL FRANK, JR.

Mr. FRANK. Okay. Thank you, Mr. Chairman. I am going to keep mine short.

I am Bill Frank, chairman of the Northwest Indian Fish Commission, in the great Northwest, and we are here to support H.R. 2874. I second the people before me on their testimony, but I also want to commend you and your committee because we were here last February and testified, and you heard us. Your people heard us, and they put it in writing, and it is very close to all of us throughout our Nation as you hear the testimony.

A lot of this trust responsibility, the government-to-government, the education, we know we are short on funding. We need to work on that, but this gets us down the road in recognition, and it is good to hear the Bureau of Indian Affairs supports this bill. We are happy to be here testifying today and thank you, Mr. Chairman, and your staff.

Mr. RICHARDSON. Thank you very much, Chairman Frank.

[Prepared statement of Mr. Frank follows.]



Northwest Indian Fisheries Commission

Phone (206) 438-1180
FAX #753-8659

6730 Martin Way E., Olympia, Washington 98506

Phone (206) 753-9010
FIS #434-9476

**TESTIMONY
OF BILL FRANK, JR.
CHAIRMAN
OF THE
NORTHWEST INDIAN FISHERIES COMMISSION
BEFORE THE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
OF THE
HOUSE NATURAL RESOURCES COMMITTEE
ON H.R. 2875, THE INDIAN FISH AND WILDLIFE RESOURCE
ENHANCEMENT ACT OF 1993**

INTRODUCTION

On behalf of the member tribes of the Northwest Indian Fisheries Commission, I am pleased to come before the Committee to discuss the Indian Fish and Wildlife Resource Enhancement Act of 1993. My name is Bill Frank, Jr., and I am Chairman of the Commission. We are very happy that the Committee has prioritized this bill for action and we look forward to working with you as this legislation develops.

In February, we came before the Committee and presented comprehensive testimony on the need for federal legislation which supports Indian fishing, hunting and gathering rights. We stressed the need for tribal recognition and the federal trust responsibility to the tribes. We told you of the legal basis for tribal management of the resource. We also spoke of the contentious past history of resource management in the Pacific Northwest and more recently of the great strides being made in cooperatively managing the resources today.

You heard our story, and have responded with draft legislation that furthers tribal management capabilities and recognizes many of the federal obligations and responsibilities to the tribes in the area of fish and wildlife management. You are to be commended for your vision.

SECTION ANALYSIS AND COMMENTS

My comments will be brief, and will focus on some changes that will strengthen the bill. Overall, it appears that the bill, as developed, meets our basic interests. It appears to be focused, not too expansive, and clean of miscellaneous provisions that it has a reasonable

focused, not too expansive, and clean of miscellaneous provisions that it has a reasonable chance to be approved. That is good, and we appreciate that this is a serious attempt to craft legislation that is reasonable and prudent.

SECTION 2. FINDINGS

We applaud the recognition of the special government-to-government relationship with the tribes and the federal government. The recognition of the trust responsibility to protect, conserve and enhance Indian Fish and Wildlife resources consistent with a fiduciary trust is also an all important concept for the federal government to assert. Such trust must also extend to the related habitats of these species. We have seen in the Pacific Northwest that recognition of the trust responsibility and tribal governmental status are powerful tools that affirm tribal co-management authority and which can assist all the affected parties in better managing the resource and the habitat which it depends upon.

SECTION 3. PURPOSES

We concur in the purposes of the act, notably the requirement to reaffirm and protect Indian hunting and fishing rights and the need to maximize tribal capability and flexibility in managing affected resources. We also support the establishment of an educational assistance program and feel such a program will benefit tribal country with improved resource management.

SECTION 5. INDIAN FISH AND WILDLIFE RESOURCE MANAGEMENT PROGRAM

We support the management objectives included in this section. However, as noted above, we again suggest that protection of the habitat which the fish and wildlife species depend upon is also a critical objective of any Indian management program.

We also support the provision requiring the contracting of any program within the Department of Interior, provided however that the affected tribe or tribal organization concur with that decision. All too often federal agencies have hid behind internal rules and procedures and have denied contracting opportunities with tribes and tribal organizations. This provision makes clear the ability and intent of the Department to contract with the tribes, and should be seen as a major cornerstone of the bill.

We believe that Subsection 5 (d) Assistance could be strengthened if actual funding amounts were established in the bill.

We are not certain of the provision to develop Indian Fish and Wildlife Resource Management Plans. We would hope that such plans would not be redundant to existing planning efforts, nor would they be a wasteful exercise of precious time and funds. We do not know what is meant by "public meetings" as a means to develop said plans. If the intent is to integrate and comprehensively manage resources, we are all in favor of the effort. We would like some clarification of this section.

SECTION 6. TRIBAL CONSULTATION

We fully support this important provision and believe that if followed, would allow the tribes to more fully implement their governmental responsibilities. Such a provision would be extremely valuable in protecting tribal interests and rights.

SECTION 7. INDIAN FISH HATCHERY PROGRAM

The tribes in the Pacific Northwest have supported the establishment of an Indian Fish Hatchery Program that is sensitive to tribal goals and objectives. As written, this section appears that the tribes will have the major voice in the development of a needs report, and as such appears to be a first step to establish an effective Indian hatchery system.

Tribes in the Pacific Northwest have extensive hatchery systems, and contribute over 50 million salmon fry to the waters of the region, benefitting Indian and non-Indian alike. We assume the Committee intends, with tribal concurrence, to include into any proposed system those hatcheries that not only are operated by the tribes, but also those that are operated on behalf of the tribes by other federal agencies. Likewise, we assume that such hatcheries do not have to be physically located on tribal lands, but may also be located off reservation in tribal ceded territory.

SECTION 9. EDUCATION IN FISH AND WILDLIFE RESOURCE MANAGEMENT

This provision is exceedingly important and far reaching. We believe the such a provision will bring more Indian resource managers into the profession, and will aid resource management.

We would like to suggest that Subsection 9 (d) Fish and Wildlife Outreach be amended to allow tribes or tribal organizations to conduct such an effort. This reflects that regional or local efforts may be more appropriate than a national program.

SECTION 13. AUTHORIZATIONS OF APPROPRIATIONS

This section does not authorize any funds, and as such lacks substance. Specifying amounts may be difficult, given the present practice of "scoring," but meaningful improvements to Indian fish and wildlife management and effective implementation of various provisions of this bill will require adequate funding.

CONCLUSION

I am sure our member tribes may have some additional comments on the proposed legislation, and I encourage the Committee to seek continued input as the bill proceeds through the process.

Again, thank you very much for the opportunity to provide our views on this bill.

Mr. RICHARDSON. Commissioner Don Wedll.

STATEMENT OF DON WEDLL

Mr. WEDLL. Mr. Chairman, thank you very much for the opportunity to testify on this bill today. The Mille Lacs Reservation believes this is a very important bill in the implementation of Indian fish and wildlife management practices and resources.

We have provided written testimony, but I would also like to identify three areas that I think are extremely important to tribal governments and tribal membership. The first area is in the area that I think over the past 50 years or so tribal members have lost access to vital resources, natural resources in their diets, and I think that that directly has impacted the health and welfare of tribal membership. Anything we can do to try to return tribal members to these important resources in their diets are extremely important, and I am glad that you have commented on that issue.

The second area that we have experienced difficulty with, and I think that that can be dealt with within this bill, is in regard to lands that are owned by the tribal government themselves within the exterior boundaries of the reservation. The status of these lands, I believe, should be clarified that in general that these lands are subject to restriction from alienation, in general that these lands owned by the tribal governments are like government-owned lands and not necessarily have to be placed into trust or have that restriction applied, and probably that tribes upon a request form that this restriction would then apply.

The third item I believe that is very important in this bill—and the question was raised with the Bureau—is the enforcement provisions that tribal governments do and have responsibilities for enforcing laws and management protection of resources and that the support in that both financial and administrative authority is very important for the implementation of this bill and the protection of resources.

With that, I would like to thank you and your staff for having a very open and meaningful discussion on this. Thank you very much.

Mr. RICHARDSON. Thank you very much.

[Prepared statement of Mr. Wedll follows.]



MILLE LACS BAND OF CHIPPEWA INDIANS
Executive Branch of Tribal Government

Statement by:

The Mille Lacs Band of Ojibwe Indians,
Don Wedll, Commissioner of Natural Resources

Before:

House Subcommittee on Native American Affairs

on: H.R.2874, the Indian Fish and Wildlife Resource Enhancement Act of 1993

October 7, 1993.

Mr. Chairman, Members of the Subcommittee, my name is Don Wedll. For the past twenty years I have worked for the Mille Lacs Band of Ojibwe Indians, and throughout the last eleven years I have served as their Commissioner of Natural Resources. As a Cabinet Member of the Executive Branch of tribal government, I am an authorized representative of the Mille Lacs Band and have authority to speak on behalf of all issues involving the Band's Natural Resources. I am pleased to submit the Band's comments on H.R.2874, introduced on August 4, 1993, which is entitled, "The Indian Fish and Wildlife Resource Enhancement Act of 1993.

Today, tribal members are afflicted with some of the highest rates of diabetes and arthritis nationwide, and have an average life-expectancy of 47 years of age. We believe that tribal members are afflicted with these problems because of the dramatic dietary change which affected many Indian people in only recent times - namely, insufficient natural resources for maintenance of a diet which had previously been virtually unchanged for nearly 1,000 years or more.

Mr. Chairman, to the extent that this legislation will have a direct impact on my professional responsibilities, I am very appreciative to you for this opportunity to comment on this legislation. Throughout my studies and observations over the last twenty years, one thing has become clear to me. Tribal governments, through their cultural and religious customs, rules, and practices, have regulated the use of natural resources for the benefit of tribal members since time immemorial. Historically, the tribal management system has provided a balance allowing tribal members to exist and natural resources to flourish. What was simply common sense for tribal leaders, would today be called an "Economically Sustainable Environment." Today we are in a transition in our past natural resource management system, which cannot sustain the present use

by society without some modification.

Mr. Chairman, the Mille Lacs Band strongly supports the first goal, or "purpose", of this legislation, which is "reaffirming and protecting Indian hunting, fishing, and gathering rights" and to provide for the conservation, management, and use of the resources. All other stated purposes in H.R.2874, which include supporting self-determination, self-governance, and maximizing tribal capability and flexibility in managing the resources are intrinsic to protecting Indian treaty rights. We commend the Committee for affirming the intent of the Congress in this regard.

The following comments address certain key elements of H.R.2874, and in some instances provides recommendations. In those instances, the Mille Lacs Band respectfully requests that the Subcommittee consider those minor revisions to H.R.2874, which we believe would make necessary perfections to this legislation.

1) We submit that the "Findings" section, (Sect.2(2)) be amended to read, ..."This trust responsibility extends to all Federal agencies and departments and absent a clear expression of congressional intent to the contrary, the United States has a duty to administer Federal fish and wildlife conservation laws **and all other relative Federal laws** in a manner consistent with the treaty rights of Indian tribes.

* This language would simply clarify that all other federal laws, for example, environmental laws, not necessarily related to fish and wildlife regulation but having an impact on such regulation, be administered within the scope of the trust responsibility. The change would delete the limiting phrase. The United States should administer all federal laws in a manner consistent with treaty rights.

2) Within the "Findings" Section, we strongly support Sect.2(5), and believe it to be a critical aspect of H.R.2874, necessary for the delineation of jurisdictional authority and resource management and protection.

(3) We suggest that within the "Definitions" section, Sect.4(8) be amended to include a subpart (C), which would read, "**and all tribally owned lands within the exterior boundaries of a reservation and managed by the tribal government, subject to restriction from alienation.**"

* This language would simply clarify for the record this federal policy, as currently practiced by the Interior Department and the Environmental Protection Agency.

(4) Within Section 5, "Indian Fish and Wildlife Resource Management Program", Sec.5(a) should be amended to read, "Consistent with the provisions of the Indian Self-Determination and Education Assistance Act (Public Law 93-638, *25 U.S.C. 450 et.seq.*) the Secretary shall..."

* This language would simply make clear that the provisions of the Self-Governance

Millie Lacs Band of Ojibwe Testimony on H.R.2874, October 8, 1993

Demonstration Project and other related amendments to P.L.93-638 apply.

(5) We believe it is critical that report language make it clear that, within the Secretary's authority to provide for the enhanced management of Indian fish and wildlife resources, that this Act is not intended to support or create a larger bureaucracy, but rather that the Secretary's role is to support tribal management plans and initiatives, ensuring that they are effectively developed and carried out.

(6) We would like to clarify our understanding that Section 5(a)(4), allows tribes to identify and manage specific resources important to tribes outside of the generally accepted principles that govern "integrated resources management practice."

(7) We suggest that in report language, the Subcommittee ensure that the Secretary is aware that within Secretarial authorities under Section 5(b)(1), which addresses the "Management Program", that the Secretary not disregard tribal progress in this area. Many tribes have actively been developing and applying Resource Management Programs within their natural resource programs.

(8) We submit that Section 5(b)(3), be amended to read, "The Secretary, upon the request of any Indian tribe or tribal organization, shall enter into a contract with the tribe or tribal organization, *which may include a compact of Self-Governance*, to plan, conduct...

* This change would simply ensure that Self-Governance tribes can incorporate Indian fish and wildlife resource programs administered by the Secretary within their compact of Self-Governance.

(9) We submit that the Subcommittee consider amending Section 5(c)(5), under "Management Activities", to read, "the development of tribal conservation *and habitat protection restoration* programs, including employment..."

" The added language would clarify that habitat protection is in fact within the bounds of the definition of tribal "conservation".

(10) The Band strongly supports Section 5(e), entitled "Indian Fish and Wildlife Resource Management Plans", which we believe provides tribal governments with the necessary support and enhancement of their authority to make meaningful management regulations and implement workable co-management agreements.

(11) Under Section 7, the "Indian Fish Hatchery Program", we would like the Subcommittee to clarify that while many tribal fish hatchery programs are effective tools for the enhancement of fish resources, that hatcheries are not the only tool available. The protection and enhancement of natural spawning areas is a critical component to fish productivity and is an effective hatchery for fish enhancement. If financial resources are to be available to tribes under this Section, the Subcommittee should consider that the

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protection of natural spawning areas to be important to the maintenance of fish hatcheries.

(12) We strongly support Section 9, which is entitled, "Education in Fish and Wildlife Resource Management." The ability to employ a trained, professional individual who understands tribal culture and fish and wildlife resources management concepts is crucial to the successful implementation of management plans.

Mr. Chairman, there is one other critical issue which is key to the Mille Lacs Band - that is, our right to enforce our tribal conservation code and the federal government's recognition and support of that right.

There can be no denying that the federal government's position is clearly that a tribe has the jurisdiction and authority to enforce its tribal conservation code through employment of Conservation Officers. Tribes have been doing so for decades. It would make sense that if a tribe can employ conservation officers, then the federal government also recognizes that tribal conservation officers have the capability to enforce the laws they were employed to enforce. For enforcement purposes, this simply means authorization to carry a side-arm and make arrests - these are two authorities which are very basic to any kind of law enforcement, and no different from how state and federal conservation officers enforce state and federal conservation laws.

In spite of that simple rationalization, which is easily supported by federal Indian law, policies of the federal government, and congressional action, some state and local governments have rejected tribal conservation enforcement authority. At Mille Lacs alone, in the past, our conservation officers have been told they would be arrested by County officers for carrying side-arms.

H.R.2874 affirms the inherent, sovereign right of Indian tribes to manage their natural resources, more so by what the bill does not say than by what it does. In similar legislation introduced in the Senate, a provision was included which makes it clear that as part of their natural resource management plans, tribes have the authority to enforce the laws which govern tribal resource management. It is our understanding that this Committee intentionally left that enforcement provision out of this legislation, because conservation enforcement is in fact an inherent, sovereign right of tribal government. Therefore, there was no need for the Congress to legislatively recognize a right which already clearly exists.

Mr. Chairman, the Mille Lacs Band of Ojibwe whole-heartedly agrees. The Band has the sovereign, inherent right, through employing tribal conservation officers, to enforce our own tribal conservation codes for the protection of our resources as part of our natural resource management plan. However, as is obvious from examples which I cited earlier, there are clearly state and local governments which disagree with the Congress and the tribes on this point.

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We understand that recognition to already exist in H.R.2486. Various sections within H.R.2874 assume the enforcement authority, including Section 5(c)1, which in part states:

"Indian fish and wildlife resource management activities carried out under the program established...may include (but shall not be limited to), (i) the development, implementation, and enforcement of tribal codes, ordinances, and regulations..", and, "(5) the development of tribal conservation programs, including employment and training of tribal conservation enforcement officers..".

Other sections assume that conservation officers have enforcement authority as well, including Section 5(d), which in part reads:

"The Secretary is authorized to provide financial and technical assistance to enable Indian tribes to - ... (4) provide training to and develop curricula for Indian fish and wildlife resource personnel, including tribal conservation officers, which incorporate law enforcement, fish and wildlife conservation, identification and resource management principles and techniques..."

It is our understanding that the fish and wildlife management plan provides for Secretarial recognition of tribal law enforcement authority. Clearly, tribes have the sovereign, inherent right of tribal conservation officers to carry out all such responsibilities and duties which are intrinsic to law enforcement.

On the whole, Mr. Chairman, H.R.2874 is an excellent bill and the Mille Lacs Band strongly supports its enactment. We would appreciate the Subcommittee's views on our recommended changes, and would be pleased to provide any further information which you request. On behalf of the Mille Lacs Band, I extend the Band's sincere appreciation to you, Mr. Chairman, for inviting me to testify here today. If you have any questions, I would be pleased to answer them at this time.

Mr. RICHARDSON. Mr. Heckert.

STATEMENT OF MARK HECKERT

Mr. HECKERT. Good afternoon, Mr. Chairman. My name is Mark Heckert. I am the executive director of the InterTribal Bison Cooperative out of Rapid City, South Dakota. I am grateful for the opportunity to testify here on behalf of the ITBC regarding H.R. 2874, the Indian Fish and Wildlife Resource Enhancement Act of 1993.

Again, I would like to echo the comments of the previous speakers in saying that we, too, have worked for a while with the committee. When the initial parts of the bill came out, they asked for substantive comments. We felt we were able to give them, and the bill, as it has turned out now, has been something that has been satisfying to us and the needs of our member tribes.

To give you a little background on the ITBC, it is a nonprofit 501(c)(3) tribal organization established to support the enhancement and restoration, reintroduction of buffalo to Indian land in a manner which integrates the tribal traditions and cultural beliefs with modern management principles.

The organization is presently made up of 26 tribes from 14 States, including two from New Mexico, Taos and Picuris Pueblo.

Mr. RICHARDSON. Are they here?

Mr. HECKERT. No, they sent me. Although each member tribe has a unique relationship with the bison, all recognize the paramount importance of bison restoration. This is aimed at restoring reservation ecologies in a manner that is economically profitable, culturally compatible and socially acceptable to the tribal communities who participate in this holistic and sustainable resource management approach.

The ITBC strongly supports the development of legislation which will acknowledge and support the rights and responsibilities of tribes in the management of their natural resources. It is essential that the legislative action guarantee tribes full participation in the protection of their most precious fish, wildlife, and recreation resources as defined by treaty rights and associated court actions regarding tribal treaty rights cases as well as applicable executive orders and congressional acts. It is equally important to preserve and protect the tribal cultures which are based upon and continue to depend upon these fish and wildlife resources.

Tribal bison production, as with tribal fisheries production, is a present day manifestation of subsistence activities which have been a way of life for Indian people in the past and are critically important for their future.

I will end my prepared remarks there and kind of summarize to keep things going here. The one thing I wanted to highlight is that regardless that this legislation is directed towards tribes and tribal land bases, this is just simply a good resource management policy that is being developed here. Whether it would be for tribal land bases or just general resource management, you are allowing a land base of some 52 million acres to finally receive some support from the Federal Government in a consistent manner.

Just in response to one of your questions to the BIA personnel, regarding the comparable spending levels, the BIA in 1990 in the

rangeland management department conducted a study on comparable funding levels and staffing levels within BIA rangeland and the U.S. Forest Service and BLM. The figures they came up with, at least for rangeland management, was that BIA and tribal staffing levels were approximately at 25 percent of the government agency for similar land bases.

One of the other aspects I would like to mention is that the legislative process has got to start taking up working in behalf of the tribes in cases like *U.S. v Borland*. The *Cheyenne River/Missouri River* case has served to remove and deteriorate tribal fisheries management rights and their resource management rights. It is very important that the legislative arm of the government is supportive and behind resource management at the tribal level.

The last aspect I would like to take up is the funding of the projects and things that are proposed in the legislation. I know of some other conservation-gearred legislation that has been authorized for years and never funded, and I think it is real important that this does receive funding. I think it is important that the committee and the tribes themselves work within the present framework and also explore new avenues of funding such as the Federal Aid program, perhaps the Land and Water Conservation program, and other avenues to provide adequate funding for the tribal bison projects as well as other natural resource management projects that the tribes and intertribal organizations propose.

With that, I will be happy to answer any questions that you might have. Thank you.

Mr. RICHARDSON. Thank you very much.

[Prepared statement of Mr. Heckert follows:]

Testimony to U.S. House of Representatives
Subcommittee on
Native American Affairs regarding H.R. 2874,
Indian Fish and Wildlife Resource Enhancement Act of 1993.
Presented by Mark Heckert, Executive Director
InterTribal Bison Cooperative.
October 8, 1993

I am Mark Heckert, Executive Director of the InterTribal Bison Cooperative (ITBC). I am grateful for the opportunity to testify to this Committee on behalf of the ITBC regarding H.R. 2874, the Indian Fish and Wildlife Resource Enhancement Act of 1993.

The InterTribal Bison Cooperative is a nonprofit 501 (c)(3) tribal organization established to support the enhancement and/or reintroduction of buffalo to Indian lands in a manner which integrates tribal traditions and cultural beliefs with modern management principles. The organization comprises 26 tribes (list attached) from 14 states (California, Colorado, Idaho, Montana, Nebraska, North Dakota, New Mexico, Oklahoma, South Dakota, Utah, Washington, Wisconsin, and Wyoming). Although each member tribe has a unique relationship with the bison, all recognize the paramount importance of bison restoration. This cooperative effort to restore bison herds is aimed at restoring reservation ecologies in a manner that is economically profitable, culturally compatible, and socially acceptable to the tribal communities who participate in this holistic and sustainable resource management approach.

The ITBC strongly supports the development of legislation which will acknowledge and support the rights and responsibilities of tribes in the management of their natural resources. It is essential that legislative action guarantee tribes' full participation and protection of their most precious fish, wildlife, and recreational resources, as defined by treaty rights and associated Court actions regarding tribal treaty rights cases, as well as applicable Executive Orders and Congressional Acts. It is equally important to preserve and protect the tribal cultures which are based upon, and continue to depend upon, these fish and wildlife resources. Tribal bison production, as with tribal fisheries production, is the present-day manifestation of subsistence activities which have been the way of life for Indian people in the past, and are critically important for their future.

Currently, all Federal fish, wildlife and recreational legislation and aid that exists has systematically excluded Tribal governments from funding. Attempts to receive funding through the Endangered Species Act and the Federal Aid Programs have been strongly opposed by the states. Therefore, we firmly believe that legislation which recognizes and funds Tribes as full participants in fish, wildlife, and recreational management is necessary and long overdue. We also need a funding mechanism that allows funds to be distributed directly to Tribal governments. Expanding Federal Agencies to carry out these management functions will only perpetuate Tribal dependence on the Federal Government.

Although the ITBC has prioritized bison as a culturally sound focal point for ecological restoration, we recognize the importance of all wildlife species and their role in maintaining

and enhancing the quality of life for Indian people. The recognition of bison as a critical species within the prairie ecosystem not only has major implications for the restoration of the prairie, but also for the socio-economic, cultural, and spiritual well being of the tribes. Tribes have realized that their rangelands cannot sustain their people through management practices which focus on livestock and tend to ignore other equally important animals and plants. Indian lands have been subject, through Bureau of Indian Affairs programs, to grazing practices which produce livestock while ignoring or consciously eliminating a host of other species which constitute rangeland ecosystems. Tribal lands have been subject to predator and competitor control programs which have battered reservation ecologies and left them less productive for all the needs of tribal communities. The restoration of buffalo has renewed hope to many tribal members and has inspired some member tribes to develop long-range restoration plans which include their entire reservation ecosystems.

For example, the Cheyenne River Sioux Tribe has developed a "Prairie Management Plan", which is an alternative plan to poisoning for prairie dog control, and which recognizes the intrinsic value of all native species as an integral part of the ecosystem. The primary goal of their comprehensive plan is to allow prairie dogs, buffalo, black-footed ferrets, eagles, and many other wildlife species to co-exist with livestock production. This dramatic departure from poisoning prairie dogs will help restore, enhance, and maintain the prairie ecosystem for the benefit of future generations. Although the Cheyenne River Sioux Tribe has enjoyed widespread support from governmental agencies and environmental groups, as well as Congress, they have yet to receive funding. Because the BIA lacks funding and the Tribe is ineligible for the funding granted to states by the Endangered Species Act or the Federal Aid in Fish and Wildlife Restoration Acts, this project can only be conducted with the support of Congress through special appropriations or other legislative action.

Because buffalo were the economic base of many Tribes in the past, restoration of buffalo to the Indian community also offers a tremendous opportunity for economic development within a cultural framework. From a purely economic viewpoint, it is more profitable to raise bison than cattle. The practical fact is that buffalo are perfectly adapted to the harsh life on the plains. Bison are the most economical animals to raise for food and economical development purposes, and are the most environmentally sensitive creatures indigenous to the Great Plains. Buffalo could easily replace cattle, horses, and/or sheep because they require less land per animal unit, require little or no intervention by man in their life cycles, and are not subject to overgrazing of any particular portion of their enclosure if adequate area is maintained for the herd. Bison live off a variety of grasses, leaving the herbaceous vegetation for deer, elk, antelope and other wildlife and are thus perfectly compatible with tribal wildlife management objectives. Buffalo require less forage per pound of animal produced than other domestic animals, and are not subject to the devastating effects of the harsh winter and summer climatic changes. Buffalo also protect their young from natural predators such as the coyote, black bear, and wolves (where they exist). Such protection means less problems for the rancher who depends upon the herd for economic survival and reduces the necessity for killing of other wildlife for economic reasons. In addition to the commercial meat products which will be produced, tribal bison production offers the potential for further economic development through the initiation of corollary industries related to bison. In short, buffalo belong on the marginal rangelands of the United

States and tribal leaders and their resource managers have come to recognize the buffalo's relevancy to future tribal management.

In addition to the ecological and economic benefits which the reservations will derive, the restoration of bison to Indian people renews hope, and quite possibly offers the last opportunity for "grass roots" tribal members to recapture the spiritual and cultural essence of their being and re-affirm the traditional values that are so important to the preservation of their culture. Bison, the pursuit of bison, and the products derived from bison, defined every aspect of the lives of Plains Indian people. Bison were culturally significant to almost every tribe in North America. In conjunction with the destruction of the great bison herds, the language, the religion, the culture and the spirit of the American Indian were similarly being destroyed. This psychological and physiological destruction created a lost people, with no visible future, and an animal with no home. The complex cultural values and social dynamics of the plains tribes are so intertwined with bison that the reestablishment of bison is an integral part of restoring pride and self-esteem to Indian people, who view bison as a central element to their very existence. To Indian people, the taking of bison is a spiritual ritual. The bison represents a spiritual essence that developed through a co-existence for over 30,000 years. To re-establish healthy buffalo populations on Tribal lands is to re-establish life itself for Indian people.

To provide for the support of tribal bison production projects in this Act, I am requesting, on behalf of the 26 tribes of the ITBC, that provisions specifically designed to assist tribes in their bison production and management activities be included in H.R. 2874, Indian Fish and Wildlife Enhancement Act of 1993 (Act). I have attached to this testimony the specific language to be included in the Act to provide support to tribal bison enhancement efforts. This language includes an addition to Section 2 which describes the importance of the bison; Section 3 purposes, to include authorization of an Indian Bison Program; Section 4 definitions, to include bison projects; and specifications to Section 8 "Indian Bison Conservation Program" with sections to define the continuing operation and maintenance of tribal bison production and management facilities.

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

We respectfully request that this committee communicate support for tribal bison conservation efforts to the Congressional Appropriations Committees.

Thank you.

PROVISIONS RECOMMENDED FOR INSERTION TO H. R. 2874, THE
 " INDIAN FISH AND WILDLIFE ENHANCEMENT ACT OF 1993"
 IN SUPPORT OF TRIBAL BISON CONSERVATION ACTIVITIES

SEC. 2 FINDINGS

(8) The American Bison was a primary wildlife species of the Great Plains ecosystem and the principle source of subsistence for Native American peoples throughout North America prior to the elimination of the great herds by government and market hunters, and continues to contribute spiritual, cultural, and economic benefit to Tribes through present tribal bison conservation activities.

SEC. 3 PURPOSES

(5) To authorize and establish an Indian Bison Program to meet Indian bison conservation and management needs, including the development of a Native American Bison Refuge to establish seed herds for tribal bison projects, and to train Indian people in bison management techniques.

SEC. 4 DEFINITIONS

(4) The term "tribal bison project" means any single-purpose or multi-purpose facility owned or operated by an Indian tribe which is engaged in the production, management, preservation, holding, or caring for bison, including related research and diagnostic bison health facilities.

(6) The term " Indian fish and wildlife resource" means any species of animal or plant life located on Indian reservations or in which Indians have a right protected by Federal law [insert "and/or Treaty"] to fish, hunt,

SEC. 8. INDIAN BISON CONSERVATION PROGRAM

(a) ESTABLISHMENT - The Secretary, with full and active participation of the bison producing tribes, shall establish an Indian Bison Program, the purpose of which shall be to support tribes in their initiation, production, management, and maintenance of their bison operations to meet resource needs, including but not limited to, Indian subsistence, ceremonial, and commercial bison needs.

(b) NEEDS REPORT - Within 12 months following the date of enactment of this Act, the Secretary, with full and active participation of the bison producing tribes, shall transmit a report to Congress identifying the existing and proposed facilities comprising the Indian Bison Program and the Native American Bison Refuge, and construction, maintenance and rehabilitation needs of the existing and proposed facilities, and provide a plan for their development, administration, and cost-effective operation.

InterTribal Bison Cooperative
Member Tribes

| | |
|---------------------------|-------------------------|
| Blackfeet | Northern Cheyenne |
| Cheyenne River Sioux | Oglala Sioux |
| Choctaw Nation | Oneida Nation |
| Conf. Salish & Kootenai | Picuris Pueblo |
| Covelo Indian Community | Santee Sioux |
| Crow Creek Sioux | Sisseton-Wahpeton Sioux |
| Crow | Southern Ute |
| Devils Lake Sioux | Shoshone-Bannock |
| Gros-Ventre & Assiniboine | Standing Rock Sioux |
| Kalispel Tribe | Taos Pueblo |
| Lower Brule Sioux | Ute |
| Nez Perce | Winnebago of Nebraska |
| Northern Arapaho | Yankton Sioux |

Mr. RICHARDSON. Let me start with Chief Heath or Mr. Arnett. You have suggested that the tribe should have the discretion as to whether to transfer an Indian fish hatchery over to the BIA from the Fish and Wildlife Service. What problems do you foresee with such a transfer? How would tribal consent solve this problem?

Mr. ARNETT. Mr. Chairman, Chief Heath asked me to respond to that question. Our concern contained in our testimony with respect to that aspect, the legislation is as a result of some history we have. About 10 years ago, the Fish and Wildlife Service proposed transferring the Warm Springs National Fish Hatchery located on our reservation to the Bureau of Indian Affairs, but no funding was going to be transferred. The problem, of course, would be, then, that the Bureau of Indian Affairs would have to take funding for other programs and use it on the Fish and Wildlife Services' hatchery. That was the problem, and we objected to it, and the transfer didn't take place. So we would want to be able to review and scrutinize any proposed transfer to ensure that it simply wasn't a dumping of a Fish and Wildlife Service facility on the Bureau and increasing the Bureau's funding difficulties that are already severe in many areas. So it may well work out to the satisfaction of the tribe. We just simply want to be able to review it and ensure in our own minds that it is satisfactory and that there is not a problem with the transfer.

Mr. RICHARDSON. Now, do you think that this can be achieved under existing authority or should we address this in legislation?

Mr. ARNETT. Oh, I think legislation is appropriate. Certainly to indicate that it is possible and in many instances desirable to transfer hatcheries to the Bureau of Indian Affairs or conversely to allow tribes to contract either with the Bureau of Indian Affairs or with the Fish and Wildlife Service to operate a particular hatchery. In our view, the key is that it is an individual tribal decision of how to manage and who should manage and operate a particular Indian fish hatchery.

Mr. RICHARDSON. Speaking of fish hatcheries, Mr. Talgo, you have indicated a need to establish new fish hatcheries. How would you use some of these fish hatchery funds? What species would you be developing and would you intend to harvest these fish?

Mr. TALGO. Yes, Mr. Chairman. We have all the alternative warm water fish supplies. Presently, we receive ours, I think, from Texas, from the White Mountain, that mainly supplies, I think, trout, but as far as for warm fish, there is none available in the Southwest.

Mr. RICHARDSON. Most of the current funds, Mr. Talgo, are dedicated to tribes in the Great Lakes region and the Northwest. In this legislation, how can we provide a more equitable distribution of the fish and wildlife funds? Are there more costs related to management in the Southwest? Do you think that our region maybe gets shortchanged here?

Mr. TALGO. I believe so. As the only speaker today, more representing the Southwest. I am going through all the testimony that is before you or mainly from Northwest and to get dollars down to Southwest I think it should be equal level.

Mr. RICHARDSON. Okay. Now let me ask Ms. Davis these questions. Your testimony mentions the tribe's efforts to restore fish in

the upper reaches of the Snake River basin. What species were there in your ancestors' time?

Ms. DAVIS. We had of course Chinook, steelhead, coho, jack, sock-eye.

Mr. RICHARDSON. Now, what are your goals with respect to the restoration efforts?

Ms. DAVIS. Our goal is to get the salmon back up there. We have, if I may be so bold as to say, we have a disagreement I guess regarding the commercial fishery and the tribal fishery with the State of Idaho. They are looking more to steelhead and the commercial sports fishery whereas the tribes are looking at the restoration of the salmon.

Mr. RICHARDSON. Mainly for subsistence purpose also, right?

Ms. DAVIS. Yes, and religious and traditional.

Mr. RICHARDSON. Right. Describe your tribe's efforts to enhance your tribal fish and wildlife resources? What kind of fish and wildlife are you currently managing?

Ms. DAVIS. Otters because in the fish and wildlife subcommittee we have a joke about it, you know, otter this and otter that, but we do have an otter project that the tribe is working on. We have been working with the State as much as we can on the elk population behind the Dworshak reservoir up in Orofino, Idaho.

We also have through the wildlife program an eagle project, an osprey project. We have a number of projects that the tribe is doing. Our fisheries department is doing very well. We have about 200, I am estimating, employees in the fisheries department.

Mr. RICHARDSON. Now, do you get assistance from the BIA for these efforts right now?

Ms. DAVIS. What we did was we 638ed as much as we could.

Mr. RICHARDSON. Right. What are your management goals and how would this legislation help you to achieve those goals?

Ms. DAVIS. I think this legislation would be like a leap for the tribe in getting some of the resources, the fisheries wildlife I guess you would call it, back in sync with the tribe as it was many years before we would be up to date.

Mr. RICHARDSON. Very good. I want to ask Mr. Dupuis some questions because he was so generous with his time. Mr. Dupuis, you have discussed the importance of wild rice and other traditional wild crops to the tribes of the Great Lakes. What are the current management efforts of your tribe with regard to these crops and do you get any BIA help for these efforts?

Mr. DUPUIS. We do get some, yes, and the government, our government, ours supports funding for natural resources and harvesting of wild rice. This year up there we had a bad crop of rice for some reason, the floods.

Mr. RICHARDSON. You have a unique situation in the Minnesota Arrowhead region. My understanding is that the tribes have treaty rights and enforcement authority under the 1854 authority. Would this bill impact your on- and off-reservation enforcement efforts?

Mr. DUPUIS. Yes, it would.

Mr. RICHARDSON. How so?

Mr. DUPUIS. Right now our reservation is about 100,000 square acres, and we have two wardens handling ceded territory, and we have one on-reservation warden.

Mr. RICHARDSON. Mr. Dupuis, how about your relationship with the State of Minnesota? How do you coordinate enforcement efforts with them and with other tribes?

Mr. DUPUIS. Well, right now in the ceded territory we are trying to work out an agreement, but there is cooperation. We had our moose feast in here; in fact, it is still going on. We do have cooperation with the State and our wardens.

Mr. RICHARDSON. Now, do you encounter any problems with your off-reservation treaty rights, Mr. Dupuis?

Mr. DUPUIS. That is in court right now.

Mr. RICHARDSON. So there are some differences, obviously?

Mr. DUPUIS. Yes, there are the two bands. They have an agreement with the State of Minnesota. Fond du Lac did have an agreement for one year and a referendum vote turned that down by the people.

Mr. RICHARDSON. Now, Mr. Johnson here from my staff is a Chippewa, and I like to geographically understand where you are in relationship to where he is. I know where he is because he reminds me every day, but where are you in the context of the State of Minnesota?

Mr. DUPUIS. We are 120 miles north of Minneapolis, Minnesota, 20 miles west of Duluth, Minnesota. Our ceded territory goes all the way up to the Canadian border, and down to the Snake River south, our reservation.

Mr. RICHARDSON. Thank you very much, Mr. Dupuis.

Mr. Wedll, you have suggested language, as I understand it, to ensure that the funds from this Act can be included in the self-governance compact. Why is that important to you? How is self-governance working as you administer your tribe's fish and wildlife program?

Mr. WEDLL. We have been an initial self-governance tribe, one of the first self-governance tribes in the Nation. What we have found is that we have expanded our ability to manage and deal with natural resource issues within the reservation.

We initially had one staff person dealing with everything from law enforcement to management of all types of resources on the reservation, and because of the very limited funding we were receiving through the 638 contract, basically through Wildlife and Parks.

Under the self-governance program, we now have a forestry program, water resource program, the natural resource management program, wildlife enforcement program, and we have a fisheries program. And as a result of the self-governance, we went from a budget of about \$100,000 up to about \$600,000 in the area of natural resources, and that significantly has improved our ability to manage those resources.

Mr. RICHARDSON. Now, in reading your testimony I notice that you mentioned the importance of natural spawning areas as opposed to hatcheries. In your judgment, are these as important as hatcheries?

Mr. WEDLL. In my judgment, yes. I believe that we will see in the next few years a change in the national policy in regard to fish hatcheries, in particular trying to enhance traditional or natural spawning areas for fish. We have actively implemented programs to produce spawning areas and enhance spawning areas, particularly for walleye which Mille Lacs lake is noted for.

Mr. RICHARDSON. Now, Mr. Wedll, you also, as I understand it, have a dispute with the State of Minnesota over the authority of tribal officers to carry firearms and make arrests. Is that accurate?

Mr. WEDLL. Yes. It is somewhat lessened now, but a number of years ago the county sheriff's department was threatening to arrest tribal game wardens for carrying side arms in order to enforce natural resources. It made it very difficult for staff people because they never knew what their status was, and I think that this bill will help clarify that and support the tribal network on enforcement.

Mr. RICHARDSON. Now, do you think we should address it in this legislation? You know, we made it clear in the *Duro* legislation and with the Indian Law Enforcement Reform Act, but do you think we should also stress this in this legislation?

Mr. WEDLL. I believe it is important in the record that under the management plan that tribes can develop with the approval of the Bureau that there is the place that enforcement would be placed and that the Bureau's recognition of that management plan would then put forth the issue of enforcement authority for tribes and clarify that position.

Mr. RICHARDSON. So you say we do this in the bill rather than in the report?

Mr. WEDLL. I am saying that within the bill you have the establishment of the management plan, and within the language, then, of the record identifying that it is your understanding that tribes will place enforcement authority in their management plan, and that they then can implement enforcement through that mechanism.

Mr. RICHARDSON. My counsel tells me we have that in there.

Mr. WEDLL. Yes.

Mr. RICHARDSON. You think it should be strengthened?

Mr. WEDLL. I think it needs to be in the record that that is the understanding.

Mr. RICHARDSON. Now, okay, let me ask a few questions of Mr. Frank. Something you said interested me, Mr. Frank, and that is you describe your efforts to address the international management of salmon and other species of fish in the Northwest. That is very interesting to me. I agree with you. How would you propose we do this, and has the Federal Government helped you at all in your efforts to do this?

Mr. FRANK. Yes, they do, and like everybody else, we have the 638 and we always come to Congress here. We have Norm Dicks here, as you know in Interior Appropriations, and like all of us, we have to come back here to the United States Congress. Without the United States Congress, we would have nothing as far as managers of our resources. In the Northwest, the tribes—may I make a comment on our San Carlos people?

Mr. RICHARDSON. Of course you can.

Mr. FRANK. It isn't that the pie is divided up and the Northwest might be more than maybe somewhere else, but the main reason is there just isn't enough money to go around for the tribes, all of the tribes. Some of the tribes have lakes and enhancement programs and a lot of other real very positive things. There are people going to work, training programs and education and so on. In our areas we have the same, but we also have the anadromous fish that goes clean out into the Aleutian Islands and beyond and through so many jurisdictions to come home. And we are involved in so much water and protection of water and just a whole lot of other things that relate to the anadromous salmon, but I think that this bill takes us down the road. It is a vehicle that we are all going to use effectively and use it with you and the committee to strengthen it.

Mr. RICHARDSON. Now, we have heard the term, Mr. Frank, "co-management," used several times today, and we have heard the Department of Interior's view of co-management. What does co-managing mean to you and to the tribes of the Northwest Indian Fisheries Commission? Do you find yourselves working cooperatively with the Department and with the BIA?

Mr. FRANK. Yes, the co-management with the State of Washington has been working for the last seven years. After the implementation of the 1974 decision, it took that long for the State of Washington to understand what co-management meant even though the court said we would be co-managers along with the State of Washington, but now even the Bureau of Indian Affairs understands what co-management means as far as the tribes and the States and the local governments.

The Fish and Wildlife Service has a problem, and also other agencies in the Federal service. We are continually educating these people about the trust responsibility, about co-management, the uniqueness of the Northwest in that particular case that made us co-managers with the State of Washington as far as the natural resource on the reservation and off the reservation, our usual and customaries, so it is so important, this bill is so important as far as that recognition. It seems like we have got to keep jamming it down their throat about the recognition of us Indian tribes as us, as managers, professional people. We need money, too, like any States or any county or anybody else, to manage our own resource.

Mr. RICHARDSON. Now, Mr. Frank, I understand that the tribes in the Northwest have been negotiating with the State of Washington to settle the tribal treaty rights with regard to shellfish. Is that right?

Mr. FRANK. Yes, sir, and we have just had another judge assigned to the shellfish case, Judge Rafeedie from Los Angeles District, and we just took him around on a visit of all of our shellfish cases. There are several motions out there right now that are on his desk, and one of the motions, is shellfish a fish, like the *U.S. versus Washington* says. He ruled that it was, so that took about 30 or 40 percent of our whole case right there on that one motion, and, yes, that has gone forward and it is very positive.

Also we are on another track about trying to settle the case along with the State of Washington. Then we have another case where we manage the shellfish along with the State of Washington in our

different areas, and we have to come to Congress to get that management money. That is not a jurisdiction problem or anything, it is just managing the resource along with the State of Washington.

Mr. RICHARDSON. So at the same time that you are going to court, you are negotiating and trying to resolve this issue?

Mr. FRANK. Yes.

Mr. RICHARDSON. Well, I commend you. I think that is the right way to go.

Mr. FRANK. And I hope that we don't end up in court. We have got to live together, and the resource has to survive.

Mr. RICHARDSON. Thank you.

Mr. Heckert, I have asked this co-management question to our other panelists. What does this mean to you for the tribes of the InterTribal Bison Cooperative? Do you find yourselves working with the BIA and with the Department and does co-management mean the same to you as it may mean to the BIA?

Mr. HECKERT. Not at the present because the tribes that I am dealing with are all working within the reservation on their own lands and with their own resources and not in areas that may have been ceded or under some kind of other co-management precept. But we are working with the different branches of government such as National Park Service, BLM and other Departments in Interior for a form of technology transfer to get the expertise from the Federal resource managers to transfer to tribal hands so they can get the most current rangeland and buffalo resource management techniques because, as you may be aware, the Fish and Wildlife Service controls three Federal bison facilities and the National Park Service controls four. As well as working with the technology transfer, we are working with the National Park Service and Fish and Wildlife to transfer some of the surplus animals to the tribes.

We are currently working and we have proposed a solution to the Yellowstone bison management problems that they are having right now—a capture and quarantine facility somewhere in the area of Yellowstone where the animals can be captured, quarantined until it is determined that they are, in fact, infected with brucellosis or, in fact, clean and then transferred out of the park to tribes that need to get the animals. So under co-management where there is an in-common resource, the tribes for bison right now are not dealing with that, but there are other aspects of cooperative management where both the tribes and the other Federal agencies can benefit through cooperation.

Mr. RICHARDSON. Now, can you give us an update, Mr. Heckert, on the progress so far in implementing that comprehensive prairie management plan for the member tribes of the InterTribal Bison Cooperative?

Mr. HECKERT. Right now the plan you are referring to has been developed by the Cheyenne River Sioux Tribe, and it was developed as an alternative to a proposed poisoning plan wherein a vast number of acres and individuals of prairie dogs would be poisoned to eliminate them and to supposedly better the range on the Cheyenne River Sioux Reservation.

Basically, looking at the poisoning scheme, the managers at Cheyenne River had determined that the amount of money that was going to be spent on poisoning prairie dogs would result in an

increase in forage that was actually less than the money spent in poisoning the prairie dogs and it would have to be done repeatedly over every three or four years. So in the purest economic sense it was probably more appropriate just to give the tribe the money rather than to poison the prairie dogs because you are never going to get the return from the poisoning of the prairie dogs that equals the money spent doing it. On top of all that, it has been determined scientifically that prairie dogs aren't a cause of range degradation, they are more of an effect. So instead of pursuing a nonsolution by poisoning the prairie dogs, the tribe decided to take the initiative to go back and actually look towards the causes which were poor range management and poor rangeland development, again, which is fueled by lack of sufficient funding in both the Bureau and the tribal programs for rangeland management development. So they are presently in the first year of an ongoing project to reintroduce bison back to the reservation.

As you may be aware, bison have significantly different grazing characteristics than other exotic animals such as cattle and sheep and swine, and coupling that with extensive and innovative water development, different rotational grazing over large areas of reservation lands in a way that will emulate natural grazing of a migratory hooved animal population, they are trying to emulate the natural system as best as possible and, by virtue of that, reduce the prairie dog infestation to a level that is manageable rather than keep bumping back and forth between poisoning and infestation.

Mr. RICHARDSON. Now, do you agree that this legislation would assist you in this process, or do you think it would make much difference to implementing this plan?

Mr. HECKERT. I have about 10 years experience in fisheries and wildlife management both with individual Indian tribes and with tribal Indian natural resource organizations, and I think, for one thing, the bill is formally recognizing that the tribes do have the right and the responsibility to manage their resources and finally giving some government support in specific toward bison.

We have been able to secure funding for bison management projects at about 10 percent of what their request has been over the last two years, through direct congressional appropriation, but there was significant confusion at the start of that as to where the money could be channeled through because bison didn't fit in any one existing program.

I believe this bill, this legislation, will give the tribes a lot of latitude in managing their own natural resources and not have to provide perhaps so much documentation just for the sake of documentation to the Bureau. They can get on with what needs to be done under the legislation and not have to be looking for ways around present situations to get things done. I think it would be very beneficial in the whole.

Mr. RICHARDSON. This has been a very good hearing, and we are going to move this legislation. You have provided the information we need. We appreciate the courtesy in your coming to Washington to testify. Have a nice trip home, and thank you for your very good, provocative and interesting testimony. The hearing is adjourned.

[Whereupon, at 3:45 p.m., the subcommittee was adjourned.]

APPENDIX

OCTOBER 8, 1993

ADDITIONAL MATERIAL SUBMITTED FOR THE HEARING RECORD



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

AUG 05 1993

Memorandum

To: Solicitor

From: Assistant Secretary - Indian Affairs

Subject: Request for Solicitor's Opinion, Conservation Enforcement Authority

We request a Solicitor's Opinion on whether Bureau of Indian Affairs Conservation Officers (CO's) and Tribal CO's are considered Law Enforcement Personnel with the authority to make arrests and carry firearms under the Indian Law Enforcement Reform Act (P.L. 101-379). We further request that the opinion address the applicability of 25 CFR Part 11 (Law and Order on Indian Reservations) and 68 BIAM (Law and Order Handbook) to Bureau and Tribal CO's relative to policies, procedures, standards, and training requirements. This request results from questions concerning the legal roles, duties and responsibilities that many Bureau and Tribal CO's are empowered with, and is in follow-up to an action item developed by the Conservation Enforcement Working Group (CEWG), established in December 1992 to clarify Conservation Enforcement (CE) related issues in the Bureau (Attachment 1).

By way of background, the Bureau's Fish, Wildlife and Recreation (FWR) Program is 98% contracted to tribes through Public Law 93-638. Acting independently, tribal governments throughout the nation have developed and implemented fish and wildlife codes, regulations and programs, governing both on and off reservation hunting and fishing, including CE functions. These programs evolved rapidly, in the absence of established legislative authority and national policies, program standards, and procedures. This has led to confusion in contracted CE related activities such as the commissioning of tribal CO's as Deputy Special Officers (DSO's), and unclear policy relative to training requirements and the purchase and carrying of firearms. Guidelines, policies, standards and procedures covering CE related functions and programs are largely absent from FWR Program authorities (25 CFR Subchapter J - Fish and Wildlife; 56 BIAM - Fish, Wildlife and Recreation).

Tribal CO's completing the 13-week Basic Police Training at the Indian Police Academy are generally not considered law enforcement officers. Consequently, contracting officers do not typically authorize the purchase of firearms through Wildlife and Parks P.L. 93-638 contracts, and Area Special Officers have not certified

firearm qualifications and in-service training, or issued DSO commissions. In an effort to address the unique training needs of CO's, a new 12-week CE Training Curriculum (see Attachment 1) is scheduled to be held at the Indian Police Academy beginning in January 1994. Clarification of law enforcement authority relative to CO's is central to this training.

Mr. Neil McDonald of your office, who attended the last CEWG meeting, and is aware of the issues, has been provided with relevant background materials and references. Questions concerning this request may be addressed to Mr. Patrick Hayes, Director, Office of Trust Responsibilities (208-5831), or to Mr. Ted Quasula, Chief, Law Enforcement Services (208-5786).

Your prompt attention to this request is appreciated.

BRIEFING PAPER

Topic: Conservation Enforcement (CE) - Bureau Responsibilities

Prepared For/On: Conservation Enforcement Update / July 30, 1993

States/Tribes: Approx. 200 fish and wildlife resource tribes

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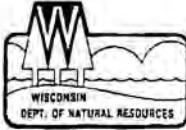
BACKGROUND: The enforcement of fish and wildlife codes, ordinances and regulations governing member and non-member use on-reservation, and the exercise of Indian hunting, fishing and gathering rights in off-reservation settings recently reaffirmed by the courts, has evolved so quickly and independently in recent years that the Bureau has failed to develop authorities and appropriate policies, standards and procedures to effectively manage and administer associated programs. This has led to confusion in conservation enforcement (CE) related activities such as the commissioning of tribal conservation officers as Deputy Special Officers, and has resulted in the absence of a Bureau organizational structure and chain of command, a lack of clear training requirements, and unclear policy relating to the purchasing and carrying of firearms by wardens and CE officers.

Over the last five years, attempts by personnel of the Office of Trust Responsibilities and the Office of Law Enforcement Services to clarify and define Bureau roles and responsibilities for CE have made little headway. Consequently, the Director, Office of Trust Responsibilities, established a CE Working Group in December 1992 to draft conservation enforcement policies, standards and training requirements for review by Bureau officials. The first meeting of the Working Group held in March 1993 resulted in a list of key action items, including the formal request of a Solicitor's Opinion on CE related authorities. A new 12-week CE training curriculum scheduled to begin at the Indian Police Academy in Artesia, New Mexico in January 1994 is also nearing completion.

A provision of the draft Indian Fish and Wildlife Resource Management Act of 1993 providing authority for a CE Program in the Bureau has received much criticism from the tribes, and may not be included in the bill scheduled for introduction in August 1993. Consequently, a Solicitor's Opinion addressing questions concerning CE related authority, operations and personnel, is in order.

BUREAU ACTION: Support the efforts of the CE Working Group, comprised of representatives from the Office of Trust Responsibilities and the Office of Law Enforcement Services, to clarify CE related roles, responsibilities and authorities, and to initiate a new CE training program at the Indian Police Academy. Request a Solicitor's Opinion clarifying CE related authorities, and be prepared to provide associated policy guidance and direction.

CONTACT: Gary Rankel; BIA Fish & Wildlife; MS-4559-M1B; 208-4088



George E. Meyer
Secretary

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

101 South Webster Street
Box 7021
Madison, Wisconsin 53707
TELEPHONE 608-260-2621
TELEFAX 608-267-3579
TDD 608-267-0837

October 22, 1993

The Honorable William Richardson
Chair, House Subcommittee on
Native American Affairs
1522 Longworth House Office Building
Washington, D.C. 20515

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|--|----------------------|----------------|
| Post-It™ brand fax transmittal memo 7671 | | # of pages = 3 |
| To | Tom Niebauer | |
| Co. | WI DNR | |
| Dept. | Phone # 608-266-5593 | |
| Fax # | 202-225-3554 | |

SUBJECT: H.R. 2874 - Indian Fish and Wildlife Resource
Enhancement Act of 1993

Dear Chairman Richardson:

Thank you very much for the opportunity to comment to your committee on H.R. 2874, the Indian Fish and Wildlife Resource Enhancement Act of 1993.

This agency has established a respectful, government to government relationship with Wisconsin Indian Tribes. We recognize the treaty and reserved rights of Wisconsin tribes, including the rights of Wisconsin tribes to manage natural resources within their jurisdiction.

As you are likely aware, the period of 1983-1991 was a very controversial one within the State of Wisconsin as the reserved usufructuary hunting and fishing rights of the six Wisconsin Chippewa Tribes were defined through litigation and negotiation. The great majority of the ultimate definition of these rights was accomplished through government to government negotiations between the tribes and the state. At its conclusion, all governments mutually decided not to appeal the Federal District Court Final Judgment defining the respective rights of state and tribal governments on the use and management of natural resources on the Chippewa ceded lands covering the northern one-third of Wisconsin. Besides this negotiation process, this agency, in active concert with other law enforcement agencies of the state, was in the forefront of protecting tribal members engaged in the exercise of their ceded lands hunting and fishing rights.

H.R. 2874 states a general purpose of improving the capacity of Indian Tribes to manage fish and wildlife. This is a general goal which this agency strongly supports. Within Wisconsin we have in the past provided technical and financial assistance to tribes to accomplish these important goals and in fact are in discussions with certain tribes currently to expand these efforts.

Unfortunately, H.R. 2874 goes too far and through explicit and implicit means expands the jurisdiction of tribes to manage natural resources and thereby diminish the Constitutionally reserved rights of states such as Wisconsin to manage their natural resources. Federal legislation such as H.R. 2874 needs



to be delicately drafted to properly protect tribal rights, jurisdiction and authority and state rights, jurisdiction and authority. Diminishing state authority should be treated with the same disdain as the abrogation of tribal rights.

Specifically in Wisconsin, the federal courts have defined the Chippewa ceded land usufructuary rights to hunt, fish and gather. The federal courts have recognized the resource management right of the tribe to self-regulate the exercise of the usufructuary right. However, the federal court very explicitly stated in LacCourte Oreilles Band v. Wisconsin, 707 F. Supp. 1034 (W.D. Wisc. 1989) that the State of Wisconsin retained all other natural resource management rights in the ceded territory with a clear fiduciary responsibility to manage the resources in a manner protecting the Chippewa usufructuary rights. H.R. 2874 goes beyond the federal court decisions and authorizes the Chippewa tribes and the Secretary of the Interior to manage the natural resources in the Chippewa ceded lands covering the northern one-third of the state. We request that you redraft H.R. 2874 to continue the existing pattern of natural resource jurisdiction as it has been defined by the federal courts.

We would also ask that your subcommittee not overturn the limited existing state jurisdiction for on-reservation natural resource management. That jurisdiction has been determined in federal court decisions such as State of Wisconsin v. Baker 698 F.2d 1323 (7th Cir. 1982). (navigable waters) and Montana v. United States 450 U.S. 544 (1981). (navigable waters and fee-patented inholdings).

I would like to conclude by emphasizing that we strongly support H.R. 2874 in its efforts to strengthen tribal resource management capabilities. However, we are requesting that you modify the bill to remove any explicit or ambiguous language that would expand tribal jurisdiction over current state authority to manage state resources. This is an issue of basic fairness to both tribal and state rights. I would just as strongly oppose this bill if it gave the states jurisdiction over tribal authority to manage tribal natural resources.

If we can help you in any way in the modification of H.R. 2874, please do not hesitate to call (608) 266-2121. Thank you for your time and efforts on this important issue.

Sincerely,


George E. Meyer
Secretary

c: Wisconsin Tribal Chairs
Wisconsin Congressional Delegation
Ada Deer, Assistant Secretary for Indian Affairs, Department of Interior
Governor Thompson
Attorney General Doyle
Max Peterson, International Association of Fish and Wildlife Agencies
Rod Sando, Minnesota Department of Natural Resources
Rollie Harms, Michigan Department of Natural Resources

Jim Schlender, Great Lakes Indian Fish and Wildlife Commission
Joe Bressette, Great Lake Inter-Tribal Council
Willie Molini, Nevada Fish and Wildlife Department



STATE OF
MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

500 LAFAYETTE ROAD, ST. PAUL, MINNESOTA 55155-4037

OFFICE OF THE
COMMISSIONER

UNIT INFORMATION
(612) 296 6157

October 28, 1993

The Honorable William Richardson
Subcommittee on Native American Affairs
1522 Longworth House Office Building
Washington, D.C. 20515

Re: H.R. 2874

Dear Congressman Richardson:

I submit these comments concerning the proposed bill H.R. 2874, titled the Indian Fish and Wildlife Resource Enhancement Act of 1993, and ask that they be included in the written record.

This bill seeks to improve the capacity of Indian tribes to manage fish and wildlife resources within reservations and ceded territories. It establishes a comprehensive program of federal assistance for this purpose, including vesting authority in the Secretary of the Interior to turn over to tribes the operation of programs affecting Indian fish and wildlife resources. The State of Minnesota agrees with these goals and purposes. We are concerned, however, that the bill as drafted is considerably broader than is necessary to achieve them, and has consequences that may not be anticipated.

The problem we see with the proposed H.R. 2874 is that it pre-emptes considerable state fish and wildlife management authority on non-Indian reservation lands and waters, and in ceded territories. In so doing, the bill legislatively overrides a consistent line of court precedents defining state jurisdiction over resource management in such areas. In Minnesota, these areas comprise many millions of acres, and consequently the bill's impact on state management programs will be substantial.

Most of the State of Minnesota is made up of ceded territory, i.e., land that was ceded by Indian tribes to the federal government in various treaties. Two of these treaties, the 1837 Treaty and 1854 Treaty, contain language that relates to reserved treaty hunting and fishing privileges; these are the subject of current litigation. The 1837 and 1854 ceded territories comprise approximately 8 million acres, which is nearly 15% of the total land area of this state. In addition, a substantial proportion of the land and water lying within the boundaries of Indian reservations in Minnesota is public, and subject to state resource management jurisdiction. The language of H.R. 2874 apparently expands any existing ceded territory and reservation harvest rights of tribes to include resource management jurisdiction, either by the Department of the Interior or the tribes themselves, and thus pre-emptes state resource management authority over these areas.

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 October 28, 1993
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In so doing, H.R. 2874 as drafted establishes in federal law expansive and highly controversial definitions of tribal interests and jurisdiction that move far beyond what has been determined by the United States Supreme Court and the lower courts. These court decisions establish that while tribes have jurisdiction over their members' hunting and fishing within reservations and in ceded territories where reserved rights exist, the states retain jurisdiction over non-Indians hunting and fishing on non-Indian lands (and navigable waters) within reservations and in ceded territories, and over resource management on such lands for both Indians and non-Indians alike. Certainly no court decisions establish the kind of tribal management authority in ceded territories or on other non-Indian lands that H.R. 2874 creates.

The courts have established a balanced relationship between Indian harvest, non-Indian harvest, and the state responsibility to manage the resource for the benefit of all. Contrary to these judicial determinations, H.R. 2874 transforms reserved tribal harvest rights on Indian lands and in ceded territories into a right to regulate non-Indian harvest on all lands within reservations, and to manage natural resources on all lands within reservations and in ceded territories to meet tribal harvest objectives. Enhanced tribal resource management on Indian lands is an objective with which we agree, but we think it ill advised to disrupt the judicially-established relationship between tribes and states concerning management in ceded territories and on other non-Indian lands.

Furthermore, the language of the proposed bill may well establish tribal harvest rights in ceded territories where no such determination has yet been made by the courts, and where substantial questions may exist about the original creation or ongoing validity of those rights. These questions are the fundamental ones in treaty hunting and fishing rights litigation, and are at the core of two active lawsuits in which Minnesota is currently involved. We are concerned that the proposed bill might interfere with this litigation and possible settlement agreements, and with other existing agreements as well. At the very least, the bill should make it clear that it leaves the underlying question of the existence of reserved hunting and fishing rights to the courts.

If H.R. 2478 is indeed intended to create such an enormous pre-emption of state jurisdiction (and re-write a good deal of court-determined Indian law in the process), then we certainly oppose it. We can see no justification for such a law. Minnesota manages its natural resources, both within ceded territories and without, for the benefit of all citizens of the state, Indian and non-Indian alike. We routinely solicit and receive input from tribal governments concerning resource management. While we certainly have differences of opinion with some tribal groups concerning Indian harvest, this does not affect the way we manage the resource.

If, as we suspect, H.R. 2874 is not intended to create this pre-emption, then the language of the bill should be corrected accordingly. It should be made clear that tribal management (and federal management on behalf of tribes) is limited to Indian lands, and that management on non-Indian lands, whether within or without reservations or ceded territories, is the exclusive prerogative and responsibility of the state.

The State of Minnesota has been involved in various litigation and negotiation concerning reservation and ceded territory harvest since the mid-1960's. We have resolved several of these disputes with negotiated agreements. These have enabled the bands and the state to avoid the social unrest and community strife that often accompany treaty rights litigation and its outcome.

The Honorable William Richardson
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Let me state again that Minnesota is enthusiastically supportive of Indian management of natural resources on Indian lands, and of federal efforts to enhance it. To the extent H.R. 2874 achieves this objective, we support it as well. We strongly urge you to examine the bill closely, however, for we feel its language will have far broader impacts. Federal pre-emption of long-established state authority and implicit recognition of treaty harvest rights not validated by the courts are not, we hope, what this bill intends.

I trust this is helpful to you. I would welcome the opportunity for further discussion or testimony concerning this matter.

Yours truly,



Rodney W. Sando
Commissioner

GREAT LAKES INDIAN FISH & WILDLIFE COMMISSION

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

• MEMBER TRIBES •

MICHIGAN

Bay Mills Community
Keweenaw Bay Community
La-Virgin-Duon Band

WISCONSIN

Bad River Band
La Crosse Ojibwa Band
La-Isle-Roberte Band
Red Cliff Band
St. Croix Ojibwa
Sokaogon Chippewa

MINNESOTA

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



October 28, 1993

The Honorable Bill Richardson
Subcommittee on Native American Affairs
Committee on Natural Resources
United States House of Representatives
1522 Longworth House Building
Washington, D.C. 20515

Re: Comments on H.R. 2874 - Indian Fish and Wildlife
Resource Enhancement Act

Dear Chairman Richardson:

The Great Lakes Indian Fish and Wildlife Commission (GLIFWC) thanks you for the opportunity to provide these comments on H.R. 2874 as part of the record of the hearing held on October 8, 1993.

H.R. 2874 would provide a federal statutory mandate for the preservation and enhancement of tribal fish, wildlife, wild plant and habitat management efforts. GLIFWC supports this initiative and the underlying goal of acknowledging - as a matter of federal law - the primacy of tribal self-regulation of treaty-protected resources, both on and off the reservation.

H.R. 2874 would serve to implement the very core of federal Indian policy - the preservation of historically and culturally significant activities of Indian people, the fulfillment of federal promises made to the tribes by treaty, the protection of significant Indian economic activity, the enhancement of self-government by the tribes, the encouragement of government-to-government dealings between tribes, states, and the federal government, and the promotion of educational opportunities for Indian people.

In drafting H.R. 2874, the Subcommittee clearly paid close attention to tribal comments provided as part of the February 18, 1993 oversight hearings regarding Indian natural resource management and enhancement issues. GLIFWC appreciates the

The Honorable Bill Richardson

October 22, 1993

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Subcommittee's sensitivity and responsiveness to tribal concerns. Our comments are offered in a spirit of working with the Subcommittee and its staff to refine specific details and language as this measure proceeds through the legislative process.

I. GLIFWC'S MEMBERSHIP AND PURPOSE

GLIFWC is comprised of 13 federally recognized tribes in Wisconsin, Minnesota and Michigan.^{1/} Each of GLIFWC's member tribes entered into one or more treaties with the United States, under which the tribes reserved off-reservation hunting, fishing and gathering rights in lands ceded to the United States. These rights have been recognized by the courts, including the multifaceted Lac Oreilles v. State of Wisconsin ^{2/} litigation, which is sometimes known as the Voigt case.

GLIFWC provided oral and written testimony at the Subcommittee's February 18 oversight hearings. We ask that this testimony be incorporated by reference into these comments for the purpose of providing more detailed information on GLIFWC's off-reservation natural resource management program, co-management activities and educational opportunities for tribal members.

As our previous testimony documents, GLIFWC is an intertribal organization exercising delegated tribal authority in providing a broad range of biological, management and other expertise to its member tribes. It was established by the tribes to protect and regulate the use of their off-reservation natural resources. It serves its member tribes by conserving and managing off-reservation fish, wildlife and other resources, helping tribes in the development and enhancement of institutions for tribal self-regulation of natural resources, and protecting the habitats and ecosystems that support those resources.

1/ GLIFWC's member tribes are: Wisconsin - 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, Sokaogan Chippewa of the Mole Lake Band, and Red Cliff Band of Lake Superior Chippewa Indians; Minnesota - Fond du Lac Band of Chippewa Indians, Grand Portage Chippewa Tribe, Mille Lacs Band of Chippewa Indians and Bois Forte Chippewa Tribes; and Michigan - Bay Mills Indian Community, Keweenaw Bay Indian Community, and Lac Vieux Desert Band of Lake Superior Chippewa Indians.

2/ See, e.g., 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 X), 775 F. Supp. 321 (W.D. Wisc. 1991)[Final Judgment in the Voigt case]; U.S. v. Bresette, 761 F. Supp. 658 (W.D. Minn. 1991).

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II. COMMENTS ON H.R. 2874

1. **Section 2 Findings.** This section contains a number of important findings regarding tribal fish and wildlife resources and management authority. Section 2(2) properly recognizes the federal trust responsibility in this area, and specifically acknowledges that this trust responsibility applies to all federal agencies.

The provision goes on to state that "absent a clear expression of congressional intent to the contrary, the United States has a duty to administer Federal fish and wildlife conservation laws in a manner consistent with the treaty rights of Indian tribes." The intent of this provision, as we understand it, is to provide a clear rule of statutory interpretation to guide federal agency action. While we strongly support such a purpose, the current language is too limited to accomplish this objective. For example, the language appears to apply only to the construction of "Federal fish and wildlife conservation laws." In our view all federal laws must be construed to avoid impairment of treaty rights and the diminution of tribal sovereign authority unless Congress expressly provides otherwise. To codify this principle - which is the teaching of the Supreme Court's Dion decision- we suggest the following language be included as a separate finding (replacing the language in section 2(2) which follows the word "department"):

Indian fish and wildlife resources, and tribal management activities shall not be impaired or diminished by federal statute, except to the extent expressly provided otherwise by Congress.

This language, along with the finding in section 2(3), would provide a clear directive to federal agencies and would likely reduce litigation between tribes and federal agencies.

2. **Section 5 - Indian Fish and Wildlife Management Program:** This Section would require the Department of Interior to provide for the management of Indian fish and wildlife resources consistent with the Self-Determination Act. We note the following:

The Honorable Bill Richardson

October 22, 1993

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- a. It is our understanding that the bill is intended to apply to tribes contracting under P.L. 93-638, or entering tribal self-governance compacts. To clarify this, we suggest that in Section 5 (and throughout H.R. 2874) the Self-Determination Act be cited as 25 U.S.C. § 450 et seq. rather than as P.L. 93-638, and that Committee report language be included to assure that self-governance tribes are full participants under the Bill.
- b. H.R. 2874 would reinforce statutory programmatic authority for the Department of the Interior (Interior) to establish an "Indian Fish and Wildlife Resource Management Program." This authority must be seen within the larger framework of the bill - which is designed to promote tribal management efforts. Along these lines, the Bill should stress that Congress does not intend Interior to create or operate a bureaucracy that diverts the financial resources needed for tribes to operate their own management programs. To ensure that unnecessary bureaucracy is avoided, the Bill could provide in Section 5(b) that: "The Secretary shall efficiently administer this Program in a manner that maximizes the transfer of financial resources to tribal fish and wildlife management programs."
- c. Section 5(c) contains a broad list of tribal management activities. It would be helpful to add to the listed activities habitat protection and restoration programs, public information/public relations and natural resource program administration. These are integral parts of tribal resource management programs and should be expressly acknowledged as such.
- d. Section 5 (and other relevant sections) should state that "tribal organizations exercising properly delegated tribal authority" may develop, implement and operate fish and wildlife management operation programs, may carry out the resource management planning process and are eligible for Secretarial financial and technical assistance. It is our understanding that the Bill intends that tribal organizations exercising delegated tribal authority - like GLIFWC does for its member tribes in connection with the Voigt case - will be full participants in the activities authorized in the Bill. The language we propose would clarify this.
- e. Sound natural resource management planning is a vitally important endeavor for tribes. As we read it, H.R. 2874 leaves a measure of uncertainty with respect to some of the requirements of a tribal resource management plan. Among other things, the Bill should make clear that tribes are not required to change their resource management traditions, methods or existing management plans to conform to the Bill's

The Honorable Bill Richardson
 October 22, 1993
 Page 5

requirements. A provision indicating that tribes (or tribal organizations exercising properly delegated tribal authority) shall have broad discretion "in determining the tribal needs to be addressed by the plan and the scope and contents of the plan" would accomplish this.

The Bill should also recognize that practical constraints may in some instances impede the completion of a comprehensive natural resource management planning process within the Bill's proposed three-year period. Comprehensive resource management planning is a complex undertaking that requires substantial funding and expertise. Tribal resource management authority may extend broadly to many species over a wide territory. For effective planning, much information must be gathered, priorities must be established and many decisions must be made. It may frequently be the case that insufficient funding and other constraints limit a tribe's ability to address all resources at once in the planning process. Rather, in many instances resources of highest priority receive immediate attention, leaving planning for other resources to a later time. Given these practicalities, a tribe should not be penalized or adversely affected for not meeting the three year planning deadline, especially for factors beyond a tribe's control.

3. Section 7 Tribal Fish Hatchery Program. This section authorizes the Secretary to establish and administer an Indian Fish Hatchery Program "to assist Indian tribes to develop tribal hatcheries and enhance fish resources on the reservation." While GLIFWC supports such a provision, we note that several of GLIFWC's member tribes stock fish from tribal hatcheries in off-reservation waters within ceded territories as part of their fishery enhancement program. GLIFWC therefore recommends deleting the words "on the reservation" from the end of section 7(a).

GLIFWC applauds the Subcommittee's vision as reflected in H.R. 2874. We support the development of legislation to provide strong statutory support for tribal fish and wildlife management programs. GLIFWC and its staff stand ready to assist the Subcommittee in any way we can.

Very truly yours,

/s/ James H. Schlender

James H. Schlender
 Executive Administrator

TESTIMONY OF MICHAEL T. PABLO, TRIBAL CHAIRMAN
OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION

ON THE PROPOSED
H.R. 2874
THE INDIAN FISH AND WILDLIFE RESOURCE
ENHANCEMENT ACT OF 1993

OCTOBER 1993

The Confederated Salish and Kootenai Tribes of the Flathead Nation have reviewed the draft legislation entitled the Indian Fish and Wildlife Resource Enhancement Act of 1993. We support in concept legislation that provides fish and wildlife resource management opportunities for Indian tribes. However, we wish to express several concerns that we have with this legislation and provide suggestions for improving it.

The Flathead Indian Reservation is the 1.2 million acre home of the Confederated Salish and Kootenai Tribes. This Reservation was created in 1855 with the signing of the Hellgate Treaty, which reserved to our Tribes the exclusive right to hunt and fish within the exterior boundaries of this Reservation. Hunting and fishing rights were also reserved in aboriginal and ceded territory outside our Reservation boundaries.

The Flathead Reservation contains nearly 70,000 acres of lakes and over 400 miles of streams which are open to fishing by Tribal and non-Tribal people. Most of the Reservation's Tribal lands (633,651 acres) along with the state and federal lands (62,703 acres), are also open to non-Tribal bird hunters. Fishing and bird hunting by non-Tribal people on the Reservation is regulated under a joint agreement between the Tribes and the State of Montana. Under this agreement, a joint Recreation Permit is required for non-Tribal people to recreate within the exterior boundaries of the Reservation. Seasonal and three-day Recreation Permits, as well as fishing and hunting stamps, are available for purchase. During 1992, 21,461 various types of Tribal recreational permits and stamps were purchased and the Tribes spent over \$1.1 million protecting and managing fish wildlife and recreation resources on the Reservation.

LEGAL CONCERNS

The purpose for which this bill was put together is of the highest value to Indian Country and it appears to be two-fold. First, it provides a funding mechanism to Tribes so that they themselves can more readily engage in management of natural resources central to their lives and their existence. If done properly this could put Tribes on a footing similar to that of states that obtain federal funding for wildlife management. The second function of the bill provides educational assistance to qualified Tribal people to further their studies in fish and wildlife management and associated fields.

The purposes of the Bill are admirable. Additionally as the bill itself attests, the purposes when properly applied would bolster the trust responsibilities of the United States government. However, we detect a deficiency in Section 13 of the bill. There is no identified source or amount of funding to implement the purposes of the bill. We stress the need to not take away from existing Tribal programs--don't rob Peter to pay Paul.

The first principle legal problem we see with the bill in its present form is the random use of similar, though not identical, words and phrases to address the scope of the bill and the nature of the Tribal interests to be protected. By definition the bill is to deal with fish and wildlife issues. Accordingly, the most evident inconsistent terminology lies in trying to define those resources. There are at least seven different terminologies used to define Tribal fish and wildlife resources. For example:

- 1) the term "Indian fish and wildlife resources" appears in Section 2(2) and elsewhere;
- 2) the term "fish and wildlife resource" appears in Section 2(4) and elsewhere;
- 3) the term "tribal resource management activities" appears in Section 2(3) and elsewhere;

4) the term "Indian hunting and fishing activities" appears in Section 2(6) and elsewhere;

5) the term "tribal fish and wildlife resources" appears in Section 2(6) and elsewhere;

6) the term "Indian hunting, fishing and gathering rights" appears in Section 3(1).

Another good example of this inconsistency appears in Section 5(a), which provides that the Secretary shall provide for the management of, variously,

- 1) "Indian fish and wildlife resources",
- 2) "fish and wildlife resources".
- 3) "Indian hunting, fishing and gathering rights, and
- 4) "certain fish and wildlife resources".

Only one of those terms is defined. The term "Indian fish and wildlife resources" is defined at Section 4(6). None of the other terms are defined. However, for example, on page three of the bill the terms "Indian hunting and fishing activities", "tribal fish and wildlife resources", "fish and wildlife resources", "Indian fish and wildlife resources" and "Indian hunting and fishing gathering rights" all appear in attempting to address roughly the same substance. The potential for confusion is quite high and is easily dealt with. Stick to one term and define it to include all fish and wildlife in which Tribes have a protectable interest.

Working from the premise that the purpose of this bill is to enhance as fully as possible the role of Tribal wildlife management activities throughout Indian country and its ceded, as well as aboriginal territories, the bill should focus on the broadest definitional term and consistently use that terminology rather than interchangeably use terms that are ill-defined.

The second definitional problem lies in geographic limitations of the scope of the bill. Three separate phrases are used to describe the geographical reach of the bill. In several Sections, notably Section 2, subparagraph 4, Section

9(f) and Section 9(a) 3 the term "Indian lands" appears as the geographic limitation of the reach of the bill. "Indian lands" is very narrowly defined in Section 4, subparagraph 8 as only lands held in trust status or subject to restrictions against alienation. By definition that excludes Indian-owned lands in fee status. On the Flathead Reservation, Indian-owned fee title lands are in the neighborhood of 70,000 acres. The term "Indian country", as defined at 18 U.S.C. 1151, covers all lands within Reservation boundaries and could be more appropriate for Reservation-wide application.

An additional aspect of the geographic reach of the bill addresses the role of Tribes in "treaty-ceded territory" in Section 2(4). By using the term "treaty-ceded territory", the bill excludes those tracts of Tribal historical lands that are aboriginal territory which the Tribes have never ceded. In the case of the Flathead Nation, aboriginal territory constitutes a tremendous area of land upon which the Tribes have very clear and protectable treaty-based rights to hunt and fish, but that would be excluded by failure to include that term "aboriginal territories" in the bill.

There is no need to place any geographic parameters on the bill since it does not purport to serve a regulatory function. Since the bill is basically a funding mechanism, there is simply no need to define the jurisdictional or geographic reach of Tribal governments. Under its trust responsibilities, the United States has the obligation to provide funding for such Tribal programs and it will do so whether or not the bill contains the terms "Indian country", "ceded Tribal territory" or "aboriginal lands". A reluctance in having such jurisdictional terms included in any Indian legislation is becoming more and more substantiated as time goes by. The several opinions in the Brendale case, as well as in the recent Bourland decision on the scope of Tribal authority on certain reservation lands that may not be in trust status, provide the impetus for such caution.

The central legal concern of the Tribes goes to what could be interpreted as an effort by the federal government to preempt the field of fish and wildlife regulation in the Indian arena. The entirety of Section 5 could be read as constituting a federal preemption of Tribal authorities within reservation boundaries and within whatever other geographic reach this bill purports to extend. One interpretation of Section 5(e)(1) is that whether or not a Tribe itself wants to engage in a management plan, the Secretary of Interior "shall" do so.

The bill provides that "to meet the management objectives set forth", an Indian fish and wildlife resource management plan shall be developed and implemented". The bill next provides that a Tribe may, under P.L. 93-638 provisions, contract to engage in that management activity. However, under Section 5(e)(B), if a Tribe chooses not to contract the development or implementation "the Secretary shall develop or implement a plan". The Secretary, under Section 5(e)(C) will be mandated to address many internal Tribal considerations and decide them in the absence of the Tribes, should the Tribes decide not to do so formally. For example, under Section 5(e)(C), the Secretary is empowered to "identify specific Tribal fish and wildlife resources goals and objectives" (Section 5(e)(C)(iii). That is wholly an internal Tribal function and the bill would empower the Secretary of Interior to do that despite the wishes of the Tribe.

A similar criticism arises out of Section 5(e)(C)(iv) which would empower (in fact would mandate), in the absence of the Tribes, the Secretary to "define critical values of the Indian Tribe and its members" regarding fish and game management. If ever there was an internal Tribal function-- that is it. The bill would mandate the Secretary of Interior to preempt Tribal sovereign powers.

Finally, under the Secretarial mandate the entire process shall be completed within three years. (Section

5(e)(C)(vii)). Section 5 improperly usurps the authority of a Tribe to engage, define and address its own critical values in the fish and wildlife arena. We cannot support this portion of the bill.

Under the provisions of Sec. 5b (1) the Tribes are concerned that the Indian Fish and Wildlife Resource Management Program could be a new BIA program which will utilize funding that might otherwise go to Tribal management efforts. We suggest instead that much of the direction for for this effort be derived by creation of regional advisory groups consisting of Tribal fish and wildlife managers and enforcement personnel selected from applicants from tribes with experienced professional staffs. Funds to cover their participation costs, as well as travel and other expenses would be made available under the Act to allow for a sharing of expertise.

This legislation can be a very important tool by which Indian Tribes can substantially improve the management of fish, wildlife and habitat resources on their reservations. However, the language within the bill about which we have expressed concerns could pose future problems for tribes attempting to improve their management capabilities. We ask that serious consideration be given to these concerns and that they be addressed in amendments to the legislation.

The Confederated Salish and Kootenai Tribes sincerely appreciate the opportunity to provide the written testimony of the contents of this legislation. We request that this testimony be included in the record for this legislation.

As with the earlier Senate efforts at developing a bill to support Tribal fish and wildlife, the intent is laudable. However, just as in the Senate efforts, this bill simply misses the mark. What Tribes need is an identified, solid and substantive source of direct federal funding that doesn't adversely impact existing Tribal funds. The Dingell-Johnson, Pittman-Robertson and related acts supply simple and direct sources of funding. Tribal access to those or similar funds

provide a solid funding source which avoids the need to address geographic jurisdictional constraints on Tribal regulatory authority.



Department of Natural Resources
Crow Creek Sioux Tribe
 P.O. Box 50, Fort Thompson, South Dakota 57539
 Telephone: (605) 245-2221

October 5, 1993

Mr. Steven Bealey
 Deputy Council on Indian Affairs
 Washington, D.C.

The Crow Creek Sioux Tribe of South Dakota would like to take a moment to remind you of the importance of the proposed legislation known as the Indian Fish and Wildlife Resource Management Act of 1993.

There are not strong enough words to express the importance of this Act to Indian people throughout the United States. Tribes such as ours have been struggling for years to be independent and self governing over our own reservations. This Bill presents a chance for Tribes to acquire the resources necessary to properly operate Wildlife and Fisheries Programs on the level of other State and Federal Agencies.

The Crow Creek Sioux Tribe would like to express its support of this Bill. The language directed toward Fisheries and Bison is very encouraging, as both are of great importance to our Tribes.

At the same time Wildlife holds as much or more importance to our Great Plains Tribe and we feel the language is too vague to produce truly great advances in our Wildlife management programs. We would like to see stronger language addressing the wildlife aspect of this bill and request your assistance in doing so.

Thank you for your time and consideration in this matter.

Sincerely,

Tony Wilman
 Tony Wilman, C.C.S.T. Biologist

Duane Big Eagle
 Duane Big Eagle-Chairman
 Crow Creek Sioux Tribe

Menominee Indian Tribe of Wisconsin



P.O. Box 397
Keshena, Wisconsin 54135

Telephone
1-715-799-3341

TESTIMONY OF THE
MENOMINEE INDIAN TRIBE OF WISCONSIN
TO THE
HOUSE NATIVE AMERICAN AFFAIRS SUBCOMMITTEE
REGARDING
H.R. 2874,
THE INDIAN FISH AND WILDLIFE RESOURCE ENHANCEMENT ACT OF 1993

October 22, 1993

The Menominee Indian Tribe of Wisconsin would like to express our thanks to Chairman Richardson and Congressman Thomas for their leadership in introducing H.R. 2874, the Indian Fish and Wildlife Resource Enhancement Act of 1993. We also thank the Native American Affairs Subcommittee for the opportunity to submit our comments on this important legislation which would establish a solid statutory basis for tribal fish and wildlife programs.

The Menominee Indian Reservation consists of 360 square miles of mostly wilderness terrain, with 80 lakes and more than 300 miles of rivers and streams. Despite attempts by the federal government more than 150 years ago to move our people from our land, the Menominee refused to be uprooted from our region of forests and the clear waters of the Wolf River and its tributaries. Unlike many other tribal homelands or reservations, Menominee lands were never allotted. Today, our reservation remains one of the largest tracts of uncheckerboarded Indian lands in the nation. It is rich in fish, wildlife, and plants necessary to carry on tribal cultural practices that provide for much of the material needs of our people.

The Menominee Tribe established its Conservation Department in 1978 with funding under the BIA Rights Protection Program. The Department provides enforcement for the Tribe's natural resources and tribal/federal trespass laws. Conservation and enforcement efforts are done in a coordinated and cooperative manner with state and federal agencies. Tribal activities enhance the overall efforts of both state and federal agencies.

In FY1991 the Tribe expanded the Department's efforts into areas of fish and wildlife management by hiring a Fish and Wildlife Biologist/Manager. This person is charged with developing the Tribe's fish, wildlife, parks and recreation program. His duties include managing four one-acre fish rearing ponds, the Circle of Flight wetlands project, and noxious weed

control; conducting environmental assessments; and co-managing fish and wildlife activities with the Wisconsin Department of Natural Resources. In FY1992 the Conservation Department patrolled a total of more than 98,500 miles. In some 350 incidents, the Department issued 49 warnings and 81 citations, and responded to 36 complaints. The Department also stocked almost two million fish and responded to beaver overpopulation by harvesting 87 animals.

GENERAL COMMENTS

In general, the Menominee Tribe supports the intent of the Indian Fish and Wildlife Resource Enhancement Act. We believe that this legislation reflects responsiveness of the Subcommittee to tribes at the Subcommittee's hearing earlier this year, and subsequent comments and suggestions made by tribes. We appreciate the bill's emphasis on tribal governmental authority for resource management and enforcement, rather than placing the emphasis on the Bureau of Indian Affairs. This tribal authority is appropriately recognized in the bill's provisions for tribes to contract for Interior fish and wildlife programs administered by the Secretary, and financial and technical assistance being authorized to tribes for evaluating tribal codes and regulations, conservation needs and resource conditions.

SPECIFIC COMMENTS

For the Subcommittee's consideration, we offer several comments on certain provisions of the proposed bill and some suggestions for changes in the wording of the bill.

Section 3 - Findings.

We note in general that the Menominee Tribe appreciates the intentional drafting of H.R. 2874 to recognize and affirm the government-to-government relationship between tribes and the federal government, treaty rights of the tribes, and the trust responsibility and rights protection responsibilities of the federal government. These Findings set forth the underpinnings of a statutory basis for tribal fish and wildlife programs.

We do note, however, that the proposed legislation does not address the issue of tribal regulation of non-Indian use of natural resources on lands within the boundaries of a reservation (except for the statement in Finding (5) that "Indian tribes have jurisdiction over Indian and non-Indian hunting and fishing activities on Indian reservations ..."). Only a few pieces of land within the Menominee Reservation are owned by non-Indians, and, during the winter, spring and fall months, the reservation is mostly closed to non-tribal members. The summer months, however, see a large influx of non-Indians onto our tribal lands, seeking to take advantage of fishing and other recreational opportunities. This number of non-Indian resource users during the summer months far outnumbers permanent residents. While the Menominee Tribe manages the lakes of our reservation, we receive no compensation from non-tribal members through licenses or other fees. We

believe that the bill should be more explicit in the way that it addresses the issue of tribal regulatory jurisdiction over non-Indians.

Paragraph (6) of the Findings section states that Indian tribes "have jurisdiction over Indian and non-Indian hunting and fishing activities on Indian reservations," but this paragraph does not explicitly acknowledge tribal civil regulatory jurisdiction over non-Indians on privately owned lands within reservation boundaries. The U.S. Supreme Court's recent decision in *South Dakota v. Bourland*, No. 91-2051 (June 14, 1993), and its earlier decision in *Montana v. United States*, 450 U.S. 544 (1981), hold that tribal regulatory authority over non-Indians on privately owned lands within reservation boundaries can be sustained in instances in which a tribe asserts such authority in order to control conduct that "threatens or has some direct effect on the political integrity, the economic security, or health or welfare of the tribe." 450 U.S. at 566. Hunting and fishing by non-Indians on fee lands, and other kinds of conduct that damage fish and wildlife habitat, may have such effects, especially in instances in which the fish and wildlife populations at issue have cultural and economic importance for the tribe. Since this is the test that the Supreme Court has laid down for a tribe to assert civil regulatory jurisdiction over non-Indians on fee lands as an aspect of inherent sovereignty, the Subcommittee should consider a finding that, in the context of fish and wildlife, would help tribes to meet this test. The alienation of Indian lands within reservations, whether pursuant to the allotment policy or more recent federal action, generally has not been carried out with any consideration of the habitat values of the lands that have been alienated. If tribes are to be able to effectively manage culturally important fish and wildlife resources, tribes that have fee lands within their reservations will need to be able to exercise regulatory authority over the conduct of non-Indians. We recommend that the bill be revised to include a finding, either in this paragraph or at another appropriate point, that:

"hunting and fishing by non-Indians on fee lands within a reservation may significantly affect a tribe's political integrity, the economic security, or health or welfare."

In addition, paragraph (6) of this section should be amended by changing the first clause to read as follows:

"the United States has an obligation to provide assistance to Indian tribes to monitor and regulate Indian and non-Indian hunting and fishing activities, ..."

Section 3 - Purposes.

We generally support the language used in this section. We believe, however, that the first two paragraphs in this section should be revised to speak of the habitat on which the fish and wildlife resources depend. Fish and wildlife resources cannot be maintained without land or water for habitat, and it would make the bill more comprehensive in its approach to resource management

if the Purposes section specifically speaks of habitat. We recommend that in both paragraph (1) and paragraph (2) of this section, after the word "resources," the words "and habitat" be inserted.

Section 4 - Definitions.

The bill includes definitions of "Indian land" and "Indian reservation" in paragraphs (8) and (9), respectively. The term "Indian land" is defined as land that is either held in trust for an Indian or tribe or held by an Indian or tribe and subject to a restraint on alienation imposed by the United States. We question the need for using the term "Indian land" as a defined term. Indian fish and wildlife resources are not necessarily located on "Indian land" as so defined. The resources may from time to time be located on fee lands within reservation boundaries or on ceded lands outside reservation boundaries. It appears to us that the term is only used in two places in the bill, both times in Section 9, which would establish an education program in fish and wildlife resource management. Paragraphs (b)(1) and (b)(2) both refer to professional employment "serving or benefiting Indian lands." It would make more sense for the cooperative education program to be established under this section to refer to employment in Indian fish and wildlife resource management or employment serving reservations. We think that the reference to "Indian lands" would only serve to give the BIA a rationale to narrow the scope of the program. Thus, we recommend that the term "Indian land" be deleted from the Definitions section and that some other term be used in Section 9.

If the real reason for using the term "Indian land" is to include Indian lands outside of reservation boundaries, then we suggest the Subcommittee look to recent statutes that have used definitions of similar terms that are based on the statutory definition of "Indian country." 18 U.S.C. § 1151. For example, the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) defines the term "tribal land" as including "all lands within the exterior boundaries of any Indian reservation." 25 U.S.C. § 3001(15). This definition of "tribal lands" is also used in the National Historic Preservation Act as amended in 1992. Pub. L. No. 102-575.

In the definition of "resource management activities" in subsection 4(12), we recommend that, after the word "resources" in the first sentence, the words "and habitat" be inserted.

Section 5 - Indian Fish and Wildlife Management Program

We strongly support provisions of the bill which would direct the Secretary to establish the Indian Fish and Wildlife Resource Management Program. In our view, Section 5 is the heart of H.R. 2874. The Tribe supports the bill's stated objective of integrated resource management, which would take into consideration not only a tribe's fish and wildlife resources, but forest, agricultural and other resources.

We are pleased to note that habitat restoration is included as a resource management activity under Section 5(c)(3). We also strongly support the inclusion of the development of tribal conservation programs, including conservation enforcement officer training and employment programs, as one of the management activities under the new program (Subsection 5(c)(5)).

Section 5 does not say where the Secretary should locate the new Indian Fish and Wildlife Resource Management Program within the Department of the Interior. Is it the Subcommittee's intention that that Program operate across various Interior agencies, that it be located within the BIA, or that its location is an issue which will be determined in consultation with tribes? We think that the bill should be more explicit. If it is not clear where the new program fits within the Department, one practical consequence is likely to be that the Program will not be included in the Department's budget request to Congress.

We strongly support Subsection 5(d), which would authorize the Secretary to provide financial and technical assistance to enable a tribe to review and update or revise its tribal management codes, ordinances and regulations; evaluate the need for and provide training to tribal conservation and other fish and wildlife staff; and document the condition of the resources. Because tribes have diverse views about what laws and regulations are needed to manage their resources and to govern subsistence and commercial uses, and many tribes, in fact, have very comprehensive conservation codes in place, the tribes are in the best situation to determine whether existing tribal codes and regulatory programs are adequate or should be changed. This subsection, in which the Secretary would serve in a role that supports tribes developing their regulatory programs in accordance with tribally defined objectives and priorities, is in keeping with the spirit of self-determination.

While a number of tribes in the Great Lakes states have developed sophisticated integrated Natural Resources Management plans for fish and wildlife management, the Menominee Tribe does not yet have such a plan in place. Areas which the Tribe hopes to address include beaver overpopulation, deer overharvest, game habitat improvement, and deer and bear registration. We also need to obtain accurate fish and wildlife population data, and upgrade our fish culture facilities.

Under Subsection 5(e), a tribe would have three years to evaluate the condition of its resources and habitat conditions, and identify holistic goals and objectives specific to fish and wildlife management through a public meeting process which would involve the wider community. We believe that such a Resource Management Plan will be very helpful. We are particularly pleased to note that one of the requirements for such a Resource Management Plan would be to "define critical values of the Indian tribe and its members and provide identified holistic management objectives." While such a requirement would be especially important for reservations where the BIA rather than the tribal government develops the Plan, we think that this is also a reasonable requirement for tribes.

Since the provisions of the bill would provide that a tribe or tribal organization could contract to administer any program in the Department of the Interior which affects fish and wildlife resources, and because the bill's Findings correctly note that the trust responsibility to protect and enhance tribal fish and wildlife resources extends to all federal agencies, we suggest a minor amendment to Subsection (e)(C)(2). We suggest that the plan should govern the management and administration of the resources not only by the Bureau and the tribal government, but by any Interior agency which administers a program affecting tribal fish and wildlife resources. In the alternative, we suggest that Section 6 regarding tribal consultation be amended to provide that departmental actions shall be reviewed in light of the Tribal Fish and Wildlife Management Plan.

Section 9 - Education in Fish and Wildlife Resource Management.

We appreciate the clarification that the new intern positions for fish and wildlife which would be created under H.R. 2874 would be in addition to, rather than be competitive with, the forester intern positions. With respect to the intern and cooperative education programs, we are glad to see those positions not just limited to the BIA Fish, Wildlife and Recreation Program, as under the Senate draft. Depending on a tribe's Resource Management Plan, we see a possibility of an intern gathering expertise in the integration of resources in the Water Resource Branch or Division of Forestry, or Environmental Services. This flexibility is appropriate in light of the bill's goals of integrated resource management plans.

As noted earlier, we recommend that the term "Indian lands" be deleted and be replaced with "Indian fish and wildlife resources."

Section 12 - Trust Responsibility.

As we noted above regarding the Subcommittee's drafting of Section 2, the Findings section, we appreciate the bill's recognition of the trust responsibility and the honoring of treaty rights in Section 12.

Section 13 - Authorization of Appropriations.

Finally, the Menominee Tribe wishes to express its concern that another source of funding be identified to carry out the objectives of the proposed legislation. We ask this Subcommittee to consider a tribal set-aside within the Dingell-Johnson and Pittman-Robertson funds, or some other form of tribal access to Federal Aid in Fish and Wildlife Restoration or Land and Water Conservation funds. These statutory funding sources for state fish and wildlife programs are funded, in part, through the dedication of various kinds of federal tax receipts. Although individual Indians pay these taxes just like other citizens, tribal governments do not have access to these funds for use in tribal fish and wildlife conservation programs.

For the Subcommittee's information, we note that in 1979 the Department of the Interior published a Task Force Report entitled "Increasing Participation by Indian Tribes in the Land and Water Conservation Fund." The Land and Water Conservation Fund (L&WCF), 16 U.S.C. §§ 460d to 460i-11, is one source of federal assistance that state fish and wildlife agencies can use for habitat restoration projects. (The L&WCF is funded, in part, by the receipt of taxes on motorboat fuels, taxes which Indians routinely pay. The L&WCF is also funded with the federal government's receipts derived from outer continental shelf oil and gas.) The 1979 Task Force Report recommended that the Land and Water Conservation Fund Act be amended to create a separate program for Indian tribes, similar to the federal assistance program for states. It is our understanding that, although the Department put some effort into developing a legislative proposal based on the Task Force's recommendations, such a legislative proposal never was submitted to Congress. We suggest that the Subcommittee look into this because it is clearly relevant to the issue of providing access for tribal fish and wildlife agencies to federal sources of assistance which are available to state agencies.

In closing, the Menominee Indian Tribe of Wisconsin again expresses our thanks to the Native American Affairs Subcommittee for its leadership in developing the Indian Fish and Wildlife Resource Enhancement Act of 1993, and for the opportunity to submit our comments on the bill. We look forward to working with the Congress toward enactment of this important legislation.



Puyallup Tribe of Indians

TESTIMONY OF
 WILLIAM A. WARREN
 FISHERIES MANAGEMENT BIOLOGIST
 FOR THE
 PUTALLUP TRIBE OF INDIANS
 ROBERTA YOUNG, CHAIRWOMAN
 BEFORE
 THE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
 OF THE HOUSE NATURAL RESOURCES COMMITTEE
 ON
 THE INDIAN FISH AND WILDLIFE RESOURCE
 ENHANCEMENT ACT OF 1993 (H.R. 2874)
 8 OCTOBER 1993

I. INTRODUCTION

Funding for tribal governments to develop comprehensive natural resource management plans and staffs has not kept pace with the need. Natural resource management is becoming increasingly complex and involves all aspects of tribal government activities. The statutory responsibilities of tribes for natural resource management has exceeded the funding available to adequately address these responsibilities.

Tribal governments contribute significantly to the demand for natural resources among both Indian and non-Indian people, therefore, it is in the nation's interest to support the protection and further development of tribal natural resources through this bill.

II. STATEMENT OF SUPPORT

The Puyallup Tribe supports the major principles and goals outlined in the latest draft (August 4, 1993) of H.R. 2874. The Tribe believes this is a good first start at comprehensive Native American fish and wildlife legislation.

The Puyallup Tribe strongly supports language in the current bill which specifically recognizes the trust responsibility of the United States regarding fish and wildlife resource protection and enhancement. The Tribe also strongly supports language in the current bill stating the commitment of the United States to a government-to-government relationship with Indian tribes which recognizes the right of full participation of tribes in decisions affecting tribal natural resources. We are also pleased to see

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H.R. 2874
8 October 1993

the commitment to adequate funding for carrying out the bill's requirements. The commitment to education and training of Native American natural resource management professionals is also an important part of the current bill. We also strongly support the inclusion of "integrated resource management" concepts in the bill, and the requirement that Indian tribes will be full participants in the implementation of this act.

III. CONCERNS OVER OMISSIONS IN PRESENT DRAFT

The Puyallup Tribe is concerned, however, over the removal from earlier drafts language requiring tribal sharing of funds from Federal Aid in Sport Fish and Wildlife Restoration (Dingell-Johnson, Pittman-Robertson and Wallop-Breaux programs) and the Land and Water Conservation Account funds. It is our position that this provision be retained in the present bill. We are also concerned about the failure to specifically mention the need for tribal funding to implement sensitive species management plans. Such language should provide the resources necessary to avoid further decline in sensitive species which would precipitate ESA listing. Not only does ESA listing signal a threat to the resource, but also to the ability of Indian communities to pursue their traditional, and economically important, hunting, fishing, and gathering activities. We believe that if this bill is to be truly comprehensive these provisions must be included.

The bill should clearly state that Indian fish and wildlife management authority, as well as the government's trust responsibility to protect and enhance Indian fish and wildlife resources, extends to both Indian and non-Indian land within reservation boundaries as well as ceded lands. In addition, the bill should include specific language recognizing the government's responsibility to insure access and availability of fish and wildlife resources to tribes. We also believe that the bill should specifically recognize the importance of funding and legislative support for environmental and habitat protection. This language was included in earlier drafts and should be retained in the final bill. Environmental and habitat protection are the ultimate determinates of whether fish and wildlife resources will be available to tribes in the future. We are also concerned with the elimination of the section dealing specifically with "Tribal Co-Management in Off-Reservation Settings" found in earlier drafts of the bill. As you are probably aware, cooperative management is an integral aspect of tribal natural resource management among U.S. vs. Washington tribes of the Pacific Northwest. This relationship has become increasingly complex with the addition of issues involving forest management, wildlife, and water quality. Therefore, there is a strong need to expand support for this

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activity. Finally, it should be clarified that the bill specifies additional funding not replacement funding for programs already established.

IV. EDITORIAL COMMENTS ON PRESENT DRAFT (4 AUGUST 1993)

The following comments do not include specific suggestions for incorporating all the tribes concerns mentioned in Section III of our testimony, however, we strongly support that all the concerns mentioned in our testimony be included in the bill.

The following comments refer to the draft of 4 August 1993 by section and paragraph number,

Sec.2.FINDINGS

(1) It should be made clear that government-to-government relationships with Indian tribes should be implemented by all government agencies and departments.

(2) It should be pointed out that the government's trust responsibility for fish and wildlife extends to ceded lands as well as to lands within reservation boundaries, and any activities, even if outside ceded lands or reservation boundaries, that threaten Indian fish and wildlife resources.

(5) Include reference to the jurisdiction of Indian tribes over fish and wildlife management within ceded territory in conjunction with other state and federal agencies.

(7) Emphasize the benefits to non-indian as well as Indian communities

SEC.3.PURPOSES.

(1) State that the Act reaffirms and protects Indian hunting, fishing, and gathering rights on land within the reservation boundaries, regardless of ownership, and on ceded territory.

SEC.4.DEFINITIONS.

(2) This definition must be amended to include any fish enhancement facility (hatchery, rearing ponds, spawning channels, etc.) "owned or operated by an Indian tribe or the Bureau, or by the United States Fish and Wildlife Service for an Indian tribe or the Bureau, which is engaged.....". The qualifier "on an Indian reservation" must be removed as the Puyallup tribe has the need for investment in fish enhancement facilities off the reservation. This is because the Puyallup Tribe reservation boundaries do not encompass the entire watershed on which our salmon fisheries depend and due

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to the biological requirements of the salmon, their enhancement facilities, in most cases, must be located off reservation to be effective.

(5) We are not familiar with the language in the Indian Forest Management Act but recommend that "forest land management activity" conform to the principles of "integrated resource management".

(6) Make clear that this includes off reservation hunting and fishing rights.

SEC.5. INDIAN FISH AND WILDLIFE RESOURCE MANAGEMENT PROGRAM.

(a) MANAGEMENT OBJECTIVES.

(1) "To protect, conserve, and enhance fish and wildlife resources, and their habitat, that are important..."

(d) ASSISTANCE.

(3) The need for infrastructure should also be mentioned. Obviously a tribe cannot have a natural resource management staff if there are no office facilities or transportation available.

(5) "determine and document the condition of the Indian fish and wildlife resources, and their habitat."

(e) INDIAN FISH AND WILDLIFE RESOURCES MANAGEMENT PLANS.

Make clear that funding will be provided directly to tribes specifically for the task of developing fish and wildlife resource management plans. We could not find such a reference in this section of the bill. This is also not covered under "Purposes" which is referred to in SEC.13. AUTHORIZATION OF APPROPRIATIONS.

RED LAKE BAND of CHIPPEWA INDIANS



Red Lake, MN 56671

Phone 218-679-3341 • Fax 218-679-3375

DIVISION:

TRIBAL COUNCIL
Organized April 18, 1918
(Revised Constitution & By-Laws,
January 6, 1993)

OFFICERS:

GERALD F. BRUN, Chairman
BOBBY WHITEFEATHER, Secretary
JAMES STRONG, Treasurer

DISTRICT REPRESENTATIVES:

DOMAN F. STANTLEY, JR.
FARNAK COOK
LODANA L. PADRANKS
THERSEY DRAVIS
LAWRENCE BODGAU
ALLEN INGLEBH, JR.
TOM J. SYLADAN, JR.
CLIFFORD C. HARDY

**ADVISORY COUNCIL
& HONORARY OFFICERS**

CHIP COUNCIL OF 1889
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STATEMENT OF THE HONORABLE BOBBY WHITEFEATHER, SECRETARY RED LAKE BAND OF CHIPPEWA INDIANS TRIBAL COUNCIL

Before the
House Committee on Natural Resources
Subcommittee on Native American Affairs
October 8, 1993

Mr. Chairman, and distinguished members of this Subcommittee, thank you for this invitation to comment on behalf of the Red Lake Band of Chippewa Indians on H.R. 2874, the Indian Fish and Wildlife Resources Management Act of 1993.

I have previously offered testimony to this Subcommittee you concerning Red Lake's problems with fish and wildlife protection and management on February 18, 1993 and before the Senate Indian Affairs Committee on January 5 and June 15, 1993.

I thank you for your responsiveness in rewriting the bill to meet our concern to preserve a Tribe's right to administer all functions under the Indian Self-Determination Act (P.L. 93-638). You also heeded our call to make the education support include resource technician professions.

Red Lake continues to support H.R. 2874 and urges the Subcommittee to secure its passage this year. H.R. 2874 would help implement the federal government's trust responsibility to Tribes by enabling Tribes to manage our natural resources ourselves.

Red Lake Enterprises; Red Lake Sawmill; Red Lake Fishing Industry;
Red Lake Bingo; Red Lake Builders; Chippewa Trading Post-Red Lake & Ponemwi

TESTIMONY OF THE RED LAKE BAND OF CHIPPEWA INDIANS
 THE HONORABLE BOBBY WHITEFEATHER, SECRETARY
 OCTOBER 8, 1993 HEARING OF THE HOUSE NATIVE AMERICAN AFFAIRS SUBCOMMITTEE
 REGARDING H.R. 2874 -- THE INDIAN FISH AND WILDLIFE RESOURCES MANAGEMENT ACT OF 1993

H.R. 2874 as introduced addresses many of the concerns that I have expressed on previous occasions. However, it does not address two concerns I have previously testified upon. These two matters are described below. I have also attached proposed bill language on the Reservation trespass issue that we ask the Subcommittee to include at markup on H.R. 2874.

*A. ADD A PROVISION TO AMEND AND STRENGTHEN
 THE FEDERAL RESERVATION TRESPASS LAW*

On several previous occasions I have provided the Subcommittee with ample evidence of the critical need for Congress to amend the federal Indian Reservation trespass law in this bill, H.R. 2874. I continue to ask that, as a priority, the attached bill language be added to H.R. 2874 in your markup of this bill. Red Lake's experience with lawless poachers who trespass on Reservation lands is not unique. Other Tribes have suffered similar indignities. There can be no reasonable argument made against the amendment we propose. It does not extend authority into a new area because for decades federal law has prohibited unauthorized Reservation trespass. The amendment we propose merely modernizes the penalty structure in that trespass law. It does not over-reach. Rather it restores a penalty level to the law which is equal in impact as the original penalty was when the law was first enacted.

The Red Lake Reservation is relatively large, with over 805,854 acres of tribal trust land and water. Most of these acres are within our so-called closed Reservation that has never been broken into allotments and lost to non-Indians. The remainder is in scattered lands that stretch north of the main Reservation to the Canadian border.

Our Reservation is not under P.L. 83-280. This means the Red Lake Band and the United States government, not the State of Minnesota, have full law enforcement responsibilities for the Red Lake Reservation. We share this responsibility with the United States. We need H.R. 2874 to be amended to reflect that shared obligation.

Increasingly, our Reservation size is a conservation enforcement challenge to our tribal game wardens. More and more we are unable to deal with the spiraling problem of non-members poaching on our lands, because

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non-members know they face only a slap on the wrist in the form of an outdated federal trespass violation if caught.

At this Subcommittee's February 18, 1993 hearing, I placed on the record an interesting story of how our game wardens thwarted some high-technology, well-funded poachers who were trespassing on our Reservation. I will not repeat the tale here in this testimony. But that problem is a real one and must be addressed. As I noted at the February 18th hearing, the key to real and effective law enforcement is an amendment to the Reservation trespass statute that stiffens its penalties, including clear authority for tribal confiscation and forfeiture of a violator's poaching equipment and vehicle.

Until you amend the law, federal and tribal game wardens enforce an aging law that has lost all its teeth due to the erosion of inflation. Under current law, Reservation trespassers under Title 18 of the United States Code, § 1165, are subject to the maximum penalties of a \$200 fine and 90 days imprisonment and the confiscation of any game seized. This law does not now expressly authorize confiscation and forfeiture of a violator's poaching equipment.

If the same poacher was to trespass on federal conservation and recreation areas instead of an Indian Reservation, federal law authorizes a maximum fine of \$500, up to one year imprisonment, and the confiscation of a violator's seized equipment. Federal wardens may either use the confiscated equipment or the proceeds from its sale to supplement the funding of local conservation enforcement efforts.

If the same poacher was to trespass on surrounding State of Minnesota lands, game wardens have even stronger penalties to bring against fish and game violators under State law. Violators can lose their hunting and fishing licenses for life, be fined a maximum of \$3,000, and serve up to one year in jail. Additionally, State wardens can and do confiscate seized equipment and devote it or the proceeds of its sale to local conservation enforcement programs.

Red Lake asks Congress to correct this inequity in federal law that now attracts law violators to our Reservation and puts at peril our fish and wildlife natural resources.

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The solution Red Lake proposes, which is attached to this testimony, is bill language which should be added to the Indian Fish and Wildlife Resource Management Act of 1993 to strengthen the reservation trespass statute (18 U.S.C. § 1165).

Our objective is to amend the law to stiffen penalties for prohibited non-member hunting and fishing on-Reservation, increasing the maximum fine from \$200 to \$3,000 and the maximum jail term from 90 days to one year, and authorizing tribal confiscation and forfeiture of violator's poaching equipment and vehicles.

The penalties in 18 U.S.C. § 1165 have not been altered for more than thirty years and inflation has eroded the impact of the maximum \$200 fine. For example, if the \$200 maximum fine is adjusted for an average annual inflation rate of 5%, the maximum penalty of \$200 in 1960 is really less than \$37.00 in today's dollars.

Inflation is not the only factor weakening conservation enforcement on Reservations. Criminals are getting more sophisticated. To maintain their effectiveness, state and federal enforcement measures are becoming increasingly sophisticated. One of the most effective of the new enforcement tools is the authority to seize and forfeit a poacher's equipment and vehicle. Like in the area of drug enforcement, taking the tools of the criminal enterprise has emerged as an important and effective measure in conservation enforcement by federal and state governments. These same forfeiture powers should be applied to Indian Reservations' conservation enforcement efforts to assist underfunded tribal government conservation programs.

For these reasons, Red Lake proposes that 18 U.S.C. § 1165 be amended to increase its maximum penalties to a \$3,000 fine, or one year imprisonment, or both, and to additionally vest tribal conservation enforcement programs with the authority to seize and forfeit to tribal use all personal property used by the violator to carry out the violation. This would include forfeiture powers over hunting and fishing as well as all transportation equipment used in the criminal enterprise.

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We believe it may be most politically feasible to include a provision that would automatically apply the higher of either the new federal penalties we propose or the neighboring state's penalties for prohibited hunting and fishing on state-administered game preserves. Since state penalties vary from state to state, Congress could in this way ensure that penalties applied on Reservations are no less stringent than surrounding state penalties.

B. EXPLORE FUNDING MECHANISMS TO ASSURE A BASIC FUNDING LEVEL FOR TRIBAL FISH AND WILDLIFE CONSERVATION PROGRAMS

H.R. 2874 carries a general authorization of funds. As we all know, actual funding will be dependent upon the Administration and Congress finding additional funds that are increasingly scarce because of federal budget cuts and spending caps. Without something more than a general funding authorization, H.R. 2874 may end up nothing more than a paper exercise, despite its good intentions.

It is becoming harder and harder for Tribes like Red Lake to adequately fund our natural resource programs. More and more people are living on or visiting the Reservation as our populations swell and Reservation economic life begins to make a come back. As more of our people return home, our Reservation's natural resources are relied on more and more for sustenance. As more and more people come on to our Reservation, it is under an increasing threat of environmental degradation.

In the last number of years BIA funding for tribal natural resource programs has declined. More and more of the funding has been sporadic and often project specific. We see a critical need for Congress to authorize *and appropriate* stable and consistent levels of funds specifically targeted for the comprehensive tribal government operation of a Tribe's natural resource core management program.

We ask that this Subcommittee explore, in future legislation that does not obstruct the quick enactment of H.R. 2874, amending revenue collection and distribution mechanisms like the Dingell-Johnson and Pittman-Robertson Acts

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so that tribal governments are provided their fair share of the taxes collected on Reservation activity.

All State and local governments receive a proportional share of funds collected under these Acts from special taxes levied on the sale of licenses, permits, weapons, ammunition, gear, equipment, boats, fuel, and related consumer goods used in fishing and hunting activities. Such funds are automatically collected by the federal government and returned to States and local units of government in proportional shares for fish and wildlife restoration projects. But none of these funds now are allocated to tribal governments despite the fact that some of the taxed hunting and fishing activities occur on tribal lands, including lands over which State and local governments have no jurisdiction or conservation responsibility. Nothing is allocated to Indian Reservations despite the fact that all Reservation fish and wildlife recreational activities contribute money to these funds. There is a strong case to be made, on basic fairness and equity, that tribal conservation and enforcement programs should get a share of such funds. While Red Lake does not wish consideration of such a provision to slow down passage of H.R. 2874, we would like this Subcommittee to explore this issue in future legislation.

C. CONCLUSION.

Please let us know how we might assist you in refining and securing passage of H.R. 2874 during this session of Congress. Thank you for this opportunity to be heard.

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RESERVATION TRESPASS/POACHER AMENDMENT
 18 U.S.C. § 1165 (Indian Reservation trespass statute)

H.R. 2874 TITLE VI -- MISCELLANEOUS PROVISIONS

SEC. 605. RESERVATION TRESPASS.

Section 1165 of Title 18 of the United States Code is hereby amended to read as follows:

SECTION 1165. HUNTING, TRAPPING, OR FISHING ON INDIAN LAND.--Whoever, without lawful authority or permission, willfully and knowingly goes upon any land that belongs to any Indian or Indian tribe, band, or group and either are held by the United States in trust or are subject to a restriction against alienation imposed by the United States, or upon any lands of the United States that are reserved for Indian use, for the purpose of hunting, trapping, or fishing thereon, or for the removal of game, peltries, or fish therefrom, shall be fined not more than \$200 \$3,000 or imprisoned not more than ~~ninety days~~ one year, or both, and all game, fish, and peltries, vehicles, weapons, gear, and other hunting and fishing equipment in his possession shall be forfeited to the Indian tribal government exercising conservation authority over the Indian land upon which the trespass occurred. The forfeited property, or the proceeds therefrom, shall be used by said tribe in furtherance of its conservation enforcement activities.

**TESTIMONY OF THE
NATIVE AMERICAN FISH & WILDLIFE SOCIETY
TO THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON NATURAL RESOURCES
Honorable Bill Richardson, Chairman
Subcommittee on Native American Affairs**

Comments on the draft legislation titled "Indian Fish and Wildlife Resource Enhancement Act of 1993" to the Subcommittee on Native American Affairs by Ken Poynter, Executive Director, Native American Fish & Wildlife Society (Society).

Dear Mr. Chairman and Distinguished Members:

I would like to thank the Committee on behalf of the Native American Fish & Wildlife Society for this opportunity to share our concerns on the proposed "Indian Fish and Wildlife Resource Enhancement Act of 1993". The Society supports the efforts of the House Committee on Natural Resources and the introduction of this legislation.

The Native American Fish & Wildlife Society is a national tribal organization established to support the development of Indian tribal government fish and wildlife management capabilities within a professional framework, and to promote information about Indian rights regarding their use of natural resources. The Society has an active membership of over 60 tribes, 1,200 individual professional biologists, managers, technicians, conservation law enforcement officers, and numerous member Commissions. Society members are currently involved in the technical initiatives that the Society sponsors, as well as developing tribal technical fisheries, wildlife, and recreation management initiatives that are critical to the preservation and protection of tribal resources.

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

over natural resources outside of reservations due to federal court decisions and voluntary cooperative agreements that mandate a co-management status between tribes and states in the Northwest and Great Lakes areas. Tribal lands, coupled with the Ceded and Usual and Accustomed areas (over 38 million acres for which tribes maintain co-management jurisdiction for fisheries and wildlife management and utilization), total a natural resource base of over 140,625 square miles, containing more than a million acres of lakes and impoundments (*exclusive* of the 21,596,800 surface acres of the Great Lakes Ceded Area) and thousands of miles of streams and rivers. Combined reservation lands would constitute the fifth largest state in the United States. Adding the off-reservation areas would constitute a land mass comparable to the State of Montana.

In addition, the Native governments of Alaska have over 45,000,000 acres of land which supports Native subsistence hunting, fishing, and gathering and is essential to maintaining their traditional lifestyle. The management of this subsistence resource - the source of life for the indigenous people of Alaska - is in complete disarray, with these people precluded from the management of the very resources which sustain them. Declining management funding in the Alaska Department of Fish and Game, non-compliance of state laws to federal legislation, and the lack of professional understanding and appreciation for Native traditional knowledge about the resource have endangered the resource for future generations.

It is essential that the magnitude of the resource base under tribal jurisdiction be fully understood in order to underscore the necessity for support of tribal resource management activities. But it is even more important to recognize the major role that tribal management has assumed in the absence of state and/or federal management assistance. In short, had the tribal/Native governments not stepped forward to manage the resource or demand changes to improve resource practices by federal/state agencies, a major part of the nation's resource base would be in ruin. As a result of this tribal foresight, tribal/Native lands still represent the most natural and healthy ecosystems in the nation.

At least nine officially recognized endangered avian species, seven threatened or endangered mammalian species, 11 threatened or endangered fish species, 12 threatened or endangered plant species, and one threatened reptile species occurs on reservation lands. Tribal fish hatcheries produce millions of salmon, steelhead trout, walleye and other species which support large and diverse fisheries. Wetlands occurring on reservations (over 20 million acres) throughout the country support considerable waterfowl production and offer great enhancement opportunity. Tribal wildlife programs manage and enhance extensive wildlife habitat for innumerable animal and plant species. Tribes across the country have begun the process of involvement in the North American Waterfowl Management Plan and have developed regulations for tribal members and non-Indians for harvest of waterfowl. Tribal land bases now contribute significantly toward meeting the demand for fisheries and wildlife recreational opportunities. Unfortunately, fisheries and wildlife funding options open to tribes have not kept pace with the expanding responsibilities for management, authority, or the demand for recreational opportunities by the tribal and non-tribal user. Tribes are now being recognized as prominent fisheries and wildlife management entities and are expecting full participation as partners in national fisheries and wildlife initiatives, but receive less than .40 cents per acre to conduct the necessary management activities.

The Bureau of Indian Affairs (BIA) Natural Resource Inventory System (NRIS) report, representing the only information available at this time, states that over 15 million user-days of public use were recorded on tribal lands in 1986. Seventy-two tribes were managing public fishing programs. The Confederated Salish & Kootenai Tribes, Montana; Fort Apache, Arizona; Leech Lake Chippewa Tribe, Minnesota; Pyramid Lake, Nevada; and Lower Colorado River, Arizona, each provided more than 250,000 days of public recreational use, most associated with fishing. The Eastern Band of Cherokees of North Carolina, alone, has provided over 430,310 of angler use days from 1987-1991. Sixty-one tribes managed public hunting programs, and at least 40 tribes managed trapping programs on reservations

which were open to non-Indian participation. Also 88 tribes opened parts of their reservations to public camping in developed, primitive, or wilderness camping areas. Indian reservations contribute significantly toward meeting the national demand for fishing and hunting opportunities.

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

The disparity in funding for tribal natural resource management, as compared to the other federal agencies charged with the same management responsibilities, dictates the need for this timely legislation. An example of the disparity in staffing levels, the U. S. Forest Services manages 190 million acres of land for multiple use. The Service employs 1,320 fisheries and wildlife biologists and ecologists. In contrast, the combined tribal and BIA staffs equal about 300 for over 100 million acres, most of whom are employed in positions of multiple duties. Tribes are in various stages of tribal natural resource development and enhancement and are in dire need of adequate funding and assistance to meet their management objectives.

In order for tribes to meet the bill's objective of developing and/or implementing their integrated resource management plans, adequate funding must be made available for this to happen. To date, there are many tribes that have already developed comprehensive integrated resource management plans but have not been able to secure funding to implement them. It is critical that funding be made available to tribes to assure the intent and success of this new legislation.

We strongly recommend that this bill establish programs to improve the management of Indian natural resources within the Department of the Interior rather than within the Bureau of Indian Affairs. We feel that the intent of this legislation should be to authorize and direct the existing agencies within the U.S. Department of the Interior to work cooperatively with tribal governments in developing workable tribal resource management programs. We further feel that this could be accomplished through cooperation among the agencies that already have the capability to provide for the needs of developing tribal programs.

We feel that cooperation and coordination among the various federal agencies will ensure that future funding allocated for tribal natural resource management will make it down to the tribal level for its intended purpose. We must begin to explore ways to responsibly and prudently disperse future management dollars so that tribes can get more out of the funding that they receive.

Although tribal conservation law enforcement was mentioned in Sec. 5. INDIAN FISH AND WILDLIFE RESOURCE MANAGEMENT PROGRAM, subsections (c) and (d), due to the tremendous need and desire of tribes to develop efficient conservation enforcement programs to protect their fish and wildlife resources, we suggest that a specific Tribal Conservation Law Enforcement component be included in the bill as a separate section. Conservation law enforcement accreditation, standards, curriculum development and officer authority are the areas that need attention. Allowing tribes to contract with the Office of Trust Responsibility for PL. 93-638 contract funding to develop their own conservation law enforcement programs is critical to their success.

In closing, we sincerely hope that the result of this effort will be legislation that provides the tools needed by tribes for self-directed fish and wildlife management of their precious natural resources, the resources that are so important to the traditional and cultural needs of these Indian communities. Thank you for providing this opportunity to present our comments.

STATEMENT SUBMITTED TO THE
HOUSE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS
ON H.R. 2874,
THE "INDIAN FISH AND WILDLIFE RESOURCE ENHANCEMENT ACT OF 1993"
by R. Max Peterson, Executive Vice-President
International Association of Fish and Wildlife Agencies

The International Association of Fish and Wildlife Agencies appreciates the opportunity to offer a statement for the record on H.R. 2874, the "Indian Fish and Wildlife Resource Enhancement Act of 1993."

The International Association is an organization whose government members include the fish and wildlife agencies of all fifty states, ten Canadian provinces, and U.S. and Canadian federal agencies having responsibilities for fish and wildlife. Founded in 1902, the International Association has been a key instrument in promoting principles of sound resource management and in fostering federal-state cooperation in the protection and management of fish and wildlife.

Before we go any further, we would like to emphasize our desire to work with the Committee to determine how best to deal with the many fish and wildlife resources which cross jurisdictional boundaries. It has become apparent to us, and to members of the Committee as well, that to become involved in legal entanglements over native fish and wildlife management represents an uncertain and expensive morass. The Association has recognized this and, as a result, has been a long-time advocate for increased funding for tribes to better manage fish and wildlife resources. Expanding the fish and wildlife resource management budgets of the tribes makes good sense: economically, socially and environmentally. The Association has worked in the past with the Native American Fish and Wildlife Society and other tribal representatives to support increased budgets for fish and wildlife management. We have testified each year before Congressional committees to support increased appropriations for tribal fish and wildlife resources. Initiatives such as the "Circle of Flight" North American Waterfowl Management Plan project is but one example where the Association has actively and aggressively sought to obtain funding for the tribes.

The Association has long been in favor of state-federal-tribal cooperation in fish and wildlife resource management. The Association has actively sought forums for discussion of such matters; the hearing on H.R. 2874 is yet one more example of an opportunity to explore this cooperation. The Association favors the term "cooperation", not "co-management". Cooperation allows, we believe, a wider, and more elastic approach to management than a more rigidly held "co-management" concept which may raise more legal and jurisdictional problems than it solves. We urge the use of cooperative agreements that allow for specific actions to evolve

and incorporate changes that occur to the various interested parties.

The subject matter of H.R. 2874 is Indian hunting and fishing rights, a subject which has two outstanding characteristics: one, it is complex; two, generalizations about jurisdiction and authority relating thereto are hazardous. One thing is certain, however, and that is that this is an area which could benefit from greater cooperation between tribes, states and the federal government in bringing about improvements on many reservations in fish and wildlife resource management.

Going right to the point, Mr. Chairman, the International Association supports the core initiative of H.R. 2874 to improve tribal capability in managing fish and wildlife resources on reservations. Tribes can, and do, qualify for federal aid by working with the states, and by meeting the same criteria as the states for use of those funds. Currently, there are examples where this is occurring and funds from many sources including the Federal Aid to Wildlife and Sport Fish Restoration Programs are being used. A number of states are currently working with tribes to obtain and use federal aid to help manage their fish and wildlife resources. In these cases, the tribes have agreed to provide for public use on a non-discriminatory basis to qualify for the use of these funds. We believe such agreements represent an important template for other agreements. This is an important consideration and a further expression of the "cooperation" we discussed earlier.

Returning to the bill, however, as we read it, we are concerned that it does not capture the spirit of cooperation that is necessary for making progress in improving fish and wildlife resources. Rather, we think it may authorize a massive preemption of state authority on ceded lands and other off-reservation areas. We believe also that H.R. 2874 could be construed to weaken the protections of federal conservation laws such as the Endangered Species Act, the Bald Eagle Protection Act, and the Migratory Bird Treaty Act. We would appreciate assurances from the Committee that it is not the intent of the legislation to alter existing federal-state jurisdictional responsibilities or to weaken federal conservation statutes. To that end we are prepared to work with the committee to develop appropriate savings provisions.

If, however, the goal is to supersede existing state authority on reservations, ceded lands, and other off-reservation areas, then we would urge that the legislation say as much so that the debate may begin and years of litigation may be avoided. I can tell you that states with large areas of ceded land subject to reserved Indian hunting and fishing rights will not welcome such a prospect, entailing as it inevitably would the erosion of the privilege of non-members to hunt and fish the ceded lands.

I am attaching a supplemental statement and legal analysis of H.R. 2874 which explores in detail some of these concerns more closely.

In conclusion, Mr. Chairman, the Association feels that while H.R. 2874 in general purports to improve the ability of Indian tribes to manage fish and wildlife resources, a goal which we support, there are also areas of substantial concern which we think need to be addressed. We wish to once again emphasize our desires to work on cooperative approaches to meet the pressing needs of the tribes. Managing fish and wildlife resources while retaining the basic authority of state fish and wildlife agencies is critical. Meeting obligations to Native Americans now provided by treaties and existing law is also critical. If we try, by Federal legislation, to change jurisdiction or rights which have been established over many years, the result will likely be confusion and chaos which will be detrimental to making progress in fish and wildlife resource management.

SUPPLEMENTAL ANALYSIS OF H.R. 2874,
THE "INDIAN FISH AND WILDLIFE RESOURCE ENHANCEMENT ACT OF 1993"
TO ACCOMPANY THE STATEMENT OF THE IAFWA
TO THE HOUSE SUBCOMMITTEE ON NATIVE AMERICAN AFFAIRS

In summary, the Association has serious concerns about the implications of H.R. 2874 on the existing jurisdictional authorities of the State fish and wildlife agencies, and its impact on existing Federal and State statutes for the conservation of fish and wildlife resources. Specifically, our concerns are:

1. Although asserting a general purpose to improve the capacity of tribes to manage fish and wildlife, a goal with which IAFWA can concur, the legislation provides expansive and controversial descriptions of tribal interests and is an obvious attempt to overrule legislatively a number of Supreme Court and lower court precedents with which tribal interests disagree. These over-broad assertions permeate the bill.
2. The essential thrust of H.R. 2874 is to transform the reserved tribal right to hunt and fish off-reservation on ceded lands into a sovereign right to regulate non-members by directing the Secretary of the Interior to manage fish and wildlife resources on ceded areas for the benefit of Indians. If requested by a tribe, the Secretary would be required to let the tribe administer fish and wildlife programs on ceded areas.
3. Within reservations, H.R. 2874 would preempt state authority over navigable waters, fee-patented inholdings and other areas which have been conveyed for public purposes. State authority has been confirmed in case law and the bill would reverse these rulings.
4. On vast areas of ceded lands, H.R. 2874 would preempt primary state authority to manage fish and wildlife, as confirmed by case law, and would establish an enhanced preference for Indians by directing the Secretary to manage Indian fish and wildlife resources for the subsistence, economic and employment needs of Indian tribes.
5. H.R. 2874 would weaken state and federal protection of endangered and threatened species on reservations and ceded areas as well as protections for migratory birds.
6. H.R. 2874 would either preempt state management authority on ceded lands or produce regulatory conflict and a duplication of effort by federal and state resource managers on such areas. Two independent natural resource management systems, whose objectives differ, cannot exist on the same area.

A more detailed analysis of the bill follows.

1. Findings (§2)

a. The principal finding of section 2(2) is a misstatement of existing law. Section 2(2) finds that "the United States has a trust responsibility to protect, conserve, and enhance Indian fish and wildlife resources consistent with its fiduciary obligation to and its unique relationship with Indian tribes."

COMMENT. The Government has no existing trust responsibility to protect, conserve and enhance Indian fish and wildlife resources. It is well established that the Government, in its dealings with Indian tribal property, acts in a fiduciary capacity. United States v. Cherokee Nation of Oklahoma, 489 U.S. 700, 707 (1987). But that federal responsibility "do[es] not create property rights where none would otherwise exist." *Ibid.* No Indian property rights are involved in respect of fish and wildlife. As stated by the Ninth Circuit, "[A] tribe cannot claim to 'own' the fish and game on the reservation so as to deprive the state of any interest in them." White Mountain Apache Tribe v. State of Arizona, 649 F.2d 1274, 1283 (9th Cir. 1981). *A fortiori*, a tribe does not own fish and wildlife off reservation on ceded lands. Moreover, even where Indian property rights are implicated, the term "trust" is something of a misnomer. "[T]he fiduciary relationship springs from the statutes and regulations which 'define the contours of the United States' fiduciary responsibilities.'" Pawnee v. United States, 830 F.2d 187, 192 (Fed. Cir. 1987), cert. denied, 486 U.S. 1032 (1988) (quoting United States v. Mitchell, 463 U.S. 206, 224 (1983)). This is not to say that Congress may not create fiduciary responsibilities in Government, only that no such fiduciary responsibility exists with respect to fish and wildlife.

b. Section 2(2) extends the "trust responsibility" to all Federal agencies and departments" and declares that, in the absence of a clear expression of congressional intent to the contrary, "the United States has a duty to administer Federal fish and wildlife conservation laws in a manner consistent with the treaty rights of Indian tribes." The related finding in section 2(3) announces the scope of the rule of construction set forth in section 2(2), viz., that any federal statute and regulation which affects "Indian fish and wildlife resources and tribal resource management activities" shall be interpreted in accordance with "the trust responsibility set forth in this Act."

COMMENT. The section 2(3) reference to "the trust responsibility set forth in this Act" renders it unclear whether the trust responsibility for fish and wildlife is thought to exist independently of H.R. 2874 or is to be created by H.R. 2874. Although listed under the findings section, section 2(2) and (3)

are not findings but appear to constitute a substantive declaration of trust and a rule of statutory construction. The substantive provisions of section 2(2) and (3) would result in an implied repeal of all federal and state fish and wildlife conservation laws and regulations "which affect Indian fish and wildlife resources and tribal resource management activities." That would include: state endangered species laws; the federal Endangered Species Act; the Marine Mammal Protection Act; the Migratory Bird Treaty Act; the Bald Eagle Protection Act; and other federal and state laws which affect Indian fish and wildlife resources.

c. Section 2(4) finds that fish and wildlife resources located "on Indian lands and treaty-ceded territory" continue to provide a resource base for the subsistence, cultural enrichment, and economic support of Indian tribes and individual Indians.

COMMENT. Like other generalizations in this bill, the finding of section 2(4) is too broadly stated. For example, in South Dakota v. Ducheneaux, Civ. No. 88-3049 U.S. District Court for the District of South Dakota (August 21, 1990), the federal court considered the extent of dependence of the Cheyenne River Sioux Tribe on fish and Wildlife resources and entered the finding that "It does not appear that subsistence hunting and fishing is widely practiced by present Cheyenne River Sioux Indians." The "subsistence and economic support" finding will be invoked to support commercial use of fish and wildlife by tribes and individual Indians on reservations and on ceded areas.

d. Section 2(5) declares that Indian tribes have jurisdiction over Indian and non-Indian hunting and fishing activities on Indian reservations and function as co-managers with tribal, State and Federal authorities to carry out shared management responsibilities for fish and wildlife resources arising from treaties, statutes or court orders.

COMMENT. This finding is not an accurate description of tribal jurisdiction and is inconsistent with Supreme Court decisions. See comment on section 5 at item 3, below.

e. Section 2(6) and (7) find that the United States has an obligation to provide assistance to Indian tribes to monitor Indian hunting and fishing, to protect and conserve populations and habitats and to maintain fish hatcheries, and that improved management will yield increased economic returns and enhance Indian self-determination.

2. Definitions (§4)

a. "Indian fish and wildlife resource," a term used throughout the bill, is defined in section 4(6) as "any species of animal or plant life located on Indian reservations or in which

Indians have a right protected by Federal law to fish, hunt, trap, or gather for subsistence, ceremonial, recreational or commercial purposes, or for which an Indian tribe has management or co-management responsibilities."

b. Section 4(14) defines "treaty-ceded territory" as the land ceded to the United States by treaty upon which the ceding tribe or tribes retain hunting, fishing and gathering rights.

3. Indian Fish and Wildlife Resource Management (§5)

Section 5(a)(5) directs the Secretary of the Interior to manage "Indian fish and wildlife resources" for several stated objectives including "subsistence, cultural enrichment and economic development" for the benefit of Indian tribes and their members. See also §5(a)(1). Section 5(a)(4) authorizes the Secretary "to selectively develop and increase production of certain fish and wildlife resources" in order to provide for "subsistence, economic and employment needs of Indian tribes." And section 5(b)(3) directs the Secretary, upon request of a tribe, to enter into a contract transferring to the tribe the administration of "any program within the Department of the Interior which affects Indian fish and wildlife resources and is currently administered by the Secretary."

COMMENT. Section 5 directs the Secretary to manage fish and wildlife located on reservations and also on ceded areas where the tribe or members have a reserved hunting right. Section 5 would constitute a massive preemption of existing state authority to manage fish and wildlife within reservations on navigable waters, title to the beds of which are in the state, Montana v. United States, 450 U.S. 544 (1981); State of Wisconsin v. Baker, 698 F.2d 1323 (7th Cir. 1982); on fee-patented inholdings, Montana v. United States, 450 U.S. 544 (1981); and on land and water areas within reservations where the tribe through conveyance no longer has exclusive use and occupation. South Dakota v. Bourland, No. 91-2051 (Supreme Court, June 14, 1993). In Arizona, for example, the Colorado River runs through the Colorado River Indian Reservation. Under the Equal Footing doctrine, the bed of the river is owned by the State of Arizona which possesses the concomitant right to manage the taking thereon of fish and wildlife.

Concerning ceded lands, reserved treaty rights to hunt, fish and gather are not rights of sovereignty in the tribe. Cohen, Handbook of Federal Indian Law 336 (Washington 1945). To the contrary, the authority of the states to establish non-discriminatory conservation regulations on ceded areas has been explicitly confirmed by the Supreme Court. The fact that tribes may regulate their members' exercise of treaty hunting and fishing rights does not make them manager of the off-reservation resource. That authority and responsibility resides in the states. Oregon

Fish & Wildlife Dept. v. Klamath Tribe, 473 U.S. 753, 765 n.16 (1985); New York ex rel. Becker v. Kennedy, 241 U.S. 556, 563 (1916); Lac Courte Oreilles Band v. Wisconsin, 707 F. Supp. 1034 (W.D. Wisc. 1989). And see United States v. Washington, 384 F. Supp. 312, 410-411 (W.D. Wash.) aff'd 520 F.2d 676 (9th Cir. 1975), cert. denied, 423 U.S. 1086 (1976). Large areas in northern tier and western states (Michigan, Wisconsin, Minnesota, North and South Dakota, Colorado, Montana, Idaho, Nevada, Utah, Oregon, Washington) represent lands ceded by tribes to the United States, and such areas are frequently the subject of reserved Indian hunting and fishing rights. The State of Wisconsin, for example, has twelve Indian reservations within its borders, with the northern one-third of the state subject to a Chippewa off-reservation harvest right based on the status of the area as ceded territory. Significant areas within the boundaries of Michigan were ceded to the United States by a series of eight treaties with various Indian tribes. H.R. 2874 would, silently, preempt state authority on ceded areas and invest authority in the Secretary or, upon tribal request, in the tribes.

In addition to a massive preemption of state authority, H.R. 2874 would alter the management objective for fish and wildlife on ceded areas. At present, the states manage on a nondiscriminatory basis for the benefit of present and future generations of the people of the particular states. Section 5(a)(4) of H.R. 2874 would institute a different objective centered on discrimination, viz., that management by the Secretary is to "provide for the subsistence, economic, and employment needs of Indian tribes." No mention is made in H.R. 2874 of hunting, fishing and trapping by non-Indian residents of the state in which ceded areas are located. It is inevitable that if the fish and wildlife resource is to be managed for subsistence, economic, and employment needs of Indian tribes, the resource will be commercialized and the privilege of non-tribal-member citizens to hunt, fish and trap will be diminished.

b. Section 5(b)(3) of H.R. 2874 provides for transfer of the administration of fish and wildlife programs to Indian tribes:

(3) The Secretary, upon the request of any Indian tribe or tribal organization, shall enter into a contract with the tribe or tribal organization to plan, conduct, and administer any program within the Department of the Interior which affects Indian fish and wildlife resources and is currently administered by the Secretary.

COMMENT. The foregoing provision is probably unconstitutional. The provision purports to authorize the Secretary to contract out to tribes or tribal organizations the administration of any program "which affects" Indian fish and wildlife resources. Under such authority, the Secretary would be required, on request of a tribe, to transfer to the tribe the

administration of any program (Endangered Species, Migratory Birds, Bald Eagle protection) "which affects Indian fish and wildlife resources" on reservations or on ceded lands. The transfer of administration of federal programs entrusted to the Secretary to a non-federal organization not subject to the Bill of Rights or the Administrative Procedure Act would open up immense legal and practical difficulties.

c. Section 5(c)(1) provides that activities carried out under the Secretary's Indian Fish and Wildlife Management Program shall include the enforcement of tribal codes. At present, the applicability of tribal codes beyond reservation boundaries, such as on ceded areas, is limited to tribal members. Section 5(c)(1) would authorize the Secretary to enforce tribal codes outside reservations against non-tribal members on ceded areas, although it is unclear whether and to what extent existing law enforcement authorities available to the Secretary could be employed for this purpose.

COMMENT. To the extent tribal codes discriminate against non-Indians, the Secretary would be involved in the enforcement of discriminatory measures on ceded areas (national forests, private lands) and on fee-patented reservation inholdings, thereby exposing the Secretary and federal enforcement personnel to assertions of violations of constitutional rights. If H.R. 2874 is not to set off a round of litigation and bitterness, it would be well for Congress to address closely the implications of section 5(c)(1).

5. Regulations

Section 10 directs the Secretary to issue regulations to implement the Act, and requires that such regulations "be developed by the Secretary with the full and active participation of Indian tribes."

COMMENT. The intent of the provision concerning "full and active participation of Indian tribes" in development of implementing regulations should be clarified. It is unclear whether tribes are to be co-executors of delegated authority and whether it is intended that the APA is not to be applicable to the issuance of regulations.

Sport Fishing Institute



1010 Massachusetts Ave., N.W., Washington, D.C. 20001 (202) 898-0770. Fax (202) 371-2085

October 22, 1993

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The Honorable Bill Richardson, Chairman
 Subcommittee on Native American Affairs
 House Natural Resources Committee
 1522 Longworth House Office Building
 Washington, DC 20515

Dear Chairman Richardson,

The Sport Fishing Institute (SPI) is pleased to provide testimony on H.R. 2874, the Indian Fish and Wildlife Resource Enhancement Act of 1993. Since 1949, SPI has served the fishery conservation needs of over 50 million American anglers and the sport fishing industry. Recreational fishing generates approximately \$24 billion in retail expenditures each year, supporting an estimated 900,000 jobs.

Enhancing tribal fish and wildlife management capacity will benefit anglers, tribes, and the resource. This bill contributes to improving management on tribal lands where federal support for fish and wildlife management has too often been inadequate. We would particularly like to commend you on Section 9. The education assistance provided through this program would be extremely valuable in developing a corps of trained fisheries professionals for management of Indian fishery resources.

However, the bill as written raises several concerns regarding alteration of existing jurisdictions and inappropriately expansive mandates regarding management of fish and wildlife resources. Until these issues are addressed, we must withhold our support. We are eager to work with your staff on correcting these deficiencies and devising a strong, balanced bill for enhancing fisheries resources.

SPI believes certain principles should be reflected throughout this bill. First, nearly all fisheries resources are shared across jurisdictional lines; the concept of Indian fishery resources should reflect this reality. As a consequence, appropriate fisheries management objectives would be to manage the resource for the sustainable benefit of the nation, in a manner consistent with tribal treaty rights.

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Secondly, nothing in this bill should be construed as weakening the authority of federal and state environmental law including (but not limited to) the Endangered Species Act (and state endangered species laws), and the Marine Mammal Protection Act. We are confident that this was not your intent, but believe that clarifying language is necessary to ensure that the bill does not weaken important environmental laws.

Further, nothing in this act should be used to alter existing state and federal jurisdictional authorities. The objective of this bill should be to enhance the management of tribal resources and to ensure management of other resources consistent with tribal rights. Existing state and federal jurisdictions for fish and wildlife management (e.g., on ceded territory or in navigable waters) should not be altered. On the other hand, if the bill is intended to alter these jurisdictions, we ask that you state so explicitly, so that open debate on that issue may begin.

Encouraging greater cooperation and consultation between state, federal, local and tribal governments should be a central objective. We believe the greatest potential for enhancing fisheries resources lies through greater cooperation, not through preemption or alteration of existing authorities.

Finally, tribal efforts to enhance recreational fisheries should be strongly encouraged. Tribal lands hold great fishery potential. According to a January 1993 SFI analysis, "Recreational Fisheries Development on Tribal Lands" (copy enclosed), tribal lands contain approximately 15,000 miles of perennial streams and over 1,600,000 acres of impoundments and natural lakes. The study found that 120 reservations hold recreational fishing potential for tribal and non-tribal anglers; 90 of these reservations currently allow for non-tribal fishing. In 1991, recreational anglers spent over four million days fishing on tribal lands, spending an estimated \$202 million on license fees, fishing equipment and fishing-related services. Clearly, sport fishing offers great potential for tribal economic development.

One example from the SFI report illustrates the value of tribal investment in sport fishing. The Eastern Band of Cherokees (located in North Carolina) has calculated that recreational anglers spend about \$3.5 million annually on the reservation. Angling fees of \$367,000 covered all program costs except for fish hatchery worker salaries, which were paid by a Bureau of Indian Affairs grant. Thus, the tribe's benefit/cost ratio was nearly ten to one.

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Improving recreational fishing on tribal lands largely depends upon tribal actions and access decisions. However, the federal government also has an important role in providing technical and financial assistance. This bill should move forward in addressing that responsibility.

SECTION-BY-SECTION RECOMMENDATIONS

Although SFI supports the general thrust of this proposal, and has consistently advocated efforts to strengthen Indian fish and wildlife programs, we have concerns regarding expansive definitions and jurisdictional implications of the bill. Several recommendations are outlined below, section-by-section.

Section 2 (2) and (3). By extending a trust responsibility to "protect, conserve and enhance Indian fish and wildlife resources" over all Federal agencies and departments and requiring all Federal statutes to be interpreted accordingly, the bill throws into question the application of conservation law (including the Endangered Species Act, the Federal Land Policy and Management Act and the Marine Mammal Protection Act). We urge clarification stating that the existing conservation laws shall have primacy, so that this bill does not inadvertently override decades of critical environmental laws.

Section 4 (6). The bill defines "Indian fish and wildlife resource" as "any species of animal or plant life" located on reservation, to which tribes have treaty rights, or which tribes manage or "comanage." The use of the word species implies a much broader view of Indian fish and wildlife than we believe is appropriate or intended by the bill. The relevant resources are not entire species, but rather are those populations which are on reservation or for which tribes have treaty rights or management responsibility. By defining at the species level, the bill would indicate, for example, that all runs of chinook salmon (including those for which tribes have no rights or responsibilities) would be considered "Indian fish and wildlife." We suggest that the word "population" would be more appropriate in this definition.

Section 5, general. We believe this section constitutes a massive and inappropriate preemption of existing state authority to manage fish and wildlife on navigable waters, title to which are in the state; on fee-patented inholdings; on ceded lands; and on land and water areas within reservations where the tribe through conveyance no longer has exclusive use and occupation. For example, the State of Wisconsin has twelve Indian reservations within its borders, with the northern one-third of the state considered ceded territory. H.R. 2874 would remove Wisconsin's authority to manage fisheries on these lands and transfer authority

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to the Secretary of the Interior or, upon tribal request, the tribes. Such a preemption of authority would undermine the ongoing management of these resources for the sustainable benefit of the state and nation consistent with treaty rights.

Section 5 (a) (1) and (4). Given the shared nature of fish and wildlife resources, we believe that objectives (1) and (4) are not appropriate. Fish and wildlife resources must be managed comprehensively for the benefit of all citizens, with appropriate attention given Indian needs. Managing them "for the benefit of Indian tribes and their members" seems to place Indian interests (distinguished from treaty rights) above the larger public and resource interests. Moreover, given that selective production is an accepted management activity, it need not be mentioned here. We also believe that the concept of sustainability should be brought into the objectives. One possible means of addressing these concerns would be to delete (4) and amend (1) to read:

(1) To protect, conserve, and enhance fish and wildlife resources and promote the development of these resources for the benefit of the nation, with appropriate attention given to the subsistence and economic needs of Indian tribes.

This would assure consideration of tribal needs in the larger context of national management goals. We note that the fish and wildlife to be managed would be that currently under the Secretary's (or tribal) jurisdiction.

Section 5 (b) (3). While SFI recognizes the value of contracting with tribes to plan, conduct and administer programs, we believe the phrasing used here is far too broad. The bill calls for contracting any program "which affects Indian fish and wildlife," which would include nearly anything the Department does, from the endangered species program to migratory bird management. While the Secretary should continue to be able to contract appropriate programs to tribes, this expansive requirement could lead to serious practical and legal difficulties. Consultation with tribes, as suggested under Section 6, would be a more appropriate means of assured involvement in these programs.

Section 5 (c) (1). SFI is concerned that this language may authorize the Secretary to enforce tribal codes against non-tribal members outside of reservation boundaries (e.g., on ceded lands). Enforcing a code which may discriminate against non-Indians on ceded lands would constitute a violation of constitutional and civil rights. We urge clarification on this point to avoid this potential legal quagmire.

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CONCLUSIONS

As written, the Indian Fish and Wildlife Resource Enhancement Act of 1993 represents a significant preemption of existing jurisdictional authority. It may supersede vital conservation laws such as the Endangered Species Act. It includes expansive definitions which could be interpreted to require management of important shared resources for the benefit of one segment of the population. We urge the subcommittee to make changes responsive to these concerns, and focus on developing a positive bill to enhance the resource. SFI supports strengthening of tribal fishery management capacity and the further development of recreational angling on tribal lands, and hope that the subcommittee will present a bill which achieves those ends without undercutting existing conservation authority. We ask that these comments be included in the hearing record, along with a copy of the enclosed SFI report on tribal recreational fisheries. Thank you for this opportunity to comment.

Sincerely,



Norville S. Prosser
Vice President



FUTURE 21

Good Fishing in the 21st Century

*A program of the Sport Fishing Institute - FishAmerica Foundation -
American Fishing Tackle Manufacturers Association*

RECREATIONAL FISHERIES DEVELOPMENT OPPORTUNITIES ON TRIBAL LANDS

Sport Fishing Institute
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1000 Massachusetts Avenue, N.W. (Suite 320), Washington, D.C. 20001 (202) 898-0770

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Gary L. Rankel, Program Manager for Fish, Wildlife and Recreation, Department of Interior, Bureau of Indian Affairs, Washington, D.C. 20245

Richard J. Baldes, Project Leader for the Lander Management Assistance Office, Department of Interior, U.S. Fish and Wildlife Service, Lander, WY 82520

Mark Hecker, Native American Fish and Wildlife Society, Broomfield, CO 80020

Edward Almond and Carroll Parker, Eastern Band of Cherokee Indians of the Cherokee Indian Reservation, Cherokee, NC 28719

David Conner, Red Lake Band of the Chippewa Indians of the Red Lake Indian Reservation, Red Lake, MN 56671

Joseph DosSantos, Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation, Pablo, MT 59855

Lynn Hatcher, Confederated Tribes and Bands of the Yakima Indian Nation, Yakima Indian Reservation, Toppenish, WA 98948

Kelly Meyer, White Mountain Apache Tribe of the Fort Apache Indian Reservation, Whiteriver, AZ 85941

Jack Piccolo, Summit Lake Paiute Tribe, Winnemucca, NV 89445

Kenneth Poynter, Passamaquoddy Tribe, Pleasant Point Reservation, Perry, ME 04667

Steve Terry, Miccosukee Tribe of the Miccosukee Indian Reservation, Miami, FL 33144

Paul Wagner, Pyramid Lake Paiute Tribe of the Pyramid Lake Indian Reservation, Nixon, NV 89424

George Waters, President, George Waters Consulting Service, Washington, D.C. 20001

Larry Wawronowicz, Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Indian Reservation, Lac du Flambeau, WI 54538

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RECREATIONAL FISHERIES DEVELOPMENT OPPORTUNITIES ON TRIBAL LANDS

INTRODUCTION

Recreational fishing in the United States involves over 50 million anglers who collectively fish over one-half billion days each year. These anglers spend over \$25 billion annually on fishing-related equipment and services. To many communities, recreational fishing is an important component of the local economy. Anglers fishing local streams, rivers, and lakes spend money on food, lodging, equipment, and many other items in the local economy. Further, these anglers may also spend money for other activities they engage in besides fishing, such as boating, hiking, camping, hunting, and sightseeing.

Lands of many Native American tribes offer numerous opportunities for non-tribal recreational fisheries development which would result in positive economic impacts on tribal economies. Tribal lands contain an estimated 15,000 miles of perennial streams, 986,000 acres of natural lakes and ponds, and another 630,000 acres of reservoirs and impoundments. Currently, 75 percent of the 120 reservations with recreational fisheries potential allow non-tribal fishing. During 1991, recreational anglers spent over four million days fishing tribal waters. They spent an estimated \$202 million on license fees, fishing equipment and fishing-related services. This represents only a fraction of the economic benefits tribal recreational fisheries programs are capable of receiving. Currently, most of this recreational fishing activity is limited in terms of the number of non-tribal anglers allowed on reservation lands to fish; the number of streams, rivers and lakes anglers are allowed to access; and the awareness of non-tribal anglers about fishing opportunities available on tribal lands. Each of these limitations is an outgrowth of tribal philosophy and policy towards non-tribal recreational fishing and may either reflect tribal attitudes toward recreational fishing or a lack of awareness and consideration of the social and economic benefits of a recreational fishing program.

The purpose of this report is to provide an overview of the potential for recreational fisheries development on tribal lands. This is accomplished in the two sections of this report. Section I identifies and discusses the various philosophical, policy and programmatic issues in developing a recreational fishing program. It also provides some basic guidelines for planning and implementing a new program. Section II provides descriptions of tribal programs considered to be excellent examples of recreational fisheries development. It also describes several tribal programs which have extensive fisheries resources with the potential for development.

SECTION I - ISSUES AND SUGGESTIONS ON PUBLIC RECREATIONAL FISHERIES DEVELOPMENT ON TRIBAL LANDS

Recreational fisheries development is a directed effort by an organization to increase recreational fishing participation through the enhancement, management and marketing of local fishing opportunities. The purpose of this development is to diversify and increase local economic activity. Initiation of a recreational fisheries program, while valuable in and of itself, will yield greater benefits if it is complimented by the development of other related outdoor recreation programs such as camping, hiking, boating and tourist activities.

This development guide is designed to provide assistance in planning a tribal recreational fisheries program. It presents the issues and concerns encountered in the recreational fisheries development process and uses examples from several tribal recreational fisheries programs to illustrate how the issue or concern can be dealt with. It should be recognized that each tribe has its own unique fishery resource base, tribal needs and priorities. Not all tribes may be interested in developing and managing their fisheries resources let alone allowing non-tribal anglers to use them. Clarification and resolution of these initial issues will set the course of events in the process of developing or enhancing tribal recreational fishing programs.

PHILOSOPHY AND POLICY

The decision to devote tribal fisheries resources toward recreational fisheries development involves several basic considerations by tribal councils. First is the fundamental question of whether or not the tribe wants to allow non-tribal use of its fishery resources. This decision should be made within the context of existing use of fishery resources for commercial, subsistence, ceremonial and spiritual purposes and the attitudes of tribal members with regard to sharing their resources. This is a critical issue in that without acceptance by tribal members and a consensus decision to support recreational fisheries development by tribal leaders, any attempts to initiate a program will continually face a lack of support.

COSTS AND BENEFITS

When making the decision to develop a recreational fishing program, the compilation and analysis of social and economic costs and benefits is important. Social costs are generally attitudinal and perceptual in nature. Tribal members may not want non-Indians on their lands and using tribal resources. Some tribal members may feel that having outsiders on the reservation will impinge on their cultural heritage and change their way of life. Others may feel there is a greater opportunity for environmental degradation. Finally, some may feel that public use of their lands may violate the sanctity of spiritual areas. While these are legitimate concerns, little evidence of their occurrence has been found. In fact, most tribes actively cater to recreational and tourist markets to increase tribal economic activity.

The social benefits associated with tribal recreational fisheries programs are the same as with other recreational and tourism initiatives. A better understanding of the customs, culture, history, values, and needs of Native American tribes and their members can be developed. This understanding can lead to greater trust, better working and improved social relations between tribal members and individuals and communities outside the reservation. A fisheries program providing high quality and a diversity of fishing opportunities for non-tribal anglers will also benefit tribal anglers as well.

Economic costs of implementing a recreational fishing program are those generally associated with program operation. This includes office space, fisheries biologists, enforcement officers and licensing clerks. Other costs involve the development and maintenance of fishing and boating facilities and services, and the costs of marketing and promoting the recreational fishing program to the public.

Economic benefits associated with tribal recreational fishing programs amounted to more than \$202 million nationally in 1991. These expenditures by non-tribal anglers at tribal businesses resulted in the creation of new jobs and the conversion of seasonal ones to full-time. Recreational fishing programs have helped diversify and stabilize tribal businesses. Revenues from license fees have been used to help fund other tribal programs. Finally, the establishment of a recreational fishing program has resulted in fisheries program grants from several different federal agencies.

In terms of the benefit/cost ratio of a tribal recreational fisheries program, the Eastern Band of Cherokees has calculated that recreational anglers spend about \$3.5 million annually on the reservation. Angling fees of \$367,000 covered all program costs except for fish hatchery worker salaries which were paid by a Bureau of Indian Affairs (BIA) grant. Thus, the benefit/cost ratio was about 10:1.

An additional consideration needing addressing is the relationship of a recreational fishing program to the larger tribal economic development plan. Recreational fisheries development entails the need for support facilities and services ranging from boat access, guide service and lodging to restaurants, fishing tackle suppliers and grocery stores. These facilities and services may exist to varying degrees. However, they need to be evaluated with regard to their proximity to fishing and access sites, and camping and lodging locations. The lack of essential facilities and services would necessitate an investment in developing or upgrading facilities to meet angler needs, to ensure that high quality angling experiences are available, and to realize the full range of economic benefits.

FISHERY RESOURCES AND MANAGEMENT

Another consideration is an assessment of whether or not there are sufficient fisheries resources to continue to meet tribal needs and accommodate non-tribal recreational fisheries development. This issue can be addressed from two perspectives. Initially, there could be surplus production of fish to allow for non-tribal fisheries programs. On the other hand, tribal fisheries resources may currently be fully utilized. However, through more intensive management (harvest regulation, etc.) or a reallocation from commercial or subsistence uses to recreational uses, a recreational fisheries program could be developed.

A final consideration is the issue of the costs of actively managing tribal fisheries resources to provide the economic benefits desired. Actively managing fisheries resources requires an investment in personnel to collect the biological and behavioral information needed for protection, enhancement, and management. Much of this information may be collected through cooperative agreements with state or federal fisheries agencies or under grants from the U. S. Fish and Wildlife Service (USFWS) or BIA. Management requires the development of an effective fishing code and regulations which are built upon sound scientific information and support the management goals of the recreational fishing program. Part of the management of fisheries involves an enforcement program to ensure that regulations are followed.

Of course, any regulatory and enforcement program needs to be complimented by an educational program that gives an understanding of why regulations are necessary and the benefits resulting from a well managed and regulated fishery. These benefits should include those accruing to tribal members from sustained fisheries production and to the tribe in general from the economic growth that will result.

To pay for some of the management costs associated with tribal fisheries development, the tribal council will need to consider licensing of non-Indian anglers. Pricing of licenses should reflect the unique fishing opportunities being offered by the tribe and the level of management activity associated with the recreational fishing program. Also of importance here is the realization that non-Indian anglers may spend money on services in support of their fishing or on other activities. This is an important consideration in determining whether tribal fisheries programs will be supported fully or in part from license fees.

If the tribe allows tribal members to fish commercially on tribal waters, then commercial and recreational fisheries management activities should be combined under one management agency. Again, the importance of commercial, recreational, subsistence and ceremonial uses of tribal fisheries resources needs to be considered when determining funding for tribal fisheries programs and setting fishing license fees.

FISHERIES DEVELOPMENT PROCESS

Creating or expanding a non-tribal recreational fishing program entails several steps which will lead to a solid program capable of providing long-term benefits to the tribe. These steps are outlined below and culminate with the development of a work plan and program evaluation. Planning for non-tribal recreational fishing programs should be made within the context of the overall tribal fisheries program. This will ensure that fisheries conservation and management goals are achieved and the needs of tribal members are met.

EVALUATE EXISTING FISHERY RESOURCES

The initial phase of any development initiative is an assessment of the fishery resources available to the tribe. This resource assessment consists of five components:

1. Current fisheries population levels.
2. Historical fisheries population trends.

3. Annual fishing use and fisheries yield estimates.
4. Opportunities for enhancement.
5. Opportunities for providing diverse and unique fishing experiences.

The first step in evaluating existing fisheries resources is to conduct an inventory of all lakes, ponds, rivers and streams to identify fish species composition and population levels. This information will identify which water bodies have fish populations capable of supporting recreational fisheries. Inventory information is the foundation from which the resource evaluation will be made and may be available from state or federal fisheries agencies if not collected by the tribe.

The second task in the evaluation is determining historical fisheries population trends. Knowing if fisheries populations have been increasing, relatively stable, or declining is important for determining the potential for recreational fishing use.

Estimating current fishing use and the harvest or yield of tribal fisheries is necessary in order to determine the effects of use and harvest on fish populations. This information is critical for assessing how much additional fishing pressure can be allowed without adversely affecting fish populations.

Once fishery resources have been inventoried, population trends assessed, and use and harvest levels estimated, opportunities for enhancing fisheries resources can be considered. Enhancement can take many forms and range from habitat improvement and stocking to removal of undesirable species and the introduction of sport fishing species. Each enhancement option needs to be evaluated for its impact on existing fish populations and whether it will help in meeting program goals.

The final step in the fisheries assessment process is to identify what types of recreational fishing experiences can be provided by tribal fisheries. These alternatives could range between warmwater and coldwater fisheries, to a diverse array of opportunities such as trophy, catch-and-release, flyfishing, wilderness, put-and-take and others. Based upon information from the resource assessment, infrastructure assessment, and market assessment, recreational fishing program goals can be developed which are most suitable for economic development and which will meet the needs of non-tribal anglers.

INFRASTRUCTURE ASSESSMENT

The infrastructure for recreational fishing consists of those services and facilities necessary to support fishing activity. Services may include food, lodging, fishing-related equipment, guides, boat rental, and bait among others. Provision of these services is essential for capturing the economic benefits from a recreational fishing program. An inventory of existing services and their proximity to fishing areas is important for determining where the development of new services is needed or for enhancement of existing services.

A facilities inventory is also important. Boat launching and mooring, trails, campgrounds, restrooms and other facilities which facilitate access to fishing areas are essential for

making fishing opportunities accessible to anglers. Further, camping facilities are particularly important if anglers are to remain more than one day in the area. The longer anglers stay in the area, the more money they are likely to spend.

Existing facilities should be evaluated and new development and enhancement opportunities should be identified. Once the recreational fishing opportunities the tribe wants to provide are determined, then specific recommendations for development and enhancement can be identified.

MARKET ASSESSMENT

This assessment is a critical component of the overall development process. If the tribe does not have sufficiently high quality or unique fishing opportunities or if there is not a large regional population to draw from, then the chances of attracting the desired number of anglers annually to fish on the reservation may be quite low. Therefore, it is crucial that a realistic appraisal of fishing opportunities and the regional fishing market be made.

This appraisal should consist of three components. First, an analysis of the regional population needs to be made. This information should include residence distance from tribal fishing areas, current fishing participation rates, annual number of fishing trips, average driving distance to current fishing locations, and information on income levels and other recreational interests.

Second, competing fishing opportunities within the region need to be examined. This information should cover both warmwater and coldwater fishing and focus on competitive opportunities that could be provided by the tribe. This analysis will help identify unique opportunities the tribe could provide and capitalize on. Additionally, understanding competing opportunities provides a good basis for marketing and promoting tribal fishing opportunities.

The final component is identifying the fishing preferences of anglers in the market area. Here consideration of warmwater and coldwater fishing needs to be made, but information on angler desires for trophy, put-and-take, catch-and-release, flyfishing and other types of fishing is very important and ties directly to the fisheries resource opportunities identified previously.

IDENTIFYING DEVELOPMENT ALTERNATIVES

Information on the regional population, competing opportunities, and angler preferences can be used to make an assessment of angler demand for various fishing opportunities the tribe might provide. This information can then be integrated with the resource and infrastructure inventories so that alternative development options can be identified. Consideration of the alternatives should be based on availability of fishery resources, the urgency of implementing the program, and the availability of staff and financial resources to initiate the program.

Selection of the best alternative(s) should be based upon: (1) which alternative is least expensive; (2) which would attract the desired angler numbers; (3) which would provide the most benefits to the tribe; (4) which would provide the most long-lasting benefits; and (5) which best fits within tribal management constraints and protects the resource. The importance of each of these considerations will vary from one tribal organization to the next and among individuals within an organization. Thus, they should be given weights to help guide evaluations of alternatives. These weights should be determined by their importance to the members of the tribal organization.

DEVELOPING A WORK PLAN

The final step of developing a work plan is crucial in developing a recreational fishing program. It establishes clear guidelines for initiating and carrying out the program, defines organizational and individual roles in development of the program, and establishes minimum standards for achieving program success. The proper work plan includes goals, objectives, and tasks.

Program goals and objectives should be individually set by each tribal organization. These goals should reflect both the economic development and recreational fishing participation aspects of the program. A *goal* is the ideal being worked toward such as increased business activity, greater diversity in tribal businesses, and quality trophy fishing. An *objective* is something real you hope to accomplish, which will bring you closer to your goal: 10,000 recreational fishing licenses sold, 25 percent increase in business sales. A *task* is an agreement that says who will do what, by when, using which resources to get the task completed. An example might be: construct a boat ramp on Antelope Lake within one year using tribal development funds. Examples of specific goals and objectives of the non-tribal recreational fishing program might be:

- Goal: To increase economic activity of tribal businesses through non-tribal recreational fishing.
- Objective a: To establish a year-round non-tribal recreational fishing program.
- Objective b: To provide diverse, quality fishing opportunities which meet the needs of recreational anglers.
- Objective c: To provide lodging, camping, and other support services to retain anglers in the area for a minimum of two days.

IMPLEMENTATION AND COMMUNICATIONS

A clearly established communications network is essential to successful program implementation. A number of individuals will be working on various tasks of the program. Communication on several levels is a key to keep program implementation moving. The flow of information within the tribal organization is very important. Frequent contact among tribal council members and fisheries program staff will keep everyone up to date on activities.

The entire tribal community should be kept informed of project activities and accomplishments. Periodic meetings, articles in tribal newspapers, and personal contacts will keep community members informed and supportive of the recreational fisheries program.

Communications with state and federal agencies is very important. Besides being sources of technical assistance, these agencies can provide funding for parts of the program. Participation in conferences, workshops, and training programs is a valuable way to learn about funding programs and what other tribal fisheries programs are doing.

MONITORING SUCCESS

Tribal communities are constantly in a state of change. In order to reach tribal recreational fisheries program goals, it is important that leaders have some way to monitor and assess the change that is occurring and relate it to the goals and objectives of the recreational fishing program. At the end of each year, or some other time period, program leaders should evaluate how well they have met their objectives, modify current objectives, and set new ones. Questions such as: Which tasks were completed? Which objectives were attained? What should be done differently next time? Who helped make things happen? What resources were used and who provided them? These questions will not only provide a means to gauge accomplishments, they are a means to recognize program staff and volunteers for their time and efforts, and to challenge the tribal community and staff to meet new and continuing objectives.

SECTION II - CURRENT AND FUTURE RECREATIONAL FISHING OPPORTUNITIES ON TRIBAL LANDS

To obtain estimates on the total amount of fishable waters on tribal lands and fully identify tribes with existing and potential recreational fishing opportunities, the FUTURE 21 staff contacted representatives from the Native American Fish and Wildlife Society (NAFWS), USFWS and BLA. Obtaining reliable estimates on the total amount of fishable waters, however, was extremely difficult since the methods used to measure or quantify these waters vary widely from tribe to tribe and from agency to agency. The most reliable and current of these estimates, obtained from BLA, indicate that as of 1991 tribal lands encompassed 91 million acres of land and 1.6 million surface acres of water. Broken down further by type of water body, natural lakes and ponds constitute 985,591 surface acres and reservoirs and impoundments comprise 629,750 surface acres. Perennial streams amount to 15,154 miles. As seen on Table 1, the total number of Indian Reservations in the contiguous 48 states is approximately 350. Of these, 120 possess at least potential fishery resources.

**TABLE 1: ESTIMATED TRIBAL FISHERIES IN THE CONTIGUOUS
48 STATES**

| | |
|---|-----|
| Total No. of Tribes | 350 |
| Tribes with Fisheries Resources | 120 |
| Tribes with Fishery Programs Which Allow for Some Level of Public Participation | 90 |
| Tribes with Recreational Fisheries Potential | 30 |

RECREATIONAL FISHING OPPORTUNITIES

The number of tribes which conduct recreational fisheries programs or have the potential to provide recreational fishing opportunities were a little easier to obtain. The most recent data from BLA (December 1992) report that 90 of the 210 tribes with fisheries resources

either conduct non-tribal recreational fisheries programs or provide non-tribal recreational fishing opportunities at some level (Table 1 and Appendix A). It is estimated that an additional 120 tribal reservations have the potential (in terms of fishery resource holdings) to provide non-tribal recreational fishing opportunities.

Based on information obtained from BIA, USFWS, and the Bureau of Land Management, FUTURE 21 staff has roughly estimated that recreational fishing activity on the 90 tribal reservations that provide non-tribal recreational fishing opportunities, amounted to approximately 4,038,353 angler days in 1991. (One angler day being equivalent to four hours of accrued fishing activity). It was further estimated that this activity accounted for \$203 million in direct angling-related expenditures and a total economic impact of \$314 million in 1991. Based on the FUTURE 21 estimates, recreational fishing on tribal lands supported approximately 6,534 jobs, resulting in \$3 million in state income tax revenues and nearly \$10 million in state sales tax receipts for that same year.

TRIBAL CASE STUDIES

Of the 90 tribal reservations identified to provide public fishing, FUTURE 21 staff identified a total twenty tribal reservations to investigate further. These reservations were identified based on whether they were determined to possess the most progressive or advanced recreational fisheries programs, or had the greatest potential to develop or further enhance their recreational fisheries programs. The specific criteria used to identify the programs (10 model programs and 10 tribal entities with the greatest potential) are as follows:

TOP/MODEL PROGRAMS

- Does the tribal entity have active/progressive fisheries and/or wildlife programs?
- Does the tribal entity have varied program staff (i.e., fishery biologists, technicians, economists)?
- Does the tribal entity communicate and work with the BIA, NAFWS, as well as other local, state, regional or federal agencies? Is the tribe responsive to these other entities?
- Has the tribal entity incorporated, or have plans to incorporate, a strong management and research agenda into its fishery program (i.e., fishing regulations, license or fee system, hatcheries, monitoring or research priorities, etc...)?
- Does the tribal entity's fishery program receive significant fishing pressure? If so, has the program taken full advantage of a license/fee system whereby the money derived from this system would be fed back into the fishery program?
- Does the tribal entity aggressively promote the recreational fishing opportunities that are available on its lands?
- Does the tribal entity welcome continued and/or increased fishing pressure and opportunities on its lands?

PROGRAMS WITH THE GREATEST UNREALIZED POTENTIAL

- Does the tribal entity have abundant, but not fully utilized, natural resources and are these resources desirable to recreational anglers (i.e., large amount of fishable acreage, desirable recreational species)?
- Does the tribal entity have the desire and will to increase non-tribal recreational fishing opportunities on its lands?
- Does the tribal entity possess the staff or the resources to design and implement a fisheries management program?
- Does the tribal entity require increased funding to begin an active fisheries program?
- Does the tribal entity require increased promotional efforts to increase awareness of its fisheries program?

With these criteria/questions in mind, FUTURE 21 staff, in consultation with representatives from the BIA identified Colville (WA), Leech Lake (MN), Navaho (AZ), Cherokee (NC), Flathead (MT), Yakima (WA), Pyramid Lake (NV), Lac du Flambeau (WI), White Mountain Apache (AZ) and Grand Portage (MN) as the ten most progressive recreational fisheries programs. The ten programs with the greatest potential were identified as Metalkatla (AL), Mission Indian Reservations (CA), Hualapai (AZ), Menominee (WI), Jicarilla (NM), Passamaquoddy (ME), Summit Lake (NV), Tulc River (CA), Miccosukee (FL) and Red Lake (MN).

Eleven of the twenty identified tribal reservations were successfully contacted and surveyed with regard to their fisheries management programs and practices, fishing pressure and amount of fishable water. The remaining nine tribal reservations were contacted repeatedly via telephone, mail and FAX with no response or feed-back. In light of this lack of success with the remaining tribes and the extensive information we had obtained from the other 11 tribal reservations, FUTURE 21 staff decided to focus on the information collected to date. A brief summation of those interviews follow:

TOP PROGRAMS

PYRAMID LAKE, NEVADA - The fisheries program on Pyramid Lake was established in 1952 by the State of Nevada. Control of the program was assumed by the Paiute Tribe in 1974. The fisheries program currently employs 29 individuals, four of which are fisheries biologists or technicians. The program included a fee system with fees set at \$6 for a daily fishing pass and \$32 for a seasonal pass (applicable to non-tribal members only). Total revenue from fishing permit sales over the last five years has been: \$257,437 in 1987, \$219,172 in 1988, \$198,754 in 1989, \$295,977 in 1990, and \$230,491 in 1991.

The Pyramid Lake Fisheries Program is currently funded by a federally-established trust fund (\$25 million invested-program) and managed by the interest derived from the fund. The Tribe itself, maintains four fish hatcheries: three hatcheries are used to raise Lahonton cutthroat trout, and one is used to raise resident Cul-ui, an endangered species. The Tribe manages 100,000 surface acres of Pyramid Lake. The most sought after fish by anglers on the Lake is the Lahonton cutthroat trout. The reservation holds the world record for this

fish at 41 pounds, caught in 1925. Pyramid Lake is open from October 1 through June 30. No commercial fishing is permitted. Fish must be at least 19 inches to be kept by anglers. There is a two fish limit. The reservation maintains two "full hook-up" campgrounds with a total of 82 sites. Primitive camping is permitted in all areas of the reservation. Boat access to Pyramid Lake is provided by five boat lanes.

Promotion of angling opportunities on the reservation is sought through the distribution of brochures, radio spots, press releases, and newsletters. Current obstacles that the program faces include the need for expanded boat access and adequate beach facilities. The Tribe is currently looking into ways to fulfill these needs. The Tribe also plans to develop a stronger marketing plan.

LAC DU FLAMBEAU, WISCONSIN - This tribal fisheries program was established in 1936 with assistance from the USFWS and the State of Wisconsin. The Tribe currently employs 25 people in its natural resources department, eight of which are fish biologists or technicians. Fisheries resources include 20,000 surface acres on over 100 lakes and more than 34 miles of streams.

No fee system exists for the tribal fisheries program since the Tribe's jurisdiction is restricted to only tribal members. The state has jurisdiction over regulations and requires only a Wisconsin fishing license to fish these waters. Non-Native Americans are bound by state regulations and catch limits. The state receives from \$85,000 to \$125,000 per year from fishing license sales on tribal lands. The fisheries program is funded partially by the Tribe, with the difference made up by BIA 638 contracts.

Ninety-eight percent of all fishing on tribal waters is non-Native American. There is no commercial fishing but subsistence fishing occurs in the form of gill-netting for whitefish and spearing of walleye since 1984. With BIA assistance, the Tribe operates a large hatchery for walleye, muskie, smallmouth, and black crappie. Most commonly sought fish include hatchery fish and brown, brook and rainbow trout which are farmed on the reservation.

It is estimated that 2,500 recreational anglers come to the reservation annually. The Tribe operates a 72 pad recreational vehicle campground and provides boat access to 10 percent of its lakes (concentrated on the main fishing lakes). No promotional program exists for recreational fishing and none is planned for the future.

WHITE MOUNTAIN APACHE, ARIZONA - Fisheries work at White Mountain began in the 1920s with a federal fish stocking and enforcement program. The fish hatchery on the reservation, Williams Creek, was constructed in 1939. Tribal licenses were issued as early as 1953, indicating that the White Mountain Game and Fish Department has been in existence nearly 40 years. This Department has changed substantially over the course of its existence as it has taken over both federal and state duties.

Currently the White Mountain Game and Fish Department manages approximately one-third of the total coldwater fisheries in the state of Arizona. With only one full-time fisheries manager (biologist) the Department has jurisdiction over approximately 400 miles of streams, 1700 surface acres of coldwater lakes, and 200 surface acres of warm water lakes.

The fisheries program includes a fee system. Non-tribal members pay fees of \$5 per day or \$80 per year for general fishing. General licenses allow angling in all general access waters on the reservation. Both tribal and non-tribal members must pay an fee to fish on restricted, trophy trout lakes. Fees for restricted areas range from \$15 per day on two lakes limited to 20 anglers daily, to \$300 per day for personal access to one coldwater lake.

The Game and Fish Department is provided with approximately half of the output of two resident USFWS fish hatcheries free of charge. Stocked fish include Apache, brown, brook, and rainbow trout, largemouth bass, channel catfish, and Arctic grayling. The fish most commonly sought by White Mountain anglers include Apache and rainbow trout. The fisheries program on the reservation is managed by the Tribe in cooperation with the USFWS. Regulations and catch limits are established by the Tribe.

The Tribe maintains data on economic impact of its fish and wildlife programs. White Mountain Apache estimates that for each recreational visit it receives, \$30 is spent per family per day on the reservation and the same amount is spent per family per day in surrounding communities, excluding lodging. Data for sales of all types of fishing permits indicate that in the 1990-1991 fishing season, license sales accounted for \$521,857 in revenue to the Tribe. Other funds available for the fisheries program include \$60,000 per year provided by BLA for the purpose of fisheries management.

The White Mountain Apache Tribe Fort Apache Indian Reservation maintains an abundance of campsites and boat access points to the larger lakes on the reservation. Brochures, maps, information booths at recreation shows, and a weekend open to outdoor writers are some of the promotional activities developed by the Tribe. Possible improvements toward maximizing benefits received from the fisheries program include increased marketing and promotional efforts and increased expenditures on facilities such as boat ramps and showers.

CHEROKEE, NORTH CAROLINA - The fisheries program of the Eastern Band of Cherokees has been in place since 1957. The program is an excellent example of a self-sustained recreational fisheries program. Initially assisted by BLA in the funding for construction of its only fish hatchery, the Cherokee Fish and Game Program and the Tribal Hatchery Program are now almost entirely funded by the Tribe itself. Only the salaries involved in the management of the hatchery are received from BLA. All other program aspects are funded using revenues generated from the sale of fishing permits.

Fishery resources on the Cherokee Reservation include 30 miles of streams and 5.7 surface acres of fishable water on 3 ponds. The fisheries program currently employs ten full-time employees including three game wardens. The Tribe develops and manages the entire program with occasional assistance from the USFWS on such projects as fishery assessments.

The primary species raised and stocked by the Tribal Hatchery is the rainbow trout although stocking of brook and brown trout is also practiced. The reservation obtains a vast majority of its trout eggs for its hatchery from the USFWS. A small amount are purchased from commercial organizations. Testament to the success of the hatchery program are the two state records caught on Tribal lands for brook and brown trout.

The current fee structure in place at Cherokee sets permit prices for non-tribal member use as follows: \$4 for a one-day license; \$8 for a two-day permit; \$11 for a three-day permit; \$15 for a five-day permit; and \$150 for a season permit. Total license sales for fiscal year 1992 amounted to 68,728 total permits sold (the vast majority of which were one-day permits) for a total permit-sale revenue of \$360,290. The Tribe estimates that the reservation realized nearly 80,000 angler days in fiscal year 1992.

There is no boat access to fishable waters on the reservation. Much of the angling is accomplished from stream-banks and pond shores. An abundance of camping facilities including a Campgrounds Of America (land leased from the Tribe) exist on the reservation to ensure anglers a place to stay.

The Eastern Band of Cherokee have estimated that recreational anglers and their families are responsible for a total economic impact of \$3.5 million annually on the reservation. To maintain such a substantial economic impact the Tribe seeks publicity for its recreational fishing opportunities through various mechanisms. The Tribe produces a brochure on its recreational opportunities which is distributed throughout North Carolina and surrounding states. Free-lance writers have helped with promotion as has tribal participation in various trade shows.

FLATHEAD, MONTANA - Until the 1980s the fisheries on Flathead Reservation were managed by the USFWS, BIA, and the State of Montana. The Salish and Kootenai Tribes established their own fisheries management program in 1985. The program oversees nearly 70,000 acres of lakes and over 400 miles of streams open to both tribal and non-tribal members and has become one of the most progressive tribal fisheries programs in the U.S.

In 1983, the Tribes received a contract from the Bonneville Power Administration (BPA) to conduct research on the impacts of Kerr Dam on the lower Flathead River system. The BPA study provided much of the baseline information needed by the tribal program to make fisheries management decisions. In 1987, the Tribal Council adopted, by resolution, the Fisheries Management Plan of the Flathead Indian Reservation. Today, the Tribal Fisheries Program, currently funded entirely by the Tribes, has a staff of three professional fisheries biologists, one contract professional fisheries biologist, two full-time fisheries technicians and several seasonal fisheries technicians working to restore, protect, and enhance the reservation's fishery resources.

The program's activities include research, regulation, planning, and plan implementation. Current work includes researching the physical and biological characteristics of Ninepipe and Kickinghorse Reservoirs. Surveys are also being conducted to determine the total number of fish harvested, number of angler days expended, catch rates, and seasons of use.

The program does not maintain or manage a hatchery of its own. Approximately 90 percent of the reservation's fisheries are naturally reproduced. The Tribes spend \$13,000 annually for USFWS produced rainbow trout to be planted in irrigation reservoirs for recreational harvest. Other species of importance to Flathead anglers include bass, lake trout, yellow perch, and cutthroat trout.

Fishing regulations on all tribal waters are consistent with state regulations. Based on their own research, the program's fisheries biologists make annual recommendations to the

Tribal Council on changes to the reservation's fishing regulations. Recent examples of changes recommended and accepted include opening the lower Flathead River to year-round fishing and closing the fishing for bull trout in all waters other than Flathead Lake. These changes were designed to increase fishing opportunities where possible without harming the resource, and to protect fisheries which are in danger.

A comprehensive fee system is in place for non-tribal member angling. Both hunting and fishing require the purchase of a \$6 annual or \$4 three-day reservation use permit. Fishing stamps are \$12 annually and \$6 for a three-day pass. To further enhance the reservation's fisheries no commercial fishing is allowed.

Flathead's fisheries have attained a high profile through multi-media promotional efforts. The program has developed a promotional brochure and a detailed map with all regulations listed. Regional newspapers and a network of outdoor writers are also used to tout the program as well as participation in local sport shows and a poster presentation. The reservation has the capacity to sustain the visitation it solicits because of its size (1.2 million acres) and the fact that it maintains an abundance of camping and boating access facilities.

In summary, the Flathead Indian Reservation currently has an active and professional fisheries management program working on a wide spectrum of fisheries management activities. Angling activity on the reservation has its economic rewards. For 1991, a year in which no three-day passes were issued, 12,529 annual fishing stamps were sold with Reservation Use Permits, representing \$225,522 in fishing license revenues alone.

YAKIMA, WASHINGTON - This reservation is situated on 1.3 million acres, and its total ceded area encompasses one quarter of the total area of the State of Washington. Developed with the aid of the USFWS, the Yakima Fisheries Program was established in 1977 through a Tribal Council Resolution. The program, administered by the Tribal Fish and Wildlife Council, currently employs 20 seasonal individuals and 55 permanent individuals (15 fishery biologists and 30 technicians). Basically, the fisheries program staff serves as a technical advisory group to the Tribal Fish and Wildlife Council. To date, the Tribal Council has been successful at not only managing the reservations fisheries but also at seeking program enhancement through active relationships with federal agencies such as the USFWS, BIA, Washington State Departments of Fisheries and Wildlife, and with local utility companies.

Fishable waters managed by the program include the Yakima River which is open year-round, and a number of lowland ponds and high-mountain lakes which are open from June 15 through October 15. A fee system is in place with fees set at \$4 for a daily pass (High Mountain Lakes), \$25 for a season license (lowland hunting and fishing). Approximate annual income from license sales is \$100,000. This revenue along with Tribe's earnings from logging is used to fund the fisheries program.

Subsistence fishing is permitted for tribal members in the form of dip-netting for salmon and steelhead. Major target species of non-tribal anglers include largemouth bass, whitefish, steelhead, eastern brook and rainbow trout, salmon, panfish and catfish.

Under contract to the Tribal Council, the Washington Department of Fisheries currently raises and stocks 30,000 eastern brook and rainbow trout per year. Half of these fish are

planted in waters open to the public, half are in restricted tribal waters. The Tribe is currently working with the BPA for a \$25 to \$45 million contract to develop a hatchery for salmon, steelhead, and trout one year from now.

The Tribe provides eight law enforcement officers to uphold tribal regulations. Drift boats and sleds are permitted on the Yakima River and outboards are restricted to small engines. Promotion of the fishing opportunities on the reservation is provided by newspaper, radio, and television spots and by word-of-mouth. There is potential for the Tribe to increase boater access and increase awareness of its current fishing opportunities. However, the Tribe also wishes to restrict development on the reservation. A pamphlet will be available in the near future.

PROGRAMS WITH GREATEST UNREALIZED POTENTIAL

PASSAMAQUODDY, MAINE - Fishery resources of the Passamaquoddy Reservation include approximately 132,000 surface acres of fishable waters. The fisheries program is small and currently still in its developmental stages. True responsibility of the program has been limited to the monitoring of fisheries and determination of fishery status. In the future, the Passamaquoddy will attempt to lobby BIA, USFWS, and the U.S. Forest Service for funds to use for conservation training. This funding would facilitate the establishment of a conservation oriented program allowing the monitoring aspect to serve as a source of information by which to manage. To that end, the Tribe recently formed a natural resources committee.

SUMMIT LAKE, NEVADA - The fisheries program at Summit Lake Reservation is currently very limited. No recreational fishing is allowed and only limited tribal fishing for subsistence occurs. The primary species sought at Summit Lake is the Lahonton cutthroat trout. The potential exists for a recreational fishery centered on this species. Discussion on opening the lake to non-tribal recreational anglers has already begun. A fee system to accompany such a move has been proposed and is under review. Throughout the discussion tribal leaders have stressed their concern about the status of fish stocks. Discussions are almost certain to lead to a hearing on the topic of a recreational fishing program.

The Tribe has just recently received funding from the BIA to renovate its fish hatchery. The program's fisheries director is planning to begin several research projects on the lake.

TULC RIVER, CALIFORNIA - There currently exists no fishery program on the Tulc River Reservation. Fishing on the reservation is limited to recreational angling by tribal members only. There are currently no plans to establish a program, recreational or otherwise.

MICCOSUKEE, FLORIDA - From an organizational perspective, the fisheries program at the Miccosukee Reservation should be mentioned among the top programs. Although the program is not a tremendous generator of revenue, the management of the reservation's fishery resources for long-term sustainable recreational use is commendable. A fee structure is in place with fees for non-residents set at \$250 a year to fish and set-up camp. The number of spaces available for campsites is very limited and there are currently 40 people on a waiting list. The fisheries director stresses the desire of the Tribe not to expand recreational fishery beyond what already exists because they are concerned about proper management and conserving the integrity as well as the magnitude of the resource.

Species most often targeted on the reservation include largemouth bass and panfish. The Tribe maintains both a fisheries and a wildlife department and has its own regulations in place, modeled after the State of Florida's.

RED LAKE, MINNESOTA - The Red Lake Reservation includes in its fishery resources the fisheries of 25 lakes with a total fishable acreage of 285,000 surface acres. The Tribe manages its own hatchery for the production of walleye and northern pike. Red Lake is one of only two closed reservoirs in the U.S. and therefore maintains its own set of regulations. A commercial gillnet fishery for walleye has been in existence since 1917 and other subsistence fishing is allowed as well.

With regards to recreational fishing some 200 angling permits were issued in 1991. A fee system is in place for non-tribal members with fees of: \$20 for a one-day permit; \$30 for a two-day permit; \$50 for a one-week permit; and \$100 for a full season license. It is estimated that 75 percent of licenses issued are seasonal and most of these are given complimentary.

CONCLUSION

This report has identified the potential for substantial social and economic benefits that can be accrued by tribes through the development and management of non-Indian recreational fisheries programs. A disconcerting finding of this study, however, indicates a wide-spread lack of fundamental fisheries resource data (i.e., amount of fishable waters, fish population levels and abundance, tribal and non-tribal use and participation) for the estimated 350 tribal entities located throughout the lower 48 contiguous states. Although BIA estimates that tribal reservations encompass 91 million acres of land and 1.6 million surface acres of fishable waters, very little of this information can be disaggregated down into reservation-specific data. For the few tribes that do maintain adequate resource, recreational use, and economic data files, the documented impacts of a well planned and managed non-tribal recreational fisheries program have been enormous in comparison to tribal investments in such programs.

Current data on fisheries resources, both biological and socio-economic, allow for successful and efficient marketing of a recreational fisheries program. The Salish and Kootenai Tribes of the Flathead Indian Reservation have used such data to promote the recreational opportunities offered by their 70,000 surface acres of lakes and over 400 miles of streams. Proper inventory of the Tribes' fishery, of which approximately 90 percent are naturally reproducing, has been instrumental in their successful management. In 1991, this management yielded a total of 12,529 annual fishing licenses sold, representing over \$225,000 in revenues to be reinvested in the program.

Adequate fee structures and maintenance of permit sales data are also key management considerations for successful tribal fisheries programs. License fees yield much-needed program revenues. Active program management allows for growth and development of a fisheries program concomitant with increases in recreational fishing participation. The Eastern Band of Cherokee Indian Reservation funds its program using only fishing license revenues. In fiscal year 1992 the Cherokee fully funded their program with the \$360,000

they received from license sales. The total economic impact incurring as a result of recreational fishing on the reservation was estimated to be \$3.5 million.

Reliable creel study and fisheries inventory data also helps gauge the success of a recreational fisheries program. This data allows fisheries managers to develop and implement more efficient and effective fish management plans that meet the needs of anglers. The White Mountain Apache Indian Reservation has taken advantage of a progressive management program and their resultant trophy Apache trout fishery helped attract over \$500,000 in license revenues in fiscal 1990 alone.

Combined, sound biological monitoring and management, efficient permitting, enforcement and promotion of a tribal fisheries program can yield tremendous economic impacts and provide social and economic stability through business diversity for Indian reservations willing to accept non-tribal recreational fisheries as an economic development tool. One of the greatest needs for increased tribal fisheries development in the future is for a cooperative and coordinated effort on the parts of federal natural resource management agencies to provide technical and financial assistance for helping tribal programs plan and implement recreational fisheries programs. Such coordinated efforts will ensure that all tribes will have access to assistance and will be able to develop and manage their programs so the optimal social and economic benefits can be achieved.

APPENDIX A: OUTDOOR PUBLIC RECREATION ON TRIBAL LANDS

OPPORTUNITIES / PROGRAMS

| Tribe / Reservation | Public Uses / Management Programs | | | |
|-------------------------|-----------------------------------|------|------|------|
| | Fish | Hunt | Camp | Boat |
| ABERDEEN AREA | | | | |
| <u>South Dakota</u> | | | | |
| Cheyenne River | Yes | Yes | Yes | Yes |
| Crow Creek | Yes | Yes | Yes | Yes |
| Lower Brule | Yes | Yes | Yes | Yes |
| Pine Ridge | Yes | Yes | - | Yes |
| Rosebud | Yes | Yes | Yes | Yes |
| Sisseton-Wahpeton | Yes | Yes | - | Yes |
| Yankton Sioux | Yes | Yes | Yes | Yes |
| <u>North Dakota</u> | | | | |
| Devils Lake | Yes | Yes | Yes | Yes |
| Fort Berthold | Yes | Yes | Yes | Yes |
| Standing Rock | Yes | Yes | Yes | Yes |
| Turtle Mountain | Yes | Yes | Yes | Yes |
| <u>Nebraska</u> | | | | |
| Omaha | Yes | Yes | Yes | - |
| Santee Sioux | Yes | Yes | Yes | - |
| Winnebago | Yes | Yes | - | - |
| ALBUQUERQUE AREA | | | | |
| <u>New Mexico</u> | | | | |
| Isleta | Yes | - | Yes | - |
| Jemez | Yes | Yes | - | - |
| Jicarilla | Yes | Yes | Yes | Yes |

OUTDOOR PUBLIC RECREATION ON TRIBAL LANDS

OPPORTUNITIES / PROGRAMS (cont'd.)

| Tribe / Reservation | Public Uses / Management Programs | | | |
|-----------------------------------|-----------------------------------|------|------|------|
| | Fish | Hunt | Camp | Boat |
| ALBUQUERQUE AREA (cont'd.) | | | | |
| <u>New Mexico</u> | | | | |
| Mescalero | Yes | Yes | Yes | Yes |
| Nambe | Yes | - | Yes | Yes |
| Picuris | Yes | - | Yes | - |
| Sandia | Yes | - | - | - |
| San Ildefonso | Yes | Yes | Yes | - |
| San Juan | Yes | - | - | - |
| Santa Clara | Yes | - | Yes | - |
| Southern Ute | Yes | Yes | Yes | - |
| Zia | Yes | - | - | - |
| Zuni | Yes | Yes | Yes | - |
| <u>Colorado</u> | | | | |
| Ute Mountain Ute | Yes | - | Yes | - |
| ANADARKO AREA | | | | |
| <u>Kansas</u> | | | | |
| Prairie Potawatomi | Yes | Yes | Yes | - |
| <u>Texas</u> | | | | |
| Alabama-Coushatta | Yes | - | Yes | Yes |
| BILLINGS AREA | | | | |
| <u>Montana</u> | | | | |
| Blackfeet | Yes | Yes | Yes | Yes |
| Crow | Yes | Yes | Yes | Yes |

OUTDOOR PUBLIC RECREATION ON TRIBAL LANDS

OPPORTUNITIES / PROGRAMS (cont'd.)

| Tribe / Reservation | Public Uses / Management Programs | | | |
|--------------------------------|-----------------------------------|------|------|------|
| | Fish | Hunt | Camp | Boat |
| BILLINGS AREA (cont'd.) | | | | |
| <u>Montana</u> | | | | |
| Fort Belknap | Yes | Yes | Yes | - |
| Fort Peck | Yes | Yes | Yes | Yes |
| Rocky Boy's | Yes | - | Yes | - |
| <u>Wyoming</u> | | | | |
| Wind River | Yes | - | Yes | Yes |
| EASTERN AREA | | | | |
| <u>Florida</u> | | | | |
| Miccosukee | Yes | Yes | Yes | Yes |
| Seminole | Yes | - | Yes | - |
| <u>Maine</u> | | | | |
| Passamaquoddy | Yes | - | - | - |
| Penobscot | Yes | Yes | Yes | Yes |
| <u>Mississippi</u> | | | | |
| Choctaw | Yes | Yes | Yes | Yes |
| <u>New York</u> | | | | |
| Seneca | Yes | - | Yes | Yes |
| <u>North Carolina</u> | | | | |
| Cherokee | Yes | - | Yes | Yes |

OUTDOOR PUBLIC RECREATION ON TRIBAL LANDS

OPPORTUNITIES / PROGRAMS (cont'd)

| Tribe / Reservation | Public Uses / Management Programs | | | |
|-------------------------|-----------------------------------|------|------|------|
| | Fish | Hunt | Camp | Boat |
| MINNEAPOLIS AREA | | | | |
| <u>Michigan</u> | | | | |
| Kewennaw Bay | Yes | Yes | Yes | Yes |
| Saginaw | Yes | Yes | Yes | Yes |
| <u>Minnesota</u> | | | | |
| Bois Forte | Yes | Yes | - | - |
| Grand Portage | Yes | Yes | Yes | Yes |
| Leech Lake | Yes | Yes | Yes | Yes |
| Mille Lacs | Yes | Yes | Yes | Yes |
| Red Lake | Yes | Yes | - | - |
| White Earth | Yes | Yes | Yes | - |
| <u>Wisconsin</u> | | | | |
| Lac Courte Oreilles | Yes | - | Yes | - |
| Lac du Flambeau | Yes | Yes | Yes | Yes |
| Menominee | Yes | Yes | - | Yes |
| Oneida | Yes | Yes | - | - |
| Red Cliff | Yes | Yes | Yes | Yes |
| Stockbridge-Munsee | Yes | Yes | - | - |
| NAVAJO AREA | | | | |
| <u>Arizona</u> | | | | |
| Navajo | Yes | Yes | Yes | Yes |
| PHOENIX AREA | | | | |
| <u>Arizona</u> | | | | |
| Cocopah | Yes | Yes | Yes | Yes |

OUTDOOR PUBLIC RECREATION ON TRIBAL LANDS

OPPORTUNITIES / PROGRAMS (cont'd.)

| Tribe / Reservation | Public Uses / Management Programs | | | |
|-------------------------------|-----------------------------------|------|------|------|
| | Fish | Hunt | Camp | Boat |
| PHOENIX AREA (cont'd.) | | | | |
| Arizona | | | | |
| Colorado River | Yes | Yes | Yes | Yes |
| Fort Apache | Yes | Yes | Yes | Yes |
| Fort McDowell | Yes | - | Yes | Yes |
| Fort Yuma | Yes | Yes | Yes | Yes |
| Hualapai | Yes | Yes | Yes | Yes |
| Salt River | Yes | - | Yes | Yes |
| San Carlos | Yes | Yes | Yes | Yes |
| White Mountain Apache | Yes | Yes | Yes | Yes |
| California | | | | |
| Chemehuevi | Yes | Yes | Yes | Yes |
| Fort Mojave | Yes | - | Yes | Yes |
| Nevada | | | | |
| Duck Valley | Yes | - | Yes | - |
| Pyramid Lake | Yes | - | Yes | Yes |
| Walker River | Yes | - | Yes | Yes |
| Washoe | Yes | - | Yes | Yes |
| Yomba | Yes | - | Yes | - |
| Utah | | | | |
| Uintah & Ouray | Yes | Yes | Yes | Yes |
| PORTLAND AREA | | | | |
| Alaska | | | | |
| Metlakatla | Yes | Yes | Yes | Yes |

OUTDOOR PUBLIC RECREATION ON TRIBAL LANDS

OPPORTUNITIES / PROGRAMS (cont'd.)

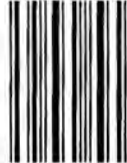
| Tribe / Reservation | Public Uses / Management Programs | | | |
|--------------------------------|-----------------------------------|------|------|------|
| | Fish | Hunt | Camp | Boat |
| PORTLAND AREA (cont'd.) | | | | |
| <u>Idaho</u> | | | | |
| Coeur d' Alene | Yes | Yes | Yes | Yes |
| Fort Hall | Yes | Yes | - | Yes |
| <u>Montana</u> | | | | |
| Flathead | Yes | Yes | Yes | Yes |
| <u>Oregon</u> | | | | |
| Warm Springs | Yes | - | Yes | Yes |
| <u>Washington</u> | | | | |
| Colville | Yes | Yes | Yes | Yes |
| Makah | Yes | - | Yes | Yes |
| Quileute | Yes | - | Yes | Yes |
| Spokane | Yes | - | Yes | Yes |
| Tulalip | Yes | - | - | Yes |
| Umatilla | Yes | Yes | Yes | - |
| Yakima | Yes | Yes | Yes | Yes |
| SACRAMENTO AREA | | | | |
| <u>California</u> | | | | |
| La Jolla | Yes | - | Yes | - |
| Yurok | Yes | - | Yes | - |

Source: Bureau of Indian Affairs. 1991. Outdoor Recreation on Indian Lands: Opportunities and Contacts. B.A. Office of Trust and Economic Development. Fish, Wildlife and Recreation Programs, Washington, D.C. 20240. 22 p.

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