MANAGEMENT OF FISH AND RESIDENT WILDLIFE ON FEDERAL LANDS

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETIETH CONGRESS

SECOND SESSION

ON

S. 2951

TO DECLARE AND DETERMINE THE POLICY OF THE CONGRESS WITH RESPECT TO THE PRIMARY AUTHORITY OF THE SEVERAL STATES TO CONTROL, REGULATE, AND MANAGE FISH AND WILDLIFE WITHIN THEIR TERRITORIAL BOUNDARIES; TO CONFIRM TO THE SEVERAL STATES SUCH PRIMARY AUTHORITY AND RESPONSIBILITY WITH RESPECT TO THE MANAGEMENT, REGULATION, AND CONTROL OF FISH AND WILDLIFE ON LANDS OWNED BY THE UNITED STATES; AND TO SPECIFY THE EXCEPTIONS APPLICABLE THERETO; AND TO PROVIDE PROCEDURE UNDER WHICH FEDERAL AGENCIES MAY OTHERWISE REGULATE THE TAKING OF FISH AND GAME ON SUCH LANDS

S. 3212

RELATING TO THE AUTHORITY OF THE STATES TO CONTROL, REGULATE, AND MANAGE FISH AND WILDLIFE WITHIN THEIR TERRITORIAL BOUNDARIES

Part 1

JUNE 18, 19, AND 26, 1968

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MANAGEMENT OF FISH AND RESIDENT WILDLIFE ON FEDERAL LANDS

TUESDAY, JUNE 18, 1968

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met at 1:35 p.m., in room 6202, New Senate Office Building, the Honorable Frank E. Moss, presiding.

Present: Senator Moss.

OPENING STATEMENT BY THE CHAIRMAN

Senator Moss. The committee will come to order.

Today and tomorrow we will hear testimony on two bills, S. 2951 and S. 3212, both of which are aimed at resolving a problem which has existed for many years. That problem concerns the management, control, and ownership of fish and wildlife resources on land located in the several States but owned by the Federal Government.

We hold these hearings without any preconceived determination. We are here to receive testimony from various witnesses who, together, will give us a broad overview of this problem and will no doubt offer various solutions and suggestions to help solve the controversy.

The 14 witnesses scheduled to testify during these 2 days of hearings represent Federal Government and national organizations who are interested in the problem at hand. Later this year, we plan to hold field hearings in other parts of the country to give additional witnesses, on the State and regional level, their opportunity to testify.

The bill, S. 2951, which was introduced by Senators Alan Bible, Howard Cannon, and Frank Church, at the request of the International Association of Game, Fish, and Conservation Commissioners, and cosponsored by Senators Norris Cotton, Gordon Allott, Clifford Hansen, Warren Magnuson, Frank Moss, Wallace Bennett, and William Spong, sets forth a congressional declaration that the title and ownership of fish and wildlife resides and rests in the several States independent of jurisdiction over or ownership of land. It holds that it is the primary duty of the States to conserve and protect these resources and that Congress determines it to be in the public interest that the States have the sole, exclusive, and undisputed legal right to manage, regulate, and control resident fish and wildlife in accordance with State laws and regulations notwithstanding the ownership or control of the lands by the Government of the United States within the boundaries of the respective States.

Exceptions to exclusive State jurisdiction would be the right of the U.S. Congress to control and regulate wildlife under any international or Indian treaty or convention to which the United States is party,

Staff member assigned to this hearing Harry C. Huse.

but only with respect to those species of fish and wildlife expressly named in such treaties.

S. 3212, a similar bill introduced by Senator Fannin, would, he states, resolve the dispute concerning jurisdiction over resident species of fish and wildlife and would, in particular, avoid any controversy with the Indian tribes regarding their hunting and fishing rights under treaty and statute.

At this point, we will place in the record copies of S. 2951 and S. 3212. Also in the record will appear copies of the reports made by the Departments to whom this legislation has been submitted. Those reports have not all come in. They will be placed in the record when they are received.

(The documents above referred to, follow:)

[S. 2951, 90th Cong., second sess.]

A BILL To declare and determine the policy of the Congress with respect to the primary authority of the several States to control, regulate, and manage fish and wildlife within their territorial boundaries; to confirm to the several States such primary authority and responsibility with respect to the management, regulation, and control of fish and wildlife on lands owned by the United States; and to specify the exceptions applicable thereto; and to provide procedure under which Federal agencies may otherwise regulate the taking of fish and game on such lands

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, as used in this Act, the term—

(1) "fish and wildlife" means all wild vertebrates (including mollusks and crustacea);

(2) "States" means the several States of the United States;

(3) "land owned or controlled by the United States" includes buildings, and structures, trees, crops, or any flora or plants growing thereon;

(4) "department or agency of the United States" means any department, agency, entity or bureau, commission, or any other official or body created by an Act of Congres having charge over the management or control of lands of the United States Government; and

(5) "State agency" means the department, commission, agency, officer, or official which is authorized by State law or constitution to regulate, control or manage fish and wildlife in such State, including an interstate compact body authorized to regulate, control, or manage any fish or wildlife.

SEC. 2. The Congress of the United States hereby recognizes—

(1) the necessity and importance of conservation programs of the several States in the management, preservation and regulation of fish and wildlife therein;

(2) that under well-established law set forth in many court decisions, including the Supreme Court of the United States, that the title and ownership of fish and wildlife resides and rests in the several States in trust for the benefit of their people independent of jurisdiction over or ownership of land and that it is the primary duty of the States to conserve and protect these resources;

(3) that unless the several States have the unquestioned right and power to manage, control and regulate fish and wildlife within their respective boundaries that the revenues from the sales of licenses or permits now or to be received by the States for the hunting, taking, capturing or seizing of fish and wildlife will be considerably diminished and conservation programs of the States seriously impaired thereby;

(4) that Congress has in the past vested certain departments or agencies of the United States with responsibilities to conserve and develop natural resources, including fish and wildlife on certain Federally owned lands, but that such responsibilities should be exercised in recognition of the State's ownership of fish and wildlife; and

(5) that it is in the best interest not only of the States but also of the Nation that the States have the sole, exclusive, and undisputed legal right to manage, regulate, and control fish and wildlife in accordance with State laws and regulations notwithstanding the ownership or control of the lands by the Government of the United States within the boundaries of the respective States. The Congress further declares it to be in the public interest that

title to and ownership of all fish and wildlife, including the regulation, management, and control thereof, in or on any land or water within the territorial boundaries of the respective States, including lands owned or controlled by the United States, continue to be vested in the several States.

SEC. 3. The exclusive right and power of the States to conserve, control, and manage fish and wildlife in or on lands and waters within their territorial boundaries for public use and benefit in accordance with applicable State law, are subject to the provisions hereof, recognized, confirmed, established, assigned, granted, and transferred to the respective States.

SEC. 4. This Act shall not be construed as affecting the responsibilities and rights of departments or agencies of the United States to conserve and develop, subject to the provisions of this Act, the natural resources, including fish and wildlife, on lands owned or controlled by the United States within the territorial boundaries of any State or as depriving the United States of the right to protect and preserve its lands from destruction or depredation by wildlife to the same extent and in the same manner permitted to any owner of land by the laws of the State in which such land is located. There is hereby specifically reserved and excepted from the operation of this law:

(a) All rights and powers of the Congress of the United States to control and regulate the taking of fish and wildlife under any international or Indian treaty or convention to which the United States is a party but only with respect to those species of fish or wildlife expressly named in said treaties.

(b) All rights and powers of the United States in and on areas over which the States have ceded exclusive jurisdiction to the United States.

(c) All rights and powers over any species of fish and wildlife ceded or granted to the United States by any State.

SEC. 5. No department or agency of the United States shall promulgate or enforce any rule or regulation with respect to the taking of fish and wildlife within the several States unless such rule or regulation is in compliance with, and under authority of, the laws and regulations of the State wherein such rule or regulation is applicable.

SEC. 6. Notwithstanding anything contained in any Act of the Congress or in any rule or regulation promulgated by any Federal department or agency it is hereby declared to be the intent of the Congress that no provision of any Act shall be construed or implemented in any manner as to displace, preempt, or deprive the several States of their primary and historically recognized authority to control, regulate, and manage fish and wildlife in or on any lands or waters within their territorial boundaries, including all lands and waters owned by the United States or in which the United States Government has an interest.

[S. 3212, 90th Cong., second sess.]

A BILL Relating to the authority of the States to control, regulate, and manage fish and wildlife within their territorial boundaries

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, as used in this Act, the term—

(1) "fish and wildlife" means all wild vertebrates (including mollusks and crustacea);

(2) "States" means the several States of the United States;

(3) "land owned or controlled by the United States" means all lands owned or controlled by the United States, including structures, and trees, crops, or and flora or plants growing thereon; and

(4) "department or agency of the United States" means any department, agency, entity, bureau, commission, official, or body created by an Act of Congress having charge over the management or control of lands owned or controlled by the United States.

SEC. 2. Except to the extent otherwise specifically provided in this Act, the United States hereby cedes to the respective States all right, title, and interest of the United States, if any, to all fish and wildlife, including the regulation, control, and management thereof, in or on any land or water within the territorial boundaries of such States, including lands owned or controlled by the United States. Subject to this Act, each State shall have the exclusive right and power to conserve, control, and manage fish and wildlife in or on lands and waters within the territorial boundaries of such State for public use and benefit in accordance with the applicable laws of such State.

SEC. 3. Nothing in this Act shall be construed as affecting—

(1) the authority and responsibility of departments or agencies of the United States to conserve and develop, subject to the provisions of this Act, the natural resources, including fish and wildlife, on lands owned or controlled by the United States within the territorial boundaries of any State or as depriving the United States of the right to protect and preserve its lands from destruction or depredation by wildlife to the same extent and in the same manner permitted to any other owner of land by the laws of the State in which such land is located;

(2) hunting and fishing rights of Indians and natives of Alaska granted or reserved by Federal treaty or statute;

(3) any authority of the United States to control and regulate the taking of fish and wildlife under any international treaty or convention to which the United States is a party, but only with respect to those species of fish and wildlife expressly named therein;

(4) any authority of the United States in and over areas over which the States have ceded exclusive jurisdiction to the United States; and

(5) any authority of the United States over any species of fish and wildlife ceded or granted to it by any State.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., June 10, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Your Committee has requested this Department's views and comments on two similar bills S. 2951 and S. 3212 which relate to the control and management of fish and resident wildlife on Federal lands.

In 1964, this Department issued an opinion which took the view that the Secretary of the Interior had authority to regulate public hunting and fishing of fish and resident wildlife on federally owned lands within the National Wildlife Refuge System. The opinion did not apply to any other Federal lands. The International Association of Game, Fish, and Conservation Commissioners disagree with the opinion. They contend that the States have the sole authority to regulate hunting and fishing of fish and resident wildlife in any area, including Federal areas other than those where exclusive legislative jurisdiction has been ceded to, and accepted by, the United States, within their territorial boundaries.

We recognize that this dispute has existed for some time now, but, in our opinion, legislation will not settle it. In fact, it could very well cause many more problems. We believe and we have urged repeatedly that this problem only can be resolved through discussion and administrative action. Progress has been made toward this end in the past few months.

In January of this year, we were encouraged in learning that, while favoring legislation, the International Association of Game, Fish and Conservation Commissioners had not closed the door to an administrative solution and we suggested a meeting to discuss the possibility of working out a mutually acceptable solution to the problem. The President of the Association, Mr. Shannon, expressed a willingness to meet, but first asked for a definite proposal before meeting. On May 11, 1968, we suggested an outline of either a general policy statement or a memorandum of understanding for each State as one possible approach for discussion purposes. A copy of our letter is enclosed. We are scheduled to meet with Mr. Shannon on June 12, 1968, to begin these discusions with the full expectation that additional meetings will be needed before a final document can be agreed upon by both parties. In their May 31 letter (copy enclosed) they indicated that our proposal was constructive and proposed five points which are very similar to the ones proposed by us.

We believe that this approach will better serve this Nation's conservation movement which relies heavily on the fact that both the States and the Federal Government have considerable responsibilities in the field of fish and wildlife management. In order to carry out these responsibilities effectively, both must look to the other for assistance. Neither can do the whole job alone. They must work together both at the highest and lowest levels. It is for these reasons, that we believe that legislation which attempted to establish the rights and preroga-

tives of both over a resource which does not recognize either State or national boundaries should not be enacted.

We understand that your Committee has scheduled hearings on these bills on June 18, 1968. In view of the fact that our discussions will begin only a few days before this date and probably will not be completed by June 18, we would hope that you would postpone the hearings pending the completion of these discussions.

We will discuss the provisions of both bills in more detail and make our recommendation at that time when, and if, hearings are commenced.

The Bureau of the Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

STEWART L. UDALL,
Secretary of the Interior.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., May 11, 1968.

Mr. WALTER T. SHANNON,
President, International Association of Game, Fish, and Conservation Commissioners, 1416 Ninth Street, Sacramento, Calif.

DEAR MR. SHANNON: Your recent letter indicated that before a meeting takes place on the longstanding issue of fish and wildlife management on Interior lands you would like to have a more "definitive proposal" for resolving the issue. This is a reasonable request.

As we indicated earlier, we believed that a policy statement covering public hunting and fishing in those areas classified in the recrational area category of the National Park System, such as national recreation areas, national riverways, national seashore areas, etc., and areas administered by this Department through the Bureau of Land Management and the Bureau of Reclamation could be adopted along the lines of that already adopted for the National Wildlife Refuge System. In essense, such a statement, consistent with present Congressional enactments, would:

1. Provide that public hunting of resident wildlife and fishing shall be permitted on these areas within statutory limitations and in a manner that is compatible with, and not in conflict with, the primary objectives for which the areas were reserved or acquired;

2. Provide that such hunting and fishing shall be in accordance with applicable State laws and regulations, unless the Secretary finds, after consulting with the appropriate State fish and game department, that he must close or further restrict public access to all or any part of such area to public hunting or fishing;

3. Provide that a State license for any public hunting or fishing shall be required; and

4. Provide for consultation with the appropriate States in the development of cooperative management plans for limiting overabundant or otherwise harmful populations of fish and resident wildlife, and secure the States' concurrence therein, except in emergency situations.

In general, the above is an outline of either a general policy statement or a memorandum of understanding for each State. It should not be construed as the Department's final word on the subject. We believe it is a reasonable approach to the problem and one which we would like to discuss with you for the purpose of getting your ideas and perfecting it.

I hope that we can resolve the problem and I again suggest that you contact Assistant Secretary Cain to arrange a suitable time.

Sincerely yours,

STEWART L. UDALL,
Secretary of the Interior.

INTERNATIONAL ASSOCIATION OF GAME,
FISH AND CONSERVATION COMMISSIONERS,
1416 Ninth St., Sacramento, Calif., May 31, 1968.

Hon. STEWART L. UDALL,
Secretary of Interior, Interior Building, C Street Between 18th and 19th NW., Washington, D.C.

DEAR MR. SECRETARY: Through Assistant Secretary Stanley Cain, we received your prompt response to our invitation to meet on the long standing issue of fish

and wildlife management on lands administered by the Department of Interior. The Executive Committee of the International Association of Game, Fish and Conservation Commissioners met on May 27, and we are pleased that a meeting will be held in Washington on June 12, 3:30 p.m., in your office with you and representatives of the International Association to discuss this matter further.

The outline of points set forth in your letter of May 11, 1968, contains constructive proposals. From the point of view of the International Association we believe that, if additional points were covered and certain clarifications made, such a general policy statement could help to resolve this dispute.

We would propose that such a general policy statement include lands administered by the Department of the Interior and cover the following points:

1. Provide that fishing and hunting of resident wildlife shall be permitted on lands administered by the Department of Interior within statutory limitations and in a manner that is compatible with, and not in conflict with, the primary objectives as declared by the Congress for which the areas were reserved or acquired.

2. Provide that hunting and fishing and the taking and possession of fish and resident wildlife on lands administered by the Department of the Interior shall be in accordance with applicable State laws and regulations, unless the Secretary finds, after consulting with the appropriate State fish and game department, that he must close or further restrict public access.

3. Provide that a State license or permit as provided by State law shall be required for hunting and fishing and the taking and possession of fish and resident wildlife on lands administered by the Department of the Interior.

4. Provide for consultation with the appropriate States in the development of cooperative management plans for limiting overabundant or harmful populations of fish and resident wildlife, and except in emergency situations, secure the States' concurrence therein. Fish and wildlife taken pursuant thereto shall be disposed of in accordance with State law and regulations.

5. The foregoing points would in no way compel the Secretary to open national parks and monuments to public hunting. If, however, such areas were opened to public hunting and resident wildlife were to be taken, compliance with the above points would be intended.

We look forward to discussing the above with you in a joint effort to arrive at a resolution of this controversy. We sincerely hope you can approve the recommendations we have made.

Sincerely yours,

W. T. SHANNON, *President.*

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., June 17, 1968.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Enclosed for your information is a copy of my letter to the President of the International Association of Game, Fish, and Conservation Commissioners which sets forth a "General Policy Statement Re: Fish and Resident Wildlife On Interior Lands." This statement was developed after lengthy conversations with members of the Association and other interested persons.

Sincerely yours,

STEWART L. UDALL,
Secretary of the Interior.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., June 17, 1968.

MR. WALTER T. SHANNON,
President, International Association of Game, Fish, and Conservation Commissioners, 1416 Ninth St., Sacramento, Calif.

DEAR MR. SHANNON: I would like to take this opportunity to advise you that, after our very helpful discussions of last week, I have issued the following policy statement relative to the management of fish and resident wildlife on lands administered by this Department:

"GENERAL POLICY STATEMENT RE FISH AND RESIDENT WILDLIFE ON INTERIOR LANDS

"A In all areas administered by the Secretary of the Interior through the National Park Service, the Bureau of Sport Fisheries and Wildlife, the Bureau of Land Management, and the Bureau of Reclamation, except the National Parks, the National Monuments, and historic areas of the National Park System, the Secretary shall—

"1. Provide that public hunting of resident wildlife and fishing shall be permitted within statutory limitations in a manner that is compatible with, and not in conflict with, the primary objectives as declared by the Congress for which such areas are reserved or acquired;

"2. Provide that public hunting, fishing, and possession of fish and resident wildlife shall be in accordance with applicable State laws and regulations, unless the Secretary finds, after consultation with appropriate State fish and game departments, that he must close such areas to such hunting and fishing or restrict public access thereto for such purposes;

"3. Provide that a State license or permit, as provided by State law, shall be required for the public hunting, fishing, and possession of fish and resident wildlife on such areas;

"4. Provide for consultation with the appropriate State fish and game department in the development of cooperative management plans for limiting over-abundant or harmful populations of fish and resident wildlife thereon, including the disposition of the carcasses thereof, and, except in emergency situations, secure the State's concurrence in such plans; and

"5. Provide for consultation with the appropriate State fish and game department in carrying out research programs involving the taking of fish and resident wildlife, including the disposition of the carcasses thereof, and secure the State's concurrence in such programs.

"B In the case of the National Parks, National Monuments, and historic areas of the National Park System, the Secretary shall—

"1. Provide, where public fishing is permitted, that such fishing shall be carried out in accordance with applicable State laws and regulations, unless exclusive legislative jurisdiction[1] has been ceded for such area, and a State license or permit shall be required for such fishing, unless otherwise provided by law;

"2. Prohibit public hunting; and

"3. Provide for consultation with the appropriate State fish and game departments in carrying out programs of control of over-abundant or otherwise harmful populations of fish and resident wildlife or research programs involving the taking of such fish and resident wildlife, including the disposition of carcasses therefrom.

"In any case where there is a disagreement, such disagreement shall be referred to the Secretary of the Interior who shall provide for a thorough discussion of the problems with representatives of the State fish and game department and the National Park Service for the purpose of resolving the disagreement.

I hope that with adoption of this general policy statement covering not only public hunting and fishing—that is, hunting and fishing by the general public—but also direct management activities in these areas both this Department and the Association will be able to lay to rest this controversial issue and turn our energies to the attainment of other pressing conservation goals. I have asked the directors of each of the above agencies to take whatever procedural steps are necessary to implement immediately this policy statement fully.

I hope that this statement will be endorsed by your Association at its next meeting in Sepetember. I recognize, of course, that even with this statement, some few problems may arise in the field and may be difficult to resolve within the general ambit of this statement. In such instances, I hope that the appropriate members will bring them to the attention of either my directors or myself.

Sincerely yours,

STEWART L. UDALL,
Secretary of the Interior.

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[1] The term "exclusive legislative jurisdiction" is applied to situations wherein the Federal Government has received, by whatever method, all the authority of the State, with no reservation made to the State except the right to serve process resulting from activities which occurred off the land involved. This term is applied notwithstanding that the State may exercise certain authority over the land, as may other States over land similarly situated, in consonance with the several Federal statutes. This term is also sometimes referred to as "partial jurisdiction."

DEPARTMENT OF AGRICULTURE,
Washington, D.C., June 17, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: In response to your request of February 9, 1968, here is the Department's report on S. 2951, a bill, "To declare and determine the policy of the Congress with respect to the primary authority of the several States to control, regulate, and manage fish and wildlife within their territorial boundaries; to confirm to the several States such primary authority and responsibility with respect to the management, regulation, and control of fish and wildlife on lands owned by the United States; and to specify the exceptions applicable thereto; and to provide procedure under which Federal agencies may otherwise regulate the taking of fish and game on such lands."

Under the provisions of S. 2951, the Congress would recognize: (1) the necessity and importance of State fish and wildlife conservation programs; (2) that the several States have title and ownership of fish and wildlife independent of jurisdiction over and ownership of land, and that it is the primary duty of the States to conserve and protect these fish and wildlife resources; (3) that State revenues from the sale of hunting and fishing licenses will be considerably diminished and State conservation programs seriously impaired thereby unless the States have unquestioned right and power to manage, control, and regulate fish and wildlife within their respective boundaries; (4) that in the past Congress vested certain Federal departments or agencies with responsibilities to conserve and develop natural resources including fish and wildlife on certain Federally owned lands, but that such responsibilities should be exercised in recognition of the State's ownership of fish and wildlife; and (5) that it is in the best interest of the Nation that the States have the sole, exclusive, and undisputed legal right to manage, regulate, and control fish and wildlife within the boundaries of the respective States notwithstanding the ownership or control of the lands by the Government of the United States. Based on this recognition, it would be declared and determined that vesting title to and ownership of all fish and wildlife in the several States, including the regulation, management, and control thereof, would be in the public interest.

The bill would recognize, confirm, establish, assign, grant, and transfer to the respective States the exclusive right and power to conserve, control, and manage fish and wildlife for public use and benefit in accordance with applicable State law, subject to certain other provisions of the bill.

The bill would not be construed as affecting the responsibilities of Federal departments and agencies to conserve and develop the natural resources, including fish and wildlife, on lands owned or controlled by the United States within any State, subject to the provisions of the bill. Further, the bill is not to be construed as depriving the United States of the right to protect its lands from wildlife damage the same as any landowner under the laws of the State in which such land is located.

Excepted from the provisions of S. 2951 would be: (1) the right of the Congress to control and regulate the taking of fish and wildlife under and specifically named in any international or Indian treaty or convention to which the United States is a party; (2) all rights and powers of the United States in and on the areas over which the States have ceded exclusive jurisdiction; and (3) all rights and powers over any species of fish and wildlife ceded or granted to the United States by any State.

No department or agency could promulgate or enforce any rule or regulation with respect to the taking of fish and wildlife within a State unless such rule or regulation is in conformance with and under authority of the laws and regulations of that State.

As it concerns this Department, these bills would affect primarily the administration of the National Forests and National Grasslands.

Wildlife and their habitat are closely related resources. The wildlife are totally dependent on their habitat. Where the habitat is Federally owned, as on National Forest System lands, close cooperation between the land administering agencies and the States is necessary to assure that wildlife population and habitat are kept in proper balance. The public interest lies in the administration of the National Forests and other public lands for the protection and enhancement of all the resource values, including fish and wildlife, of those lands.

This Department does not act generally to establish hunting and fishing seasons or fix bag or creel limits for the taking of game and fish on the National Forest

System. It does have the authority and the responsibility to administer such lands for wildlife and fish habitat as well as for other purposes. This is recognized in the Multiple Use Act of June 12, 1960 (16 U.S.C. 528–531), which provided that, "It is the policy of the Congress that the National Forests are established and shall be administered for . . . wildlife and fish purposes." At the same time, that Act said specifically that "Nothing herein shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish on the national forests."

The policy and practice of the Department always has been to cooperate to the fullest with State fish and wildlife conservation agencies in the protection and management of wildlife and fish in or on the National Forests and other lands and waters administered by this Department. Secretary's Regulation W–2, concurred in by the International Association of Game, Fish, and Conservation Commissioners in 1941, provides that:

"The Chief of the Forest Service, through the regional foresters and forest supervisors, shall determine the extent to which national forests or portions thereof may be devoted to wildlife production in combination with other uses and services of the national forests, and, in coorperation with the Fish and Game Department or other constituted authority of the State concerned, he will formulate plans for securing and maintaining desirable population of wildlife species, and he may enter into such general or specific cooperative agreements with appropriate State officials as are necessary and desirable for such purposes. Officials of the Forest Service will cooperate with State game officials in the planned and orderly removal in accordance with the requirements of State laws of the crop of game, fish, fur-bearers, and other wildlife on national forest lands."

In accordance with this regulation, the Forest Service has cooperative arrangements with the appropriate State agencies in all of the States in which major units of National Forest System lands are located. The general substance of these arrangements is to recognize the responsibility of the States to regulate and control the wildlife and fish. The States fix the seasons and the bag and creel limits. The Forest Service develops and manages the habitat. Some States, under formal cooperative agreement, participate in such habitat development. The success of this approach to wildlife management on the National Forest System lands is evident in the fish and wildlife population, the fisherman and hunter successes, and the generally healthy condition of the resource.

The success of the longstanding policy and practice of this Department for cooperation with the States in the conservation and management of the fish and wildlife resources on the National Forests and National Grasslands shows that insofar as this Department is concerned there are no issues that need to be resolved by enactment of legislation such as S. 2951. Also, we understand efforts are being made to resolve administratively questions with respect to jurisdiction over the management of fish and wildlife on other Federally owned lands.

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary.*

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., March 19, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: Your letter of February 9, 1968, requests our comments on S. 2951, 90th Congress, which would declare and determine the policy of Congress with respect to the primary authority of the several States to control, regulate, and manage fish and wildlife within their territorial boundaries; to confirm to the several States such primary authority and responsibility with respect to the management, regulation, and control of fish and wildlife on lands owned by the United States; and to specify the exceptions applicable thereto; and to provide procedure under which Federal agencies may otherwise regulate the taking of fish and game on such lands.

The bill, if enacted, would not affect the functions of the General Accounting Office, and we have no particular information concerning the desirability of the proposed legislation.

Sincerely yours,

FRANK H. WEITZEL,
Assistant Comptroller General of the United States.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., May 7, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: Your letter of March 22, 1968, requests our comments on S. 3212, 90th Congress, entitled: "A BILL Relating to the authority of the States to control, regulate, and manage fish and wildlife within their territorial boundaries."

We have no special information as to the desirability of this measure and, therefore make no comments regarding its merits.

Sincerely yours,

FRANK H. WEITZEL,
Assistant Comptroller General of the United States.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., June 18, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 2951, "To declare and determine the policy of the Congress with respect to the primary authority of the several States to control, regulate, and manage fish and wildlife within their territorial boundaries; to confirm to the several States such primary authority and responsibility with respect to the management, regulation, and control of fish and wildlife on lands owned by the United States; and to specify the exceptions applicable thereto; and to provide procedure under which Federal agencies may otherwise regulate the taking of fish and game on such lands."

The proposed legislation is not of primary interest to this Department and the Department has no comment to make on the general merits of the bill.

The Department has been advised by the Bureau of the Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

FRED B. SMITH, *General Counsel.*

DEPARTMENT OF STATE,
Washington, D.C., June 18, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Secretary has asked me to reply to your letters of February 8, 1968 and March 21, 1968 requesting the Department's comments on S. 2951 and S. 3212, bills to declare and determine the policy by the Congress with respect to the primary authority of the several States to control, regulate and manage fish and wildlife within their territorial boundaries; to confirm to the several States such primary authority and responsibility; to relinquish, disavow and disclaim any power of the United States with respect to the management, regulation, and control of fish and wildlife on lands owned by the United States and specifying the exceptions applicable thereto.

The management, regulation, and control of various species of fish and wildlife is governed by the terms of a number of international treaties or conventions to whcih the United States is a party. Section 4(a) of the proposed bills would provide an exception from its general rule, that the responsibility of the several States, with respect to treaties or conventions to which the United States is a party. Such an exception must be provided, of course, if any such bills were to be enatced because of the obligations the United States has undertaken in connection with these treaties and wildlife. Nevertheless, the Department does not favor the enactment of S. 2951 and S. 3212 because the management, regulation, and control of fish and wildlife is a complex matter often involving or affected by activities of several States or of several nations. In these circumstances the most effective management, regulation, and control and fish and wildlife can be accomplished only by a government which can impose uniform regulations if

necessary or can constructively vary such regulations if necessary from the totality of the management circumstances.

The Department would defer to the views of the Department of the Interior and to other Departments and Agencies on this subject where such species of fish and wildlife are found wholly within the land areas of the United States since such matters are the responsibility of those departments and Agencies. However, this Department has a direct concern with such management activities where such species of fish or wildlife move across international borders, or in the ocean migrate into or out of the territorial sea and contiguous fisheries zone of the United States.

The Department believes that the Federal Government must maintain the necessary jurisdiction, of itself or in cooperation with other governments, to effectuate the most efficient management of such fish and wildlife resources in such circumstances as it appears necessary to institute management programs on a broader purview than those which could be instituted by the individual states. Under the terms of the proposed legislation, the Federal Government would be forced to conclude a treaty or convention for this purpose. Such a formal action may not be necessary or desirable in certain circumstances.

The Department would also note that the fishery resources of the United States contiguous fisheries zone are, and should remain, within the exclusive jurisdiction of the United States.

The Department can see no useful purpose in enacting the proposed legislation and considers that the protection of our fish and wildlife resources would be best served by maintaining a certain flexibility for action by the Federal Government in cases where this should be found necessary.

The Bureau of the Budget advises that from the standpoint of the Administration's program there is no objection to the submission of these reports.

Sincerely yours,

H. G. TORBERT, Jr.,
Acting Assistant Secretary for Congressional Relations.

OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., June 19, 1968.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on S. 2951, which would declare and provide for the carrying out of a policy tendering to the States certain authority over fish and wildlife now vested in the United States.

By this bill the Congress would declare ownership of all fish or wildlife in or on any land or water within the territorial boundaries of the several States, including lands owned by the United States, to be vested in the respective States, together with the exclusive right to control and manage them in accordance with State law. Excepted would be only a right by the Congress to control and regulate fish or wildlife named in a treaty or convention, areas over which States have ceded exclusive jurisdiction, and rights over any species of fish or wildlife ceded to the United States by any State. Federal agencies would be prohibited from promulgating or enforcing any rule or regulation with respect to fish or wildlife within the several States except with the consent of the State. Inconsistent acts or parts of acts would be made subject to a general repealer.

While this bill involves matters as to which the Department of State, the Department of the Interior, the Department of Agriculture, the Department of Defense, and other Federal agencies which control major portions of Federal lands have primary responsibility, for reasons hereinafter stated, this Department is opposed to such legislation.

The concern of the Department of State would arise, of course, because of its responsibilities with respect to fish or wildlife which move across international borders and with respect to fish which migrate into or out of the territorial sea or contiguous fisheries zone of the United States. It would seem manifest that such responsibilities could not always be expediently discharged in the interests of the United States through negotiation of a formal treaty naming particular species of fish or wildlife and the consequent operation of an exception under subsection 4(a) of the bill.

The Department of the Interior has numerous responsibilities, of course, exercised mainly through an Assistant Secretary for Fish and Wildlife and the Fish and Wildlife Service, with respect to fish and wildlife generally. In addition, that Department has extensive responsibilities through its Bureau of Indian Affairs for the protection of treaty created fishing rights of a large number of Indian Tribes, especially in the northwestern states. The extent to which these responsibilities would be affected by the subject bill is a matter as to which that Department can perhaps best indicate. Nevertheless, this Department has been and is currently directly involved in a sustantial amount of litigation in which State authorities have asserted and are asserting various positions with respect to the applicability of State laws and regulations which, if sustained, would seriously impede if not completely frustrate the performance of congressionally authorized Federal regulatory functions and the exercise of federally created or recognized rights. The Department of the Interior has further responsibilities with respect to fish and wildlife, as have other agencies of the Government supervising major portions of Federal real property, as an incident to the management and protection of such property.

The authority of Federal administrators to control fish and wildlife on Federal lands under the exclusive jurisdiction of the United States, which would be reserved to them by subsection 4(b) of the bill, is a normal consequence under existing law. A State now cannot enforce its fish and wildlife laws on such lands. *Chalk* v. *United States*, 114 F. 2d 207 (C.A. 4, 1940), *cert. den.* 312 U.S. 679. But only less than 2% of federally owned lands are under exclusive Federal jurisdiction.

The Congress, and Federal administrators, now also have a great deal of authority with respect to the other 98% of Federal lands, however. As it was stated in *Utah Power and Light Co.* v. *United States*, 243 U.S. 389 (1917), pp. 403–405) :

"The first position taken by the defendants is that their claims must be tested by the laws of the State in which the lands are situated rather than by the legislation of Congress, and in support of this position they say that lands of the United States within a State, when not used or needed for a fort or other governmental purpose of the United States, are subject to the jurisdiction, powers and laws of the State in the same way and to the same extent as are similar lands of others. To this we cannot assent. Not only does the Constitution (Art. IV, § 3, cl. 2) commit to Congress the power "to dispose of and make all needful rules and regulations respecting" the lands of the United States, but the settled course of legislation, congressional and state, and repeated decisions of this court have gone upon the theory that the power of Congress is exclusive and that only through its exercise in some form can rights in lands belonging to the United States be acquired. True, for many purposes a State has civil and criminal jurisdiction over lands within its limits belonging to the United States, but this jurisdiction does not extend to any matter that is not consistent with full power in the United States to protect its lands, to control their use and to prescribe in what manner others may acquire rights in them. * * *

"From the earliest times Congress by its legislation, applicable alike in the States and Territories, has regulated in many particulars the use by others of the lands of the United States, has prohibited and made punishable various acts calculated to be injurious to them or to prevent their use in the way intended, and has provided for and controlled the acquisition of rights of way over them for highways, railroads, canals, ditches, telegraph lines and the like. * * * And so we are of the opinion that the inclusion within a State of lands of the United States does not take from Congress the power to control their occupancy and use, to protect them from trespass and injury and to prescribe the conditions upon which others may obtain rights in them, even though this may involve the exercise in some measure of what commonly is known as the police power. * * *"

That this power both transcends State laws and specifically appertains to the subject-matter of the present bill is demonstrated by *Hunt* v. *United States*, 278 U.S. 96 (1928) where it was held that a State could not enforce its game laws against Federal employees who, upon direction of the Secretary of Agriculture, destroyed a number of wild deer in a national forest (which was not under the legislative jurisdiction of the United States), because the deer, by overbrowsing upon and killing young trees, bushes, and forage plants, were causing great damage to the land. The court said (p. 100) :

" * * * That this [destruction of deer] was necessary to protect the lands of the United States within the reserves from serious injury is made clear by the evidence. The direction given by the Secretary of Agriculture was within the

authority conferred upon him by act of Congress. And the power of the United States to thus protect its lands and property does not admit of doubt, *Camfield* v. *United States*, 167 U.S. 518, 525–526; *Utah Power & Light Co.* v. *United States*, 243 U.S. 389, 404; *McKelvey* v. *United States*, 260 U.S. 353, 359; *United States* v. *Alford*, 274 U.S. 264, the game laws or any other statute of the state to the contrary notwithstanding."

The present bill would purport to take away from Federal administrators, and from the Congress except as to treaty-named fish and wildlife, all of the authority and rights defined and affirmed in the judicial decisions mentioned above. In addition, they would submit to the control of State authorities the century old treaty fishing rights of the various Indian tribes. And they would abrogate the considerable volume of Congressional action in recent years recognizing and fostering the interest of the nation at large in the development of adequate programs for the conservation and proper management of our fish and wildlife resources without regard to their occurrence on federally owned lands. Witness, for example, the current alewife problem in the Great Lakes, a problem with which the individual states concerned are jurisdictionally, either by individual action or cooperative action, incapable of handling.

Finally, we note that the subject bill predicates its provisions for subordination of Federal authority to State authority upon a recognition of property ownership in the States of the fish and wildlife resources within their boundaries. Whether the concept of State ownership of the wild animals, birds, and fish within their boundaries is desirable as between the respective States and their citizens is a question on which we express no view. Nevertheless, we consider it undesirable, if not actually obstructive to the accomplishment of proper Federal functions in this field, for the Congress to establish such ownership in the several States as between them and the United States.

In view of the fundamental relation of the United States' authority and rights with respect to the management and protection of Federal property and to the fostering of the foreign relations of the United States, its responsibilities with respect to the treaty rights of the Indians, and the public interest in the proper management and conservation of our fish and wildlife as an important national resource, the Department of Justice considers that the subject bill is contrary to the national interest and it is therefore opposed to its enactment.

This will also serve as a reply to your request for the views of the Department of Justice on S. 3212, a bill which is similar in general purposes to S. 2951.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the Adiministration's program.

Sincerely,

WARREN CHRISTOPHER,
Deputy Attorney General.

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., June 18, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of this Department on S. 2951, a bill

"To declare and determine the policy of the Congress with respect to the primary authority of the several States to control, regulate, and manage fish and wildlife within their territorial boundaries; to confirm to the several States such primary authority and responsibility with respect to the management, regulation, and control of fish and wildlife on lands owned by the United States; and to specify the exceptions applicable thereto; and to provide procedure under which Federal agencies may otherwise regulate the taking of fish and game on such lands."

The bill would vest in the States the primary authority for management of fish and wildlife within their boundaries, including fish and wildlife on lands owned by the United States.

We defer to the Department of Interior on the desirability of the jurisdictional lines drawn by the legislation.

We note for the Committee that section 4(f) of the Department of Transportation Act requires that the Secretary of Transportation not approve any project requiring the use of a wildlife or waterfowl refuge without considering if some

feasible and prudent alternative is available. If no such alternative is available the project may be approved. We understand the language of section 5 of S. 2951 to limit its applicability to the manner and times of taking of fish and wildlife by fishermen and hunters and that it would not include indirect "taking" of fish and wildlife through displacement by a public project. If that is not the intent, then we see a possible conflict between section 4(f) of the Department of Transportation Act and section 5 of S. 2951 and request that the conflict be resolved.

The Bureau of the Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report for the consideration of the Committee.

Sincerely,

JOHN L. SWEENEY,
Assistant Secretary for Public Affairs.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., June 18, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 3212, "Relating to the authority of the States to control, regulate, and manage fish and wildlife within their territorial boundaries."

The bill would cede to the respective States all right, title, and interest of the United States, if any, to all fish and wildlife in or on any land or water within the territorial boundaries of such States, subject to certain exceptions.

The proposed legislation is not of primary interest to this Department and the Department has no comment to make on the general merits of the bill.

The Department has been advised by the Bureau of the Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

FRED B. SMITH,
General Counsel.

Senator Moss. I intend to proceed in calling the witnesses who have been here listed, and if there are others who have not been listed as witnesses but want to testify, they can make their desire known to the clerk, and we will call them as we can get to them, either today or tomorrow.

Senator Alan Bible of Nevada has prepared a statement on the bill of which he is the principal sponsor, and that will be placed in the record at this point.

(The statement of Senator Bible referred to above, follows:)

STATEMENT OF HON. ALAN BIBLE, A U.S. SENATOR FROM THE STATE OF NEVADA

Mr. Chairman, I appear before you today in support of my bill, S. 2951, to declare and determine the policy of the Congress with respect to the primary authority of the several States to control, regulate, and manage fish and wildlife within their territorial boundaries; to confirm to the several States such primary authority and responsibility with respect to the management, regulation and control of fish and wildlife on lands owned by the United States; and to specify the exceptions applicable thereto; and to provide procedure under which Federal agencies may otherwise regulate the taking of fish and game on such lands.

The purpose of this bill which has been endorsed by the Nevada Fish and Game Commission through its Director, Mr. Frank Groves, is to attempt to resolve the continuing disagreements between the respective State fish and game commissions and Federal agencies as to who has jurisdiction on Federal lands over resident wildlife species.

I appreciate the fact that some controversy has arisen over the exact effect this proposal would have on the management of wildlife on the various Federal

lands throughout the country. I am aware that some individuals believe that if enacted this proposal would open national parks and Indian reservations to public hunting under the control of the State authorities. As one who has worked diligently in the creation, establishment and protection of national parks and recreation areas, I wish to assure everyone that this is not the intent.

It is my expectation that after taking testimony from the various Federal departments as well as from State agencies, sportsmen and conservation groups the Committee will report a measure that will not infringe on the valid jurisdiction of the Federal authorities and which will permit the States to protect and manage the fish and wildlife resources on the public domain lands within their respective States. As I have previously stated, it is my sincere opinion that it is in the best interests of the Nation as well as the States that long recognized control over fish and wildlife management properly remain with State and local government. If enactment of this proposal can accomplish this purpose and prevent the continuing arguments that have arisen between the States and the United States the Congress will have accomplished a very worthwhile objective.

Mr. Chairman, your kindness and courtesy in scheduling S. 2951 for hearings at this time are certainly appreciated not only by me but by the sportsmen and hunters of the State of Nevada as well.

[From the Congressional Record, Feb. 8, 1968]

CONTROL, REGULATION, AND MANAGEMENT OF FISH AND WILDLIFE

Mr. BIBLE. Mr. President, on behalf of myself and my colleagues, Senators CHURCH and CANNON, I introduce, for proper reference, a bill to declare and determine the policy of the Congress with respect to the primary authority of the several States to control, regulate, and manage fish and wildlife within their territorial boundaries; to confirm to the several States such primary authority and responsibility with respect to the management, regulation, and control of fish and wildlife on lands owned by the United States; and to specify the exceptions applicable thereto; and to provide procedure under which Federal agencies may otherwise regulate the taking of fish and game on such lands.

The prime purpose of the bill endorsed by the Nevada Fish and Game Commission through its director, Mr. Frank Groves of Reno, Nev., is to resolve the continuing argument and controversy between the respective Fish and Game Commissions of the various States and Federal agencies as to who has jurisdiction on Federal lands over resident wildlife species.

I trust that Congress can move expeditiously to resolve this long continuing problem.

Mr. CHURCH. Mr. President, I am happy to join my distinguished colleagues from Nevada, Senators BIBLE and CANNON, in sponsoring this bill to declare and determine policy with respect to authority of the States to manage the fish and wildlife within their boundaries.

This bill should help resolve a problem which has been with us a good many years. It has been endorsed by the Idaho Fish and Game Department through its director, Mr. John R. Woodworth, who informs me it is also endorsed by the various State game departments and the National Governors' conference.

The VICE PRESIDENT. The bill will be received and appropriately referred.

The bill (S. 2951) to declare and determine the policy of the Congress with respect to the primary authority of the several States to control, regulate and manage fish and wildlife within their territorial boundaries; to confirm to the several States such primary authority and responsibility with respect to the management, regulation, and control of fish and wildlife on lands owned by the United States; and to specify the exceptions applicable thereto; and to provide procedure under which Federal agencies may otherwise regulate the taking of fish and game on such lands, introduced by Mr. BIBLE (for himself, Mr. CANNON, and Mr. CHURCH), was received, read twice by its title, and referred to the Committee on Commerce.

Senator Moss. Our first witness will be Hon. Clarence F. Pautzke, Commissioner, Fish and Wildlife Service, Department of the Interior.

We are very glad to have you, Mr. Pautzke. If you will come forward and proceed, we will be very pleased to hear you.

STATEMENT OF CLARENCE F. PAUTZKE, COMMISSIONER, FISH AND WILDLIFE SERVICE; ACCOMPANIED BY DAVID B. FINNEGAN, ASSISTANT LEGISLATIVE COUNSEL; GEORGE B. HARTZOG, JR., DIRECTOR, NATIONAL PARK SERVICE; EUGENE V. ZUMWALT, ASSISTANT DIRECTOR, BUREAU OF LAND MANAGEMENT; AND JOHN GOTTSCHALK, DIRECTOR, BUREAU OF SPORT FISHERIES AND WILDLIFE

Mr. PAUTZKE. Mr. Chairman, may I have some other members of the staff of Interior here at the table?

Senator Moss. We would be very glad if you will identify them, and if they will take their places at the table.

Mr. PAUTZKE. Mr. Dave Finnegan of the Legislative Office of Interior; Mr. George Hartzog, Director of the National Park Service; Mr. Gottschalk—he is not here yet—Mr. Zumwalt, Bureau of Land Management.

Senator Moss. Very glad to have you gentlemen join us here today, and if there are questions that we have of any of you, we will feel free to put them to any member of the panel sitting at the table.

Mr. PAUTZKE. Mr. Chairman, I appreciate this opportunity to come here to speak upon these two bills. I have a short statement that I would like to read and place in the record.

Senator Moss. All right. You may proceed.

Mr. PAUTZKE. Mr. Chairman and members of the committee, the two bills before you today, S. 2951 and S. 3212, relate to the control and management of fish and resident wildlife on Federal and non-Federal lands.

In 1964, this Department issued an opinion which took the view that the Secretary of the Interior had authority to regulate public hunting and fishing or fish and resident wildlife on federally owned lands within the National Wildlife Refuge System. The opinion did not apply to any other Federal lands or to non-Federal lands.

The International Association of Game, Fish, and Conservation Commissioners disagrees with that opinion. They contend that the States have the sole authority to regulate hunting and fishing of fish and resident wildlife in any area, including Federal areas other than those where exclusive legislative jurisdiction has been ceded to, and accepted by, the United States, within their territorial boundaries.

As you know, this dispute has lasted for some time. We were encouraged, however, in learning last January that, while still favoring legislation, the International Association of Game, Fish, and Conservation Commissioners had not closed the door to an administrative solution to the problem. Since then, we have had some discussions with representatives of the Association and others with a view to developing a general policy statement which would serve to resolve the problem without attempting to do so through legislation—a task which we consider quite formidable when one looks at the specialized problems that can and do exist in each State.

It is with great pleasure that I am able to tell you today that only yesterday Secretary Udall announced such a statement. It provides:

A. In all areas administered by the Secretary of the Interior through the National Park Service, the Bureau of Sport Fisheries and Wildlife, the Bureau

of Land Management, and the Bureau of Reclamation, except the National Parks, the National Monuments, and historic areas of the National Park System, the Secretary shall—

1. Provide that public hunting of resident wildlife and fishing shall be permitted within statutory limitations in a manner that is compatible with, and not in conflict with, the primary objectives as declared by the Congress for which such areas are reserved or acquired;

2. Provide that public hunting, fishing, and possession of fish and resident wildlife shall be in accordance with applicable State laws and regulation, unless the Secretary finds, after consultation with appropriate State fish and game departments, that he must close such areas to such hunting and fishing or restrict public access thereto for such purposes;

3. Provide that a State license or permit, as provided by State law, shall be required for the public hunting, fishing, and possession of fish and resident wildlife on such areas;

4. Provide for consultation with the appropriate State fish and game department in the development of cooperative management plans for limiting overabundant or harmful populations of fish and resident wildlife thereon, including the disposition of the carcasses thereof, and, except in emergency situations, secure the State's concurrence in such plans; and

5. Provide for consultation with the appropriate State fish and game department in carrying out research programs involving the taking of fish and resident wildlife, including the disposition of the carcasses thereof, and secure the State's concurrence in such program.

B. In the case of the National Parks, National Monuments, and historic areas of the National Park System, the Secretary shall—

1. Provide, where public fishing is permitted, that such fishing shall be carried out in accordance with applicable State laws and regulations, unless exclusive legislation jurisdiction[1] has been ceded for such area, and a State license or permit shall be required for such fishing, unless otherwise provided by law;

2. Prohibit public hunting; and

3. Provide for consultation with the appropriate State fish and game departments in carrying out programs of control of over-abundant or otherwise harmful populations of fish and resident wildlife or research programs involving the taking of such fish and resident wildlife, including the disposition of carcasses therefrom.

In any case where there is a disagreement, such disagreement shall be referred to the Secretary of the Interior who shall provide for a thorough discussion of the problems with representatives of the State fish and game department and the National Park Service for the purpose of resolving the disagreement.

Mr. Chairman, we hope that the association will adopt this important statement at its next meeting in September. We believe that it should lay to rest the fish and wildlife controversy that has continued since 1964.

The statement is applicable only to Federal lands administered by Interior through the National Park Service, the Bureau of Sport Fisheries and Wildlife, the Bureau of Land Management, and the Bureau of Reclamation. It covers both the general public recreational hunting and fishing activities within these areas and the direct management of these areas for fish and resident wildlife purposes by these Interior agencies. It is effective immediately and each of the heads of these agencies will take whatever steps are necessary to implement it fully. It does not apply to Indian trust lands or lands administered by the Bureau of Indian Affairs or Indian treaty rights or non-Federal lands.

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[1] The term "exclusive legislative jurisdiction" is applied to situations wherein the Federal Government has received, by whatever method, all the authority of the State, with no reservation made to the State except the right to serve process resulting from activities which occurred off the land involved. This term is applied notwithstanding that the State may exercise certain authority over the land, as may other States over land similarly situated in consonance with the several Federal statutes. The term is also sometimes referred to as "partial jurisdiction."

In regard to the bills before you today, we strongly believe that they should not be enacted. They are far reaching. They are founded on an erroneous legal premise and overlook constitutional realities. They do not take cognizance of the various acts of Congress establishing policies of longstanding duration, such as those applicable to the national parks and monuments, many of which prohibit hunting by the general public, or obligations of the Government under treaty or convention which are not necessarily aimed at specific species, such as the 1941 Convention between the United States of America and other American Republics respecting nature protection and wildlife preservation in the Western Hemisphere, and the Great Lakes Fisheries Convention, or the obligations of the United States under treaties and statutes to Indians both on and off reservations.

We do not want to imply that Congress should not legislate in this area. On the contrary, we believe that as specific problems regarding fish and wildlife arise, Congress may, as has been the case in the past, have to legislate to solve these problems. But Congress should not try to do this with one broad sweep, because such legislation could lead to more problems of even greater magnitude.

We urge that this committee put aside this legislation and give the Secretary's policy statement a chance to work. We believe it will be effective and will resolve this issue. We are convinced that this approach will better serve this Nation's conservation movement which relies heavily on the fact that both the States and the Federal Government have considerable responsibilities in the field of fish and wildlife management. In order to carry out these responsibilities effectively, both must look to the other for assistance. Neither can do the whole job alone. They must work together both at the highest and lowest levels. It is for these reasons, that we believe that legislation which attempted to establish the rights and prerogatives of both over a resource which does not recognize either State or Federal property boundaries should not be enacted.

Mr. Chairman, I have not gone into this legislation in detail today because we believe that this policy statement makes it unnecessary. If, however, your committee decides to act on it, we request the opportunity to comment in detail about its provisions and to point out its many problems.

Mr. Chairman, this concludes my statement, and we are available for questioning.

Senator Moss. Thank you, Mr. Pautzke.

First of all, I want to commend you and the Secretary for working out a very constructive and positive statement on this matter and, as you say in your statement, you hope that this would be allowed to work before it became necessary to attempt any legislation by the Congress and, perhaps that is so.

I can assure you that if we go ahead trying to mark up a bill to report to the Senate that you will have additional opportunity to testify before any such mark up is undertaken.

As I said in my opening statement, what we are trying to do here today is to get the problem defined and the statements of the Federal departments and the national organizations spread on the record, and then we had planned to seek comments from the States out in the field in areas where it would be more convenient for State commis-

sioners and local fish and game organizations to come and testify, and then having the whole record put together, we can take another look and decide whether we need to go on or whether, having defined the problem and steps having been taken administratively, it would then be necessary to go on.

I just have one or two questions. First of all, I would like to know if in working out this statement that the Secretary has issued for the Department of the Interior, has there been any discussion or interaction with the Department of Agriculture?

Mr. PAUTZKE. We have not, Mr. Chairman.

Senator MOSS. You have not been in consultation with them? They are, of course, the other Federal department that has a large amount of area under control of the Federal Government on which fish and wildlife are found, and so I will be interested in finding out whether Agriculture intends to have some similar policy. They already have a policy, of course, on fishing and hunting in the national forests.

I think you made it clear that nothing in this statement deals with the rights on Indian reservations or lands that are controlled by Indians.

Mr. PAUTZKE. We feel that this is a special issue, Mr. Chairman.

Senator MOSS. Is there any intention to work out a similar statement dealing with the Indian problems?

Mr. PAUTZKE. I will say this, and then I will ask Mr. Finnegan to reply; it is my opinion that this is a legal matter which has been in and out of the courts, and we feel that, as you know, only recently there was a Supreme Court decision on one phase of this problem, and I would imagine that the States with the problem will probably promulgate additional advances in this direction.

Senator MOSS. Mr. Finnegan, do you want to respond to that?

Mr. FINNEGAN. No; I have nothing to add.

One thing I might say is that the States themselves or the proponents of this legislation have indicated quite definitely they did not intend to cover the Indian legislation, the Indian problem in it, and that was clearly our intention in drafting this statement. We were limiting it to just these four areas.

Senator MOSS. Well, there is something of a problem that exists, at least there is a degree of misunderstanding, I know, in my State, about Indians permitting hunting and—I do not know about fishing, but hunting on Indian reservations at a time that does not coincide with the open season declared by the State for certain game, and until we can get further clarification of that there is probably going to be a little friction and misunderstanding on it.

I wanted to ask about this matter of consultation with the appropriate State fish and game agencies. This is in your statement. What does the consultation entail? How do you visualize that?

Mr. HARTZOG. Mr. Chairman, from our standpoint, consultation would involve all facets of the program. The intent, I think, of item 2 is that there should be open lands entirely in these recreation areas that we administer, and in the other areas covered by this policy statement unless the Secretary finds, as he would in the case of the Ozarks, which was the initial statement by the Congress on this basis of lands being open unless they were closed, that after consultation

with the State, it was necessary to restrict public access for safety or for some other reason relating to the management of those lands.

Senator Moss. This particular paragraph provides simply for consultation and does not indicate that there has to be concurrence at the end of the consultation.

Mr. HARTZOG. Well, you have got some real problems there, Mr. Chairman, in providing for agreements there because, you know, there again, as we tried to cover, I think it is, in item 4——

Senator Moss. Over in item 4.

Mr. HARTZOG (continuing). We say except in emergency situations there should be concurrence.

One of the instances that came up in our discussion of this with some of the conservation representatives, citizen conservation representative organizations that we were meeting with, was in the case of a fire, for example. There is very little time to consult, you know. You try to consult, but if you have a disagreement and the fire danger is imminent, you still close it, you know, to restrict public access, and this is one of the instances that came up as we were talking about this No. 2. But the intent is that it permeates the whole cooperative relationship between us and the States.

Senator Moss. In your statement where you are talking about limiting over abundant or harmful population of the fish, it does say that the Secretary will secure the State's concurrence in such planning.

Mr. HARTZOG. Right.

Senator Moss. I take it then if the State would not concur, there would not be a program to go forward.

Mr. HARTZOG. Except in emergency situations, and this came up in our discussion. If you have a marauding bear in a campground, for example, there is very little time to sit around and debate this issue at the higher levels of administration either in the State or the Department. We tried to cover these in our consultations, but invariably they are going to crop up.

The intent was to make very clear that what we want to do is to reach agreements with the States, but nevertheless there does come an instance in which you have to act, and these are the exceptions to the rules, and really are not germane to the underlying issue of consultation in the execution of a normal management program.

Senator Moss. So except in the case of an emergency you would have to have the concurrence when you dealt with these overpopulations and harmful effects of the fish and wildlife.

Mr. HARTZOG. Yes, sir.

Senator Moss. We are glad, Mr. Gottschalk joined us.

Mr. GOTTSCHALK. I regret being late.

Senator Moss. We are glad that you are here.

I am going to have to go and answer that rollcall buzzer that you heard. It will take me about 10 minutes or so.

I think, Mr. Pautzke, it might be well if you submitted in writing some of your comments, perhaps, on the details which you said you did not bring up today, because you were hopeful that the administrative declaration would make it unnecessary. But it still might be well for us to have before the committee your point of view on the specifics of the act just as though we were going to mark it up, although I reiterate my statement before that we certainly will notify you and we will have further hearings before we proceed toward any markup of the bill.

We are still in the informational stage at this time, and I am, of course, very pleased that the International Association and the Department of the Interior have been holding these meetings, and I think at least we have gone a long way toward solving it. Whether this solves it entirely or not, I cannot say off the top of my head. It looks very good to me, in your statement.

Mr. PAUTZKE. Then, Mr. Chairman, it is your wish that we submit in greater detail our comments on these various provisions?

Senator Moss. Yes, looking for precise provisions of the bills before us, indicating what criticism you have of those provisions or suggesting changes. You might, perhaps, if you would, amplify a little bit on the Indian matters as to why that has to be held apart. Mr. Finnegan can do that for us, too.

Mr. FINNEGAN. Yes, sir.

(This information is being supplied at a later date to the committee.)

Senator Moss. I am going to have to declare a recess at this time. I think as far as these present witnesses are concerned though you may be excused if you wish to leave, and we will go from here as soon as I return in about 10 minutes.

Mr. PAUTZE. Thank you, Mr. Chairman.

(Short recess.)

Senator Moss. We will resume.

I apologize for the delay. We may have more trouble later because of the necessity to go to the floor, but we will move along now as rapidly as we can.

Mr. Walter T. Shannon, who is the president of the International Association of Game, Fish, and Conservation Commissioners is here. We are pleased to have you, Mr. Shannon, and we appreciate your traveling so far to be with us to testify today. You may proceed.

STATEMENT OF WALTER T. SHANNON, PRESIDENT, INTERNATIONAL ASSOCIATION OF GAME, FISH, AND CONSERVATION COMMISSIONERS; ACCOMPANIED BY NICHOLAS V. OLDS, ASSISTANT ATTORNEY GENERAL, STATE OF MICHIGAN, CHAIRMAN, LEGAL COMMITTEE

Mr. SHANNON. We certainly appreciate it, and with your permission, I would like to have Nick Olds, who is chairman of the legal committee, sit up here with me.

Senator Moss. We are very pleased to do so.

Mr. SHANNON. In case people want to get legal.

Senator Moss. All right. We are glad to have the lawyers at high level.

Mr. SHANNON. First, for the record, Mr. Chairman, my name is W. T. Shannon. I am president of the International Association of Game, Fish, and Conservationists, and those who are unfamiliar with the International Association, of 50 States are members of the International Association, and as such, I am speaking their point of view here today.

The International Association of Game, Fish, and Conservation Commissioners strongly endorses the basic tenets of S. 2951 and S. 3212, which would reaffirm the rights of the States to manage and

regulate fish and resident wildlife. The gradual and continuing trend toward Federal intrusion into the historic and traditional areas of responsibility and jurisdiction of the States is a matter of great concern to the State fish and game agencies.

This trend toward a gradual usurpation of authority was given new impetus by an opinion of the Solicitor of the Department of the Interior, dated December 1, 1964, which stated, in effect, that the Federal Government has authority superior to that of the States in managing and regulating all fish and wildlife on Federal lands. This opinion was challenged immediately by this association as being in direct conflict with long-standing concepts of law which have governed the regulation of fish and resident wildlife throughout this Nation's history. An opposing legal brief was prepared by the International Association, which is included as appendix B in the report of hearing on S. 444, dated October 19, 1967.

The fear is created that if the Federal Government can set its own regulations on fish and resident wildlife on its lands, the view might then develop that private landowners could claim a similar right. If this view began to take hold, the time-honored principle of public ownership and State regulation and management of fish and resident wildlife would be completely destroyed. By law, history and centuries of tradition, the ownership of wildlife has been separated from ownership of the land. This concept must be preserved if we are to avoid complete chaos in the management of fish and game resources in this Nation.

Carried to the ultimate conclusion, the authority of the States to issue licenses for hunting and fishing could be completely eroded if ownership of wildlife were determined on the basis of landownership. It is certain that the resulting loss of license revenue would seriously impair the ability of the State fish and game agencies to continue the extensive and highly successful fish and wildlife management programs now prevalent in the States.

A brief review of the pattern of land ownership in nine of our major public land States may bring the problem into a little better perspective. In these nine Western States, the U.S. Government owns approximately 70 percent of the total land acreage and the States own about 1 percent. The annual revenue to these States for hunting licenses is in excess of $22 million and the sale of State fishing licenses amounts to more than $14 million each year. However, from 75 to 80 percent of the total hunting effort occurs on Federal lands and 60 to 70 percent of the fishing effort is on waters located on Federal lands. The reason is simply that such lands furnish the best habitat because they are mainly undeveloped and at higher elevations.

If, at some future time, it were determined that a State hunting and fishing license was no longer required on Federal lands, or more probably, if the State licensing system were supplanted by a Federal licensing requirement, the loss in State revenue would be proportionate to the hunting and fishing effort on Federal lands. This would virtually eliminate the State fish and game agencies as effective resource management bodies. Presumably, the Federal Government would then have to fill the vacuum by employing large numbers of conservation workers, such as enforcement officers and fish and game biologists. Is there any reason to believe that this fish and game management func-

tion could be performed more efficiently and economically by the Federal Government? We think not.

What is equally important is the confusion that would result for the public if the Federal Government should decide to require licenses and establish regulations for the taking of fish and resident wildlife on Federal lands which would be different from those of the States. Most Federal lands in the States are intermixed with private and other lands—a checkerboard hodge-podge—and for the most part are unposted. How would a citizen wishing to obey the law know which law he should obey? It would be chaos. Granted that Secretary Udall, whom I honestly respect and admire, apparently does not intend to pursue such a course, but who knows what the next Secretary may do?

(The balance of Mr. Shannon's prepared statement follows:)

This made the situation more difficult, but we have continued to hold discussions with the Secretary and his staff, and it would appear that some progress has been made in this area. However, the underlying question of ownership and right to regulate fish and resident wildlife remains unanswered, and it would be appropriate, we believe, for Congress to declare policy on the issues involved. In the absence of such a declaration by Congress, this issue will continue to be a festering one between the States and the Federal Government.

The recent litigation between the National Park Service and the State of New Mexico is one example of why a Congressional declaration of national policy is so urgently needed.

In October, 1967, the National Park Service announced plans for activating a research project which would involve the taking of fifty deer at the Carlsbad National Park. The New Mexico Game and Fish Department, after being informed of these plans, advised the National Park Service that a State collecting permit would be required, and offered its cooperation to avoid conflict and to assure that the carcasses would be utilized lawfully.

The offer was rejected by the park superintendent, who stated, "inasmuch as this is a Federal project carried out on Federal lands, we do not consider it necessary that our men have collecting permits issued by your department." This is an application of the Department of the Interior's position. About fifteen deer were taken a short time later, the organs removed and the carcasses left to rot on the ground, again contrary to State law which prohibits wastage of game.

This action was characterized by the Chairman of the New Mexico Game and Fish Commission as being an intentional and flagrant violation of State law.

The Game Commission presented its case before the Federal District Court in Albuquerque and obtained a temporary restraining order prohibiting the Park Service from taking more deer. A permanent restraining order was then requested.

An opinion was issued on March 12, 1968, by Judge Payne of the United States District Court, which stated that, "The defendants should be restrained and enjoined from the further killing of wildlife within the boundaries of Carlsbad Caverns National Park for the purpose of conducting a research study, unless they first secure authority for their acts by compliance with State law." While the opinion did not address itself directly to the issue of ownership of game by the States, it was the Court's decision that where such action is not necessary to protect the land, the authority of the Secretary of the Interior to manage national parks is not broad enough to permit the taking of deer without complying with State law.

There are many other incidents which could be cited where State and Federal officials have been in disagreement over the regulation and management of resident wildlife. Collectively, they indicate an alarming trend toward Federal involvement in areas which have been traditional areas of State responsibility and jurisdiction.

This Association fully subscribes to the traditional right of the landowner to manage his lands. We also recognize that the Federal government, unless otherwise provided by law, has the same rights that any other landowner has under the laws of the respective States. We respectively submit, however, that neither the Federal land-managing agencies nor any other landowner can preempt and nullify State authority to regulate fish and resident wildlife based on the premise of land ownership.

It is also the firm belief of the International Association that pending bills aimed at reaffirming the States' authority to manage and regulate fish and resident wildlife should not change the present status of the Rare and Endangered Species Act, the Bald Eagle Act, or the Federal treaty-making authority involving migratory birds. We further believe that existing rights of Indians and natives of Alaska to hunt and fish as established by treaties or acts of the Congress should remain unchanged. This legislation should not affect existing Federal authority when legislative jurisdiction has been ceded by any State to the United States. If amendments are desired to provide any of these safeguards, we would be happy to assist you in the preparation of such amendments.

In summary, the International Association believes that if the basic issues in the controversy between the States and the Department of the Interior are to be resolved, it is necessary that Congress take action to resolve the question of the right of the States to manage, regulate, and control fish and resident wildlife on lands owned by the Federal government with exceptions we have noted.

The Western Governors' Conference for each of the past three years has urged Congress to reaffirm the traditional authority of the States in this field. The National Governors' Conference likewise adopted the same position last year.

A declaration of national policy by the Congress will provide the needed solution—and in a manner that can be respected and adhered to by both Federal and State officials. This will enable State and Federal conservationists to get on with our respective jobs of resource management and once again present the united front so vitally needed if we are to be successful in meeting the ever-increasing recreational demands of our people for fish and wildlife.

Mr. SHANNON. I would like to show you just briefly these maps. Incidentally, these maps are put out by the Bureau of Land Management, I think it is a very fine thing for them to do because it at least gives the people some indication of where public lands are and which are private lands. But if you open this up and see the colored sections here, you will see, it is obvious, that it would be almost impossible for anybody who wanted to fish, hunt, or trespass or do anything else that might require a permit or a different regulation—how would he know whether he should follow State law or Federal law?

This is a place, there are individual sections scattered all over, spread out, and it would be extremely difficult for an ordinary citizen to follow the different laws and regulations if this authority were divided.

Senator Moss. So that the record will identify this properly, it should be noted this is a map with the title on it, "Public Lands, Resources, and Recreation, Susanville Area, California," published by the Department of the Interior, Bureau of Land Management.

This will be an exhibit in the file, I do not think it will be reproduced in the record, but at least we will have reference to it.

Thank you.

Mr. SHANNON. My only point was to show you how much these lands are intermixed, and I happened to pick the one out in California because I happen to be from California and this was available. But the same situation, sometimes worse, sometimes better, occurs in many of the Western States.

Since the issuance of the Solicitor's opinion in 1964, the International Association of Game, Fish, and Conservation Commissioners has attempted to resolve the controversy through negotiations with the Secretary of the Interior. The Secretary stated by letter on March 11, 1967, to James LaRue Early in Denver that:

The Federal Government has the right to control, regulate, and manage the wildlife resources on Federal land acquired or reserved for Federal purposes.

I will submit this letter for the record. I have it here.

Senator Moss. It may go in at this point, if you will submit it to the reporter to enter.

(The letter above-referred to, follows:)

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., March 11, 1968.

MR. JAMES LARUE EARLY,
1235 Washington St.,
Denver, Colo.

DEAR MR. EARLY: We have received your letter of February 26 and the enclosed clipping from the *Denver Post* relating to jurisdiction over wildlife.

At this point in history a review of the provisions of the Louisiana Purchase relating to wildlife would in our opinion be academic.

The Federal Government has the right to control, regulate, and manage the wildlife resources on Federal lands acquired or reserved for Federal purposes. We do not question the States' jurisdiction to manage and control resident wildlife on non-Federal lands. We believe the conservation effort will be best served by public and private conservation forces putting their energy to support programs which further conservation efforts in the light of that understanding.

We appreciate your inquiry and the attached news item.

Sincerely yours,

STEWART L. UDALL,
Secretary of the Interior.

Mr. SHANNON. This, of course, this statement, made the situation more difficult, but we have continued to hold discussions with the Secretary and his staff, and it would appear that some progress has been made in this area, as Mr. Pautzke testified.

However, the underlying question of ownership and right to regulate fish and resident wildlife remains unanswered, and it would be appropriate, we believe, for Congress to declare policy on the issues involved. In the absence of such a declaration by Congress, this issue will continue to be a festering one between the States and the Federal Government.

The recent litigation between the National Park Service and the State of New Mexico is one example of why a congressional declaration of national policy is so urgently needed.

In October 1967, the National Park Service announced plans for activating a research project which would involve the taking of 50 deer at the Carlsbad National Park. The New Mexico Game and Fish Department, after being informed of these plans, advised the National Park Service that a State collecting permit would be required, and offered its cooperation to avoid conflict and to assure that the carcasses would be utilized lawfully.

Incidentally, the State of New Mexico has never ceded jurisdiction in this area to the Federal Government.

The offer was rejected by the park superintendent, who stated:

Inasmuch as this is a Federal project carried out on Federal lands, we do not consider it necessary that our men have collecting permits issued by your department.

This is an application of the Department of the Interior's position. About 15 deer were taken a short time later, the organs removed and the carcasses left to rot on the ground, again contrary to State law which prohibits wastage of game.

This action was characterized by the chairman of the New Mexico Game Commission as being an intentional and flagrant violation of State law.

The game commission presented its case before the Federal district court in Albuquerque and obtained a temporary restraining order prohibiting the Park Service from taking more deer. A permanent restraining order was then requested.

An opinion was issued on March 12, 1968, by Judge Payne of the U.S. district court, which stated that:

> The defendants should be restrained and enjoined from the further killing of wildlife within the boundaries of Carlsbad Caverns National Park for the purpose of conducting a research study, unless they first secure authority for their acts by compliance with State law.

While the opinion did not address itself directly to the issue of ownership of game by the States, it was the court's decision that where such action is not necessary to protect the land, the authority of the Secretary of the Interior to manage national parks is not broad enough to permit the taking of deer without complying with State law.

There are many other incidents which could be cited where State and Federal officials have been in disagreement over the regulation and management of resident wildlife. Collectively, they indicate an alarming trend toward Federal involvement in areas which have been traditional areas of State responsibility and jurisdiction.

This association fully subscribes to the traditional right to the landowner to manage his lands. We also recognize that the Federal Government, unless otherwise provided by law, has the same rights that any other landowner has under the laws of the respective States. We respectively submit, however, that neither the Federal land-managing agencies nor any other landowner can preempt and nullify State authority to regulate fish and resident wildlife based on the premise of land ownership.

It is also the firm belief of the international association that pending bills aimed at reaffirming the States' authority to manage and regulate fish and resident wildlife should not change the present status of the Rare and Endangered Species Act, the Bald Eagle Act, or the Federal treatymaking authority involving migratory birds. We further believe that existing rights of Indians and natives of Alaska to hunt and fish as established by treaties or acts of the Congress should remain unchanged.

This legislation also should not affect existing Federal authority when legislative jurisdiction has been ceded by any State to the United States. If amendments are required or desired by the committee in relation to some of these items we certainly would be happy to assist you in preparing such amendments.

In summary, the international association believes that if the basic issues in the controversy between the States and the Department of the Interior are to be resolved, it is necessary that Congress take action to resolve the question of the right of the States to manage, regulate, and control fish and resident wildlife on lands owned by the Federal Government with exceptions we have noted.

The Western Governors' Conference for each of the past 3 years has urged Congress to reaffirm the traditional authority of the States in this field. The National Governors' Conference likewise adopted the same position last year, in 1967, and I will submit copies of these resolutions for the record if you wish, sir.

Senator Moss. They may be printed in the record at this point.

(The documents referred to follow:)

1966 ANNUAL MEETING, WESTERN GOVERNORS' CONFERENCE, APRIL 24 TO 28

II. FEDERAL-STATE RELATIONS IN FISH AND WILDLIFE MANAGEMENT

Whereas, Since colonial times in this country, the ownership of wildlife, by law, history and tradition, has been separated from the ownership of the land, in contrast to the European system in which the landowner owns the game thereon; and

Whereas, Under the United States Constitution, it has been held that the species of wildlife are held in trust by the individual states for the people of each state, the principal exception to this rule arising under the treaty-making power of the United States which makes the migratory bird treaties and other federal legislation dealing with migratory birds the supreme law of the land; and

Whereas, Contrary to Supreme Court decisions and the dictates of sound, unified fish and game management policies, the United States Solicitor General's office recently has held that the federal government has full power and control over both migratory and resident species of wildlife on all federally-owned land: Now, therefore, be it

Resolved, That the Western Governors' Conference reaffirms the basic right of the states to conserve, manage and regulate the use and harvest of resident species of fish and game on all lands within each individual state on which said jurisdiction has not been relinquished to the federal government; and be it further

Resolved, That, to prevent further encroachment upon the states' responsibilities in the management of wildlife and fish resources, the following basic policies be adopted: The federal government, through existing international treaties and agreements, bears direct responsibility and jurisdiction over specified migratory birds, certain endangered species, basic research, certain oceanic resources, and fauna of certain territorial lands beyond the continental United States, and fish and resident species of wildlife are and should remain state resources under the direct jurisdiction and responsibility of the individual states.

NATIONAL GOVERNOR'S CONFERENCE, 59TH ANNUAL MEETING, OCTOBER 20, 1967

II. REAFFIRMING STATES' JURISDICTION OVER FISH AND WILDLIFE MANAGEMENT

Whereas, since colonial times in this country, the ownership of wildlife, by law, history and tradition, has been separated from the ownership of the land, in contrast to the European system in which the landowner owns the game thereon; and

Whereas, it has been held by the U.S. Supreme Court that all species of wildlife are held in trust by the individual States for the people of each State, the principal exception to this rule arising under the treaty-making power of the United States which makes the migratory bird treaties and federal legislation dealing with migratory birds pursuant to and limited by said treaties the supreme law of the land; and

Whereas, contrary to Supreme Court decisions and dictates of sound unified fish and game management policies, the Solicitor of the Department of the Interior has held, and the Secretary of the Interior, Stewart L. Udall, has concurred therewith, that the federal government **has full and exclusive power and** control over both migratory and resident wildlife on all federally-owned land: Now, therefore, be it

Resolved, That the National Governors' Conference reaffirms the basic right of the States to conserve, manage and regulate the use and harvest of resident species of fish and game on all lands, including those lands owned by the federal government, within each individual State on which said jurisdiction has not been relinquished to the federal government; and be it further

Resolved, That, to prevent further encroachment upon the States' responsibilities in the management of wildlife and fish resources, the following basic policies be adopted: the federal government, through existing international treaties and agreements, bears direct responsibility and jurisdiction over specified migratory birds, certain endangered species, basic research, certain oceanic resources, and fauna of certain territorial lands beyond the continental United States, and fish and resident species of wildlife are and should remain state

resources under the direct jurisdiction and responsibility of the individual States; and be it further

Resolved, That the National Governors' Conference supports the basic tenets of H.R. 8377, introduced in the First Session of the 90th Congress, which purports to declare and determine the policy by the Congress, with respect to the primary authority of the several States to control, regulate and manage fish and wildlife within their territorial limits.

1968 ANNUAL MEETING, WESTERN GOVERNOR'S CONFERENCE, MAY 12–15

VI. FISH AND WILDLIFE MANAGEMENT

Whereas Resolution Number II of the 1966 Western Governors' Conference, and Resolution Number VI of the 1967 Western Governors' Conference reaffirmed the basic right of the states to conserve, manage and regulate the use and harvest of resident species of fish and game on all lands within each individual state on which said jurisdiction has not been relinquished to the federal government; and

Whereas the International Association of Game, Fish and Conservation Commissioners is supporting legislation to effect this policy, making it abundantly clear that there is no desire to change any International treaty involving the regulation of migratory birds, the Rare and Endangered Species Act, the Bald Eagle Act, the rights of Indians, and natives of Alaska to hunt and fish as established by treaties or Acts of the Congress, the management of lands or control over wildlife species which have been ceded by any state to the United States, and the federal responsibility for conserving and developing fish and wildlife habitat on federal lands: be it

Resolved, That the Western Governors' Conference, at its May 12–15 1968 Annual Meeting in Honolulu, Hawaii, does support legislation to effect the policy set forth above.

Mr. SHANNON. A declaration of national policy by the Congress will provide the needed solution—and in a manner that can be respected and adhered to by both Federal and State officials. This will enable State and Federal conservationists to get on with our respective jobs or resource management, which is most important, and then they can once again present the united front so vitally needed if we are to be successful in meeting the ever-increasing recreational demands of our people for fish and wildlife.

This concludes my statement, Senator.

Senator MOSS. Thank you, Mr. Shannon. That is a very fine statement.

I notice your references to misunderstandings that have involved the Department of Interior. Do you have any similar problems with the Department of Agriculture and the Forest Service?

Mr. SHANNON. Well, since what they call the Pisgah case in North Carolina, the Forest Service developed regulations and also a policy later, which solved a great deal of the problem.

We do have a few conflicts with the Forest Service, but generally their attitude is they recognize the States' traditional rights and outside of a few instances we get along pretty well with the Forest Service.

Senator MOSS. Mr. Cliff was not able to be here today, but he will testify in the morning, representing the Forest Service, and I wondered if there were any problems existing there so that I might want to pose questions to him.

Mr. SHANNON. Well, I would say that, for instance, I know of one problem, I do not think it is of great significance, but for instance, in the State of Florida, the Florida Game and Fresh Water Fish Commission has declared that pigs are game. There are lots of pigs

in Florida and, as such, they come under regulation by the Florida Game and Fresh Water Fish Commission.

My understanding is that—and I checked up a few months ago—the Forest Service refused to recognize them as game, and classes them as domestic animals, which essentially means that the State regulations do not apply.

Now, this is understandable in one way, from the standpoint of the Forest Service because they do not want the pigs on forests because they cause damage.

The point is, here is a difference where the State really has the authority to say what is game and what is not, and when some other entity says it is not, then those regulations do not apply if this decision sticks.

Senator Moss. I will ask him about the pigs.

Mr. SHANNON. Well, maybe the situation has been corrected, but I checked up within, well, the last 5 or 6 months, and apparently it was still the same situation.

Senator Moss. We are, of course, hearing testimony on two different bills. You have a preference as between those two bills or do you endorse them both?

Mr. SHANNON. We endorse them both. We feel that each bill has some good things. I think that in arriving at an eventual—or when the bill is marked up, whichever one—certainly, some things could be taken out of one bill and some things taken out of another bill. Each has some good things.

For instance, Senator Bible's bill has a policy statement at the beginning which is not included in Senator Fannin's bill.

There are some other things that could be done with both bills. But, in general, we strongly support the basic tenets in both bills.

Senator Moss. Mr. Pautske thought we ought to wait a while and see how things worked out with the declaration which has been made by the Secretary of the Interior on behalf of several of the agencies in that Department. What is your response to that suggestion?

Mr. SHANNON. Well, this could be done. However, the statement or the policy statement—and I think now I want to compliment the Department of Interior for going this far, this is the farthest they have ever gone—but it skirts one big basic issue, and that is who owns the fish and wildlife on Federal lands. Now, until that question is resolved, I think we are going to continue to have problems. This issue has to be resolved.

Another thing is that I am sure that Secretary Udall, while I know that he would carry out this policy, be very honest about it, how about the next Secretary? Without a declaration of policy by Congress, he might by a stroke of a pen eliminate this policy, and then we are back into the fire again.

Then there is this question, too: not all public lands are within the Department of the Interior. The Secretary's statement can only cover the Department of Interior; and another thing is that this controversy has been going on for years, and it has resulted in a number of court cases.

I think until the policy is pretty clear and set forth by Congress that we will continue to have these court cases. Not only that, but we will have disssention between the State and Federal Government, and this

carries on down the line to the employees who are doing a job, and when you get this kind of dissention and controversy, you are not doing the best for the resource.

Senator Moss. Thank you, Mr. Shannon. We appreciate your testimony, speaking on behalf of the international association.

We are very glad to have it in the record as we try to pull together all points of view on this problem to decide what to do about it.

Mr. SHANNON. We certainly appreciate being here.

Senator Moss. This is the opinion in the *New Mexico* case, and this will go in the record at this point.

(The document above referred to, follows:)

MODRALL, SEYMOUR, SPERLING, ROEHL & HARRIS,
PUBLIC SERVICE BUILDING, POST OFFICE BOX 2168,
Albuquerque, N. Mex., June 13, 1968.

Re Senate bill 2951.

Hon. FRANK E. MOSS,
U.S. Senator, Chairman, Senate Commerce Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR MOSS: The undersigned is a Special Assistant Attorney General for the New Mexico State Game Commission, appointed for the sole purpose of representing the State of New Mexico in its litigation with Secretary Stewart L. Udall and other Interior Department officials. This letter is written on behalf of the New Mexico State Game Commission and at the request of the National Association of Game, Fish and Conservation Commissioners for the purpose of expressing to you and your committee our interest in Senate Bill 2951.

Our State Game Commission strongly favors passage of Senate Bill 2951. We feel that we have much more than a passing interest in the proposed legislation, since we are now engaged in costly and time-consuming litigation with Secretary Udall and other Interior Department officials on this very subjct in the federal courts. The bill, as we read and understand it, would prevent future similar disputes between our state and federal officials.

The details of our state controversy with Secretary Udall and the Department of the Interior are, briefly, but well, summarized in the body of the Decision of the United States District Court for the District of New Mexico in an excellent Opinion written by the Honorable H. Vearle Payne, United States District Judge for the District of New Mexico. For this reason, we attach hereto a copy of Judge Payne's Opinion for your review and your consideration.

As appears from the Opinion filed March 14, 1968, our state offered the Park Service their full cooperation in its proposed deer-habit study at the Carlsbad Caverns National Park. The offer was declined and the Park Service, in compliance with orders from the Department of Interior, refused to comply with our state laws governing the taking of game for scientific purposes. The Federal District Court held that the Defendants, all of whom are federal officials, must comply if they desire to continue with their scientific study.

This decision was appealed by Secretary Udall on May 24, 1968, and is presently pending in the United States Court of Appeals for the 10th Circuit in Denver, Colorado, where it will probably be argued this fall.

The issues in this litigation are quite narrow and, regardless of the outcome, the case will not, in our judgment, set a precedent broad enough to prevent the Park Service or some other Interior Department agency from future encroachments in local game management areas.

The entire controversy surrounding jurisdiction of resident wildlife on federally-owned lands must be resolved by federal legislation. Absent a legislative solution, we foresee and predict tremendous expenditures of money and manpower by both the federal government and the several states in continuously fighting this battle in the courts each time a separate and distinct controversy arises.

We respectfully urge that you favorably report Senate Bill 2951 to the Senate and we sincerely thank you for the opportunity of presenting our views on the subject.

Yours very truly,

GEORGE T. HARRIS, Jr.
Special Assistant Attorney General for Subject Litigation Only.

[No. 7373, Civil Action]

In the United States District Court for the District of New Mexico

THE NEW MEXICO STATE GAME COMMISSION, PLAINTIFF, VS. STEWART L. UDALL, SECRETARY OF THE INTERIOR; STANLEY A. CAIN, ASSISTANT SECRETARY OF THE INTERIOR; GEORGE HARTZOG, JR., DIRECTOR OF NATIONAL PARK SERVICE; NEAL G. GUSE, SUPERINTENDENT OF CARLSBAD CAVERNS NATIONAL PARK; R. R. MABERY, CHIEF RANGER; AND ROBERT J. SCHUMERTH, NEAL R. BULLINGTON, WILLIAM J. WILSON, ROBERT M. TURNER, WALTER B. O'NEAL, WALTER H. KITTAM, DERRICK C. COOKE, PARK RANGERS, DEFENDANTS

OPINION

This is a contest between the New Mexico State Game Commission and the Secretary of the Interior and his delegates. Ostensibly, the issue presented concerns the Secretary's authority to order the destruction of wildlife in the Carlsbad Caverns National Park, in violation of New Mexico law, for the purpose of conducting a scientific research study. The broader issue presented relates to the role of the States in the activity of wildlife management. Because federal lands located in states other than New Mexico might be effected by the outcome of this dispute, a number of states have appeared as *amicus curiae*.

Plaintiff has requested (1) a declaratory judgment pursuant to 28 U.S.C. § 2201, and (2) that the defendants be enjoined from killing any more wildlife on the park. Defendants contend that they are acting within their authority, and that this is in reality a suit, without consent, against the United States. They have responded with a motion for summary judgment.

The parties have filed herein a stipulation of the facts, and the case is being decided on its merits and not on the defendants' motion for summary judgment. Both parties desire that the Court decide the case on the stipulation as though a trial had been held.

When the parties signed and filed the stipulation of facts, the Court inquired whether the deer in question were to be killed to prevent injury to the parklands, or to permit a study to determine the likelihood of future depredation. The Court was informed that the Government did not intend to kill the deer because of present knowledge of depredation, but merely to gather information as the basis for a study. It has been stipulated that the State of New Mexico has offered to provide the defendants with state permits authorizing the killing of the deer, and that the defendants have refused the offer.

As mentioned, defendants contend this is, in reality, an unconsented-to suit against the United States. In this regard, the Court is cognizant of the rule that an officer of the Unite States, such as the Secretary of the Interior, is immune to suit in his official capacity when the suit is, in effect, one against the United States. However, there exists an exception to the rule where there are allegations that the officer's actions exceeded his statutory authority. Actions of an official that exceed his authority are not actions of the United States, and in such case, the doctrine of sovereign immunity does not apply. *Malone* v. *Bowdoin, 369 U.S. 643; Pan American Petroleum Corp.* v. *Pierson, 284 F. 2d 649 (10 Cir., 1960)*; *Frost* v. *Garrison, 201 F. Supp. 389 (D. Wyo., 1962)*. In the instant case, plaintiff alleges that defendants are without authority to do the acts complained of, and the Court concludes that the doctrine of sovereign immunity does not preclude this action.

In the alternative to the contention that the defendants have exceeded their authority, plaintiff alleges that any such authority found to exist is clearly unconsitutional. Should it be determined that defendants were acting within their statutory authority, and that a substantial question of constitutionality with respect to the statute, or statutes, challenged exists, the Court would initiate the convening of a three-judge panel to hear the matter. *Ex parte Poresky, 290 U.S. 30, and cases following.* However, insofar as the problem is one of statutory construction, and the constitutional question is not reached, the parties and the Court are in agreement that the case is not one appropriate for adjudication by a three-judge court.

The parties are apparently in agreement that the United States has not acquired exclusive jurisdiction over the Carlsbad Caverns National Park. If the Federal Government possessed exclusive jurisdiction over this area, a dif-

ferent problem would be presented. See, for example, *Chalk* v. *United States, 114 F. 2d 207 (4 Cir., 1940), Cert. denied, 312 U.S. 679.* No evidence to the contrary having been introduced, the Court concludes that the land in question was not acquired under circumstances which authorize the United States to exercise exclusive jurisdiction, and that New Mexico has not ceded exclusive jurisdiction over the area to the Federal Government. From this conclusion, it follows that the authority of the Federal Government upon the Carlsbad National Park is not absolute. The question then remains whether Congress has provided the Secretary with the authority that he now asserts. If the asserted authority exists, State Law that is inconsistent therewith must fall.

According to the law of the State of New Mexico, the State Game Commission is charged with the responsibility of managing, controlling, and of regulating the hunting of all resident species of wildlife within the state. The defendants are charged by federal law with the responsibility of managing and controlling federal lands in the state, including the area known as Carlsbad Caverns National Park.

In accordance with a program planned by the National Park Service, the defendants notfied the New Mexico State Game Commission that they intended to issue federal permits to persons selected by them authorizing the killing of fifty deer in the Carlsbad Caverns National Park. The killing would take place out of the New Mexico deer hunting season, and the consent and cooperation of the Game Commission would not be obtained. Thereafter, certain of the defendants were issued such permits by another of the defendants, and fifteen deer were killed. Pending a determination of their right to continue, defendants have temporarily abandoned the program.

The parties' stiulation includes facts already recited, and makes reference to an affidavit filed in this case by the Director of the National Park Service in describing the program which is underway on Carlsbad Caverns National Park. The Director states that the federal officers are conducting studies concerning the "Dry Season Food habits of Deer" within the Carlsbad Caverns National Park, and he concludes that

"(T)hese research programs are absolutely necessary for proper management and administration of Carlsbad Caverns National Park in order to fulfill the responsibilities and obligations of the Secretary of the Interior and his delegated agents to conserve the scenery, natural and historic objects, and wildlife of the park; and that this research project is required in order that reliable scientific information may be gathered and used as a basis for other decisions affecting the management and administration of the area for the purpose of preserving and protecting the park lands from injury or damage."

The responsibility of administering, protecting, and developing Carlsbad Caverns National Park is placed with the National Park Service, subject to the provisions of Title 16, Sections 1 and 2–4 of the United States Code. 16 U.S.C. § 407a. By the terms of Section 1 of Title 16, the National Park Service is obligated to implement the fundamental purpose of the national parks. This fundamental purpose is "to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave then unimpaired for the enjoyment of future generations." 16 U.S.C. § 1. The defendants assert they are conforming with this directive in conducting their present study. They rely for their authority, as well, upon Section 3 of Title 16, which authorizes the Secretary to "provide in his discretion for the destruction of such animals and of such plant life as may be detrimental to the use of any of said parks. . . ."

Section 3 of Title 16 is clearly inapplicable in the present situation. No showing has been made that the deer involved are detrimental to the use of the park, and indeed, defendants make no such claim. It is the opinion of the Court that the Secretary's authority under this section must be predicated upon such a finding.

The question remains whether the broad mandate contained in Section 1 includes the authority the defendants have asserted. The Court has concluded that this section does not include such authority. Reading Section 1 of Title 16 as broadly as defendants contend it should be read would render Section 3 unnecessary, as the authority to order the destruction of wildlife "as may be detrimental to the use" of national parks would be provided without the specific authorization found in Section 3. It seems to the Court an unreasonable conclusion that Congress authorized an activity in Section 3 that was already permitted by Section 1. The conclusion that Congress intended the Secretary's

authority to be proscribed by the conditions set forth in Section 3 seems the more logical to the Court.

Defendants rely in part upon *Hunt* v. *United States, 278 U.S. 96 (1928)*. It seems to the Court that the defendants' reliance is misplaced, however, for that decision is distinguishable from the present case in more than one respect. In *Hunt*, the Supreme Court permitted the destruction of deer on a national forest and game preserve by United States officials, noting (1) that the deer were in such excess numbers "that the forage is insufficient for their subsistence" and the deer "have greatly injured the lands in the reserves by over-browsing upon and killing valuable young trees, shurbs, bushes and forage plants", and (2) observance with the game laws of the State "would have so restricted the number of deer to be killed as to render futile the attempt to protect the reserves." 278 U.S. 96, 99, 100. Neither of the recited factors is present in this case. No depredation is known to be occurring, and New Mexico has offered to cooperate with the Federal officers. Clearly, *Hunt* does not authorize the killing of deer for the purpose of conducting a study. No one doubts the Government's authoriyt to protect its lands, and it seems to the Court that *Hunt* merely reaffirms that proposition, as does Section 3 of Title 16, U.S.C.

Section 53–3–23 of the New Mexico Statutes provides in pertinent part as follows:

"The state director may issue permits to any person to . . . kill . . . game . . . at any time when satisfied that such person desires the same exclusively . . . for scientific . . . purposes."

The Court concludes that Sections 1 and 2–4 of Title 16, U.S.C., do not authorize the destruction of wildlife upon the park for the purposes outlined in the Director's affidavit. The Court further concludes that enforcement of Section 53–3–23, New Mexico Statutes Annotated, quoted above, will not interfere with the Secretary's task as defined in 16 U.S.C. § 1. For these reasons, defendants must comply with Section 53–3–23, N.M.S.A., if they intend to pursue this study further.

This Court has jurisdiction to enjoin acts of officials which are unsupported by statutory authority, *Leedom* v. *Kyne, 358 U.S. 184; Frost* v. *Garrison (D., Wyo., 1962) 201 F. Supp. 389; Harper* v. *Jones (10 Cir. 1952), 195 F. 2d 705*, and cases cited therein. Accordingly, it is the opinion of the Court that the defendants should be restrained and enjoined from the further killing of wildlife within the boundaries of Carlsbad Caverns National Park for the purpose of conducting a research study, unless they first secure authority for their acts by compliance with State Law.

This opinion shall constitute the Court's findings of fact and conclusions of law, as required by Rules 52(a) of the Federal Rules of Civil Procedure.

At Albuquerque, this 12th day of March, 1968.

H. VEARLE PAYNE,
U.S. District Judge.

Senator Moss. Mr. Charles Callison, who is the executive vice president of the National Audubon Society, will be our next witness.

Mr. Callison, we are glad to have you, sir.

STATEMENT OF CHARLES H. CALLISON, EXECUTIVE VICE PRESIDENT, NATIONAL AUDUBON SOCIETY

Mr. CALLISON. Thank you, Mr. Chairman.

My name is Charles H. Callison, and I am executive vice president of the National Audubon Society.

Mr. Chairman, the National Audubon Society is one of America's oldest and largest citizen conservation organizations, and we have between 67,000 and 68,000 members in the National Audubon Society. This number includes the members of 127 State and local Audubon Societies that we classify as branches, in that each of the members in the local branch, such as the Utah Audubon Society, as an example, is also a member of the National Audubon Society.

It does not include the memberships of 251 State and local organizations that are affiliated. This is another category of belonging to the National Audubon Society.

The present controversy over the ownership, regulation, and management of wildlife on Federal lands is interesting, diverting, and too bad. It is too bad because it is diverting the attention and energies of conservationists from constructive goals, and making rivals, or disputants, out of natural allies. It has been a source of regret to the National Audubon Society because we regard all of the State wildlife agencies as our natural allies in the historic and continuing struggle against the forces of commercial exploitation, unwise land use, unplanned and shortsighted destruction of natural habitats, and environmental pollution that reduce wildlife resources and progressively eliminate opportunities for people to enjoy them.

We regard the bureaus of the U.S. Fish and Wildlife Service, the National Park Service, the Bureau of Land Management, and the U.S. Forest Service likewise as our natural allies in the cause of conservation. Sometimes we disagree with them on certain policies or projects, and freely say so. But generally we support their programs, try to help get the legislation and appropriations they need, and cooperate with them in many ways, just as we do with the State conservation agencies.

We think our friends in the State and Federal agencies ought also to be friendly, and that between them the watchwords and the policy ought to be collaboration and cooperation, not conflict and competition.

The introduction of this legislation grew out of a kind of tempest in a teapot, and has been built irrationally into an emotional issue with dire predictions of disaster for the State agencies and their programs.

The issue of States' rights versus Federal authority often degenerates to absurd, even comical, aspects, and this is very nearly such a silly example. It ought to be settled by a simple agreement on policy between the Federal and State agencies. If Federal legislation is needed to cool off this teapot tempest, it should be equally simple: a declaration of policy by the Congress that recognizes the authority of the States to regulate resident—nonmigratory—wildlife and to license hunters and fishermen on the public lands with clear provisions excepting those limited, special Federal conservation areas that have been established by Congress or under the authority of Federal laws, namely, the national parks and monuments, the national wildlife refuges, and the relatively few special areas that have been set aside, or may be set aside in the national forests for the conservation of endangered species. If these special areas are to serve the important purposes for which they were established, the authority of the Federal agencies to manage them and their resources should not be diminished or compromised.

In other words, the Federal Government should assert simply that where public hunting or fishing is proper and permissible on the unreserved public domain or in the national forests, it must be done in accordance with State conservation laws. This is, in fact, the policy that prevails now. I don't think there is any plan, purpose, or conspiracy on the part of the Federal agencies to change it. But some of the State game directors have convinced themselves there is such a conspiracy, so a reassertion of policy might cool off the current teapot tempest.

The National Audubon Society has to oppose both S. 2951 and S. 3212 because they go much too far. If enacted, either bill would seriously cripple several vitally important Federal conservation programs that thave been established by Congress, some of them with the support of the International Association of Game, Fish and Conservation Commissioners and all of them, I think, with at least the association's tacit concurrence.

Specifically, these are our objections, and I must emphasize that they are strong objections:

1. The language of section 3 and section 4 of S. 2951, and the more concise but similar language in section 2 of S. 3212, are in direct conflict with administrative management and regulatory authority given the U.S. Fish and Wildlife Service over units of the national wildlife refuge system in a number of acts of Congress. This authority was clarified, consolidated, and strengthened in section 4 of the Endangered Species Preservation Act—Public Law 89–669—less than 2 years ago with concurrence of the International Association of Game, Fish, and Conservation Commissioners.

If S. 2951 and S. 3212 were enacted, which law would prevail in the courts? A court would have to decide in favor of the later law, in view of the fact that the provisions of the Endangered Species Act is not among the express exceptions contained in section 4 of S. 2951 or section 3 of S. 3212.

If either S. 2951 or S. 3212 were to become law, the Bureau of Sport Fisheries and Wildlife would have to go, hat in hand, seeking State permission even to capture and remove deer, or turkey, or a bighorn sheep, or a black-footed ferret, from one refuge to another.

We do not believe the 90th Congress will want to emasculate the very important and highly popular Endangered Species Act passed by the 89th Congress. We do not believe this committee wants to cripple the national wildlife refuge system.

2. If either of these bills were to pass, it would make most of the national parks and monuments vulnerable to pressures for public hunting within them. If the National Park Service needed to reduce a herd of deer or elk, as it has had to do from time to time through live-trapping and removal, or through shooting by its own rangers, it could do so only by permission of the State. The State could say, "We are sorry, Mr. Park Service, but the only way we'll let you reduce your elk herd is through public hunting."

True, these bills make an express exception for areas over which the States have ceded exclusive jurisdiction. But there are 67 national parks and national monuments. States have ceded exclusive jurisdiction in only 15 of the 67. Fifty-two would be vulnerable, and the authority of the National Park Service to conserve, protect and manage the wildlife within them would be crippled.

The vast majority of the millions of Americans who visit the national parks every year to enjoy the wildlife and the scenery do not want public hunting in them. The "blue ribbon" Advisory Board on Wildlife Management appointed by Secretary of the Interior Stewart L. Udall recommended unanimously against public hunting in the national parks. This Board, which submitted its report on wildlife problems in the national parks in 1963, was composed of Dr. A. Starker Leopold of the University of California, Chairman; and Dr. Clarence

M. Cottam, Dr. Ira N. Gabrielson, Dr. Stanley A. Cain, and Mr. Thomas L. Kimball, members. All are distinguished biologists and ecologists whose names are well known to this committee.

Dr. Cain has since become Assistant Secretary of Interior. He served as a member of this committee before that appointment, of this advisory committee.

I do not believe the Congress will want to pass a law that could lead to abrogation of the historic policy against hunting in the national parks, or that would compromise and weaken the administrative authority of the National Park Service over these precious areas.

3. Enactment of either S. 2951 or S. 3212 would nullify the Bald Eagle Act of 1940 and its amendment of 1962 that extended Federal protection to the golden eagle. These are endangered species. The laws protecting our eagles were passed without objection by the International Association of Game, Fish and Conservation Commissioners.

S. 2951, in section 4(a), "specifically reserves and excepts" from its operation, and I quote the language of the bill:

> All rights and powers of the Congress of the United States to control and regulate the taking of fish and wildlife under any international or Indian treaty or convention to which the United States is a party but only with respect to those species of fish or wildlife expressly named in said treaties.

S. 3212 makes exactly the same exception, although in fewer words, in section 3, paragraph (4).

Although migratory in fact, neither the bald eagle nor the golden eagle is expressly named in the migratory bird treaties with Canada and Mexico. None of the birds of prey are so named in any treaty, although they are nearly all migratory in fact. Several species of hawks are severely diminished and some are actually in danger of extinction. They need Federal protection because the laws of many States with respect to these birds are weak, ambivalent, and poorly enforced.

4. Finally, both of these bills contain a weird and seemingly meaningless exception—section 4(c) of S. 2951 and section 3, paragraph (5) of S. 3212—conceding "all rights and powers over any species of fish and wildlife ceded or granted to the United States by any State."

No species of fish or wildlife has ever been ceded or granted by any State to the United States. This being so, what possibly can be the intent, or the purpose of this strange paragraph? Perhaps it really has no meaning whatever, but if it has a meaning, there can be only one answer.

Some of the State wildlife administrators who concocted this legislation and urged its introduction must have had, in the backs of their minds, the possibility of making such a cession. And what species would they cede? Most likely the animals ceded would be the ones regarded as problems and nonrevenue producers, such as the predators and pest rodents, and the endangered species. Thus the Western States could cede the coyote and get the sheep ranchers off their backs. They could cede the pine mouse, the red-backed mouse and the porcupine, and point toward Washington, D.C., when the timber industry complained.

The States could also cede the bald eagle and the golden eagle, perhaps all the hawks and owls, and thereby rid themselves of any responsibility for protecting these species.

Montana could cede the grizzly bear, California its condor, and thereafter each say, "This is your problem, Uncle Sam, not mine."

If this paragraph, which appears in both bills, has any purpose at all, it must be to pave the way for an abandonment of responsibility that would be totally unworthy of a State wildlife department that represents itself as a conservation agency. We object strongly to the language and the implication of this provision.

Mr. Chairman, the international association, in a "position paper" issued March 13, 1968, at Houston, Tex., declared it did not desire to change the present status of the Rare and Endangered Species Act, or the Bald Eagle Act. Yet either S. 2951 or S. 3212 would nullify the Bald Eagle Act and cripple the Endangered Species Act.

The international association said nothing about not wanting to cripple or invade the administration of the national wildlife refuges. It has not disclaimed any intent to force hunting into the national parks—unless it does so at this hearing—and I do not believe I heard Mr. Shannon make that declaration.

Some public assertions have been made that the whole controversy, and this legislation, grew out of the *Carlsbad Caverns National Park* case, in which the State of New Mexico took the National Park Service to court for killing some deer for research without a State permit. The district court ruled against the Park Service on the grounds that while the Service has legal authority to kill deer to protect the habitat from overbrowsing, there is no law that says it can kill deer for research purposes. But if S. 2951 or S. 3212 were to pass, the Park Service could not kill deer to protect the habitat, except by permission of the State.

I understand the *Carlsbad Caverns* case has been appealed. The courts will eventually settle that issue. But the record here should show that these bills did not originate with the New Mexico case. Some versions of this legislation were introduced in the House last year, long before the Park Service set out to collect some research specimens in Carlsbad Caverns National Park.

The teapot tempest really started simmering several years ago when a Department of the Interior solicitor wrote an opinion that concluded that if it wanted to do so, the Federal Government has constitutional authority to regulate all hunting and fishing on any Federal lands. I don't think the Federal Government wants to, and I don't think it should.

We think the whole issue could be settled by a declaration of policy by the Secretary of the Interior. We don't think legislation is necessary at all.

But if Congress in its wisdom should decide to pass a law in order to lead our feuding conservation agencies out of the alley and into the light, all that is necessary is a simple declaration of policy, or of the intent of Congress, that if any public hunting or fishing for resident—nonmigratory—species is done on Federal lands, within such areas where hunting and fishing is an appropriate recreational use of the game populations, it must be done in accordance with State law and under State license. Then this minimum legislation should also state clear exceptions for the national wildlife refuge system, the national park system, any special wildlife refuges established in the national

forests, the Endangered Species Act, the Bald Eagle Act, as amended, and for all migratory birds.

Mr. Chairman, I commend to the committee a careful and helpful analysis of the legal questions raised by this legislation, an analysis prepared by our esteemed sister organization, the Conservation Foundation. If the Conservation Foundation's analysis—sent to Senator Magnuson under date of February 21, 1968—has not been entered into the record of this hearing, I hereby respectfully request that it be so entered.

Senator Moss. It has been received and it will be entered at this point in the printed record.

Mr. CALLISON. Thank you.

(The document referred to follows:)

THE CONSERVATION FOUNDATION,
Washington, D.C., February 21, 1968.

Senator WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR MAGNUSON: Reference is made to your letter of January 19, 1968, requesting the views of the Conservation Foundation on a bill proposed by the International Association of Game, Fish and Conservation Commissioners affecting title to fish and wildlife.

For the reasons set forth in the following memorandum, the proposed legislation is in conflict with long-established court decisions. We also believe that the results sought would be contrary to the public interest in effective wildlife management.

Sincerely,

RUSSELL E. TRAIN, *President.*

VIEWS OF THE CONSERVATION FOUNDATION OF PROPOSED LEGISLATION AFFECTING TITLE AND OWNERSHIP OF FISH AND WILDLIFE ON FEDERAL LANDS

At the request of the Chairman of the Senate Committee on Commerce, The Conservation Foundation submits these comments on the bill proposed by the International Association of Game, Fish and Conservation Commissioners.

This bill would declare it to be the policy of the Congress that title and ownership of fish and wildlife resides anl rests in the several States independent of jurisdiction over or ownership of land; that it is the primary duty of the States to conserve and protect these resources; and that Congress determines it to be in the public interest that the States have the sole, exclusive, and undisputed legal right to manage, regulate and control fish and wildlife in accordance with State laws and regulations notwithstanding the ownership or control of the lands by the States. Certain exceptions to this policy, not here important, are provided.

In our view, the proposed legislation would be contrary to the public interest in sound wildlife management and would conflict with established court decisions.

WILDLIFE MANAGEMENT CONSIDERATIONS

One of the more vexing problems facing those concerned with the management of public lands and their natural resources has resulted from the presumption that ownership and responsibility for fish and wildlife rested with the states and not with the owner of the land. National forests and other public lands throughout the United States have long experienced damage to forest and range resources because of the inability of the several states to properly manage or control deer, elk, or other wildlife. The federal agencies concerned with these lands have been inhibited in their efforts to achieve good management by an unwillingness to come into conflict with the supposed ownership and regulatory powers of the states.

It is an accepted principle of wildlife biology that the future of any animal species rests with the future of its habitat. If the habitat is damaged or destroyed the wildlife associated with it are adversely affected. No degree of legal protection afforded to wildlife as such can be effective if the habitat is not protected. The

right to manage habitat, to change it, destroy it or improve it, have in most instances remained with the owner of the land. Since good land management is basic to good wildlife management, management of wildlife is most readily and economically accomplished by those responsible for the management of the land.

If the authority over wildlife on public lands is separated from the authority over lands, the ability of the public agency to protect the resources of these lands is unnecessarily handicapped.

During the 1920's attempts to prevent damage by deer to the Kaibab National Forest and to control the explosive increase of the deer population were handicapped by initial lack of any clearly recognized federal authority to control the deer herd. As a result of mismanagement, range and forests were damaged and the deer died off by the tens of thousands.

Throughout the national forests of California damage by deer to their own habitat and to forest and range resources of value for other purposes has been severe. All efforts to achieve effective control over deer populations have been blocked by the inability of the state to put a sound deer management policy into operation.

Many other examples of similar problems can be found. There appears to be no sound reason, based on the principles of wildlife management, for establishing state ownership, authority and responsibility over wildlife inhabiting federal lands. Instead such a clear designation of state authority as has been proposed by the International Association of State Game, Fish and Conservation Commissioners would be likely to lead to greater confusion and less effective management of wildlife on federal lands.

LEGAL ASPECTS OF THE BILL

It is inaccurate to say as does the bill, that title and ownership of fish and wildlife reside with the states "under well-established law set forth in many court decisions." On the contrary, court decisions have upheld broad federal powers supporting federal regulation of fish and wildlife on the public lands. Other court cases clearly indicate the limits of state power over fish and wildlife. As between the states and the federal government, the question of fish and wildlife jurisdiction is not one of ownership, which is a confusing legal fiction, but of power and authority. The federal government has historically had fish and game authority that this bill would remove. In doing so, the bill would raise new and more troublesome difficulties.

Some significant case law

Section 4 of the bill grants the federal government the right "to protect and preserve its lands from destruction or depredation by wildlife to the same extent and in the same manner permitted to any owner of land by the laws of the state in which such land is located." However, the federal government is *not* "any owner of land." The property and supremacy clauses of the Constitution leave no doubt that the federal government can exercise extraordinary powers over its own land wherever situated.

In Memorandum Opinion No. 36672, the Solicitor for the Department of the Interior cited *Camfield v. U.S.*, 167 U.S. 508, 525 (1897) to the effect that "the general government doubtless has a power over its own property analogous to the police power of the several states . . . measured by the exigencies of the particular case." The *Camfield* case involved a privately constructed fence located outside, but effectively surrounding, federal lands. The question was the extent of Congress' power to legislate against such nuisances occurring within a state and outside federal lands. The court upheld such abatement measures "so long as such power is directed solely to (the public land's) protection." The *Camfield* case, therefore, established the proposition of broad federal powers over public land while at the same time limiting federal "police" powers over *nuisances* occurring outside such land.

The Supreme Court, in *Hunt v. U.S.*, 278 U.S. 96 (1928) upheld the federal power to protect public land even if state game laws were violated. There, the federal government enjoined Arizona officials from interfering with federal attempts to control the Kaibab Deer population on its own land. Implicit in the court's decision was the determination that fish and game were not "owned" by the state, and that the supremacy and property clauses as construed by the courts would not allow the state to determine what the federal government could do to protect federal land from wildlife abuse.

State authority

A recent Pennsylvania state court decision reinforces these conclusions drawn from the *Hunt* case. In *Commonwealth v. Agway, Inc.*, 210 Pa. Superior Court 150 (1967), the Commonwealth sought damages for fish killed by pollution discharge. In support of its suit the Commonwealth argued that it had a property interest in fish in a state of freedom. The court disagreed, and in its opinion clarified the difference between ownership and control.

"The Commonwealth has the *power* for the common good to determine when, by whom and under what conditions fish running wild may be captured and thus owned and the power to control the resale and transportation of such fish thereby qualifying the ownership of the captor. It has this power as a result of its sovereignty over the land and the people. But *it is not the owner of the fish* as it is of its lands and buildings so as to support a civil action for damages resulting from the destruction of those fish which have not been reduced to possession."

In clarifying the difference between certain powers over fish and game and the concept of ownership, the Pennsylvania court cited *Toomer v. Witsell*, 334 U.S. 385 (1948), where the Supreme Court addressed itself to the game ownership question. Said the Supreme Court, "The whole ownership theory, in fact, is now generally regarded as but a fiction expressive in legal short-hand of the importance to its people that a state have power to preserve and regulate the exploitation of an important resource." (In that case the court held that South Carolina violated the Privileges and Immunities Clause by imposing a nonresident fishing license fee 100 times higher than that for residents.)

One case often cited in support of state "ownership" claims is *Geer* v. *Conn.*, 161 U.S. 519 (1895). The question there was the extent of the state's power to regulate game within its borders so as to confine use within the state and forbid any export. It was a dispute between the state and a private citizen. The Supreme Court determined that the game involved was a matter of "internal commerce" and so appropriate to regulation under the state's police power. Under a broadened construction of the commerce clause that same result might not be reached today, but the Pennsylvania court in the *Agway* case cited *Geer* in *support* of its decision against state game ownership. It pointed out that the *Geer* decision was reached in terms of state *power* and *control* over wildlife. The court there had said it was an attribute of government to control the taking of animals *ferae naturae* and the power passed from England to the states to the extent it was "not incompatible with rights conveyed to the federal government." Emphasizing the point again, it was implicitly determined by the Supreme Court later in the *Hunt* case that the state had no ownership claim and the states had in fact conveyed to the federal government the right to control wildlife on federal land.

Conclusions

A review of applicable cases leads to the conclusion that the proposed bill is not in accord with court decisions because it would establish state game ownership on federal lands. It would allow the states a veto over federal decisions affecting fish and game on public lands that courts in the past would not support. Any evaluation of the merits of the bill must be made with this fact in mind.

Specific difficulties raised by the bill

(1) Under Section 4(a) the U.S. may regulate the taking of fish and wildlife *only if they are expressly named by treaty.* This limitation flies in the face of a federal district court's opinion in *U.S.* v. *2,271.29 Acres etc.*, 31 F. 2d 617 (1928). In that case, which has been cited in support of state wildlife arguments, the court addressed itself to the question of federal power to regulate game through refuges established under the Migratory Bird Treaty Act. Said the court:

". . . it seems quite essential that, as an incident to the maintenance of the refuge for migratory birds, those in charge have some power of regulation over the number and kinds of other game present, and also, in order that the migratory birds may be secure in their refuge, that hunters and fishermen be at times excluded. Thus as an incident to the main purposes arises the necessity of regulation of game which ordinarily is subject to regulation by the state alone."

The bill would prohibit such incidental regulation by federal officials.

(2) Section 7 is particularly troublesome. The section does not specify what acts or parts thereof are to be repealed. It is important that they be listed, for not to do so is asking Congress to legislate in the dark. Furthermore a full list

of acts to be repealed might contradict the contention in the bill that the policy of state ownership is "well-established" in law.

Mr. CALLISON. Mr. Chairman, I also submit for the record two editorials from the May–June issue of our magazine Audubon. One deals directly with this legislation. The other discusses the national wildlife refuge system and its importance to the general public.

Senator MOSS. Thank you.

Those will be entered in the record at this point.

(The editorials referred to follow:)

THE PUBLIC INTEREST IN NATIONAL WILDLIFE REFUGES

Interior Secretary Stewart L. Udall's blue-ribbon Advisory Board on Wildlife Management, popularly known as the Leopold Committee, has completed its third major study. Previous investigations and reports by the board concerned wildlife problems in the national parks, and federal policies in predator and rodent control.

Its recent report on the National Wildlife Refuge System is published in full in this issue of *Audubon*. We commend it to our readers, and we endorse its recommendations, particularly the proposal that a *natural ecosystem* component should be added in the management of the refuges.

"A mudflat maintained for shorebirds, a woodlot supporting a heron colony, a tule border left for yellow-headed blackbirds or a thicket for transient warblers represents a value over and beyond the cloud of ducks and geese that occupy the central ponds," the board emphasized.

"The number of Americans concerned with viewing or photographing wildlife in increasing exponentially with population. Their interests should be served by the refuges, along with the interests of the hunting public."

The other side of the coin is that the nonhunting conservationist has an obligation to participate actively in support of the refuges and in defending them against encroachments. Indeed, the general taxpaying public has a vast investment to protect in the lands and waters that have been set aside or acquired by the federal government to preserve migratory birds and other wildlife.

Some spokesmen for sportsmen's groups carelessly assert that only hunters and fishermen, through their license fees, have paid for wildlife conservation. The fact is that such revenues—specifically, in this case, from duck stamp sales—have actually paid for only 1,241,713 acres. This is barely one-third of the 3,783,000 acres in the 250 refuges that have been established primarily for wild ducks and geese.

The balance of the acreage in the waterfowl refuges, and the rest of the 28.5 million acres in the entire system, have been bought by the taxpaying public where purchased; or given to the federal government by private individuals or groups; or withdrawn from public domain lands that were—and are—the property of the general public.

"STATES' RIGHTS" BILL THREATENS FEDERAL CONSERVATION PROGRAMS

The issue of states' rights versus federal power crops up in odd places. Now it has arisen in the area of wildlife management, where cooperation—not competition—should characterize the relations between state and federal conservation officials.

Fearful that such agencies as the U.S. Forest Service, the Bureau of Land Management, and the U.S. Fish and Wildlife Service might start setting open seasons and bag limits, or even charging license fees for hunting and fishing on government lands, the directors of state game departments are pushing a bill in Congress to assert the "exclusive right and power of the states to conserve, control, and manage fish and wildlife in or on lands and waters within their territorial boundaries."

The National Audubon Society supports the concept and practice of state authority over resident—nonmigratory—species of wildlife. We believe that if any public hunting or fishing is permitted on any federal lands, it should be done in accordance with state conservation laws. We believe the federal government has no business invading this field, and we see no threat that it intends to do so. The regulation of migratory game is an exception, a responsibilty exer-

cised by the Department of the Interior under the migratory bird treaties to which the United States is party with Canada and Mexico.

The legislation being sponsored by the state game departments goes too far. If passed it would make the National Park Service vulnerable to state and hunter pressure for public hunting in the national parks. It would cripple the authority of the Bureau of Sports Fisheries and Wildlife to manage the national wildlife refuges. It would repeal the federal laws protecting bald and golden eagles. And, similarly, it would nullify essential parts of the Endangered Species Preservation Act of 1966.

This states' rights measure must be defeated unless amended so as not to destroy or damage important federal conservation laws and programs.

Senator Moss. I do appreciate your testimony, Mr. Callison. It is directly to the point, and I think it states your position, the position of the Audubon Society, very clearly.

Obviously, we are dealing with a very controversial concept, and this hearing is doing exactly what we wanted it to do by getting on the record the position taken by various organizations, such as your very excellent organization, that we all know and admire, and we will take great note of the position taken by the National Audubon Society.

Mr. CALLISON. Thank you, Mr. Chairman.

I agree that the conduct of these hearings is most helpful. I think it is fine to clear the air with this discussion.

Senator Moss. I would assume that whatever policy we follow ought to be uniform as between the Department of Agriculture and Department of the Interior?

Mr. CALLISON. I think it should. And also keep in mind that the Department of Defense holds a lot of Federal land.

Senator Moss. Yes. That has not been mentioned before, but that is true. They have a great amount of land and large range areas where there are fish and game.

Well, thank you very much.

I am going to have to be excused again for a few minutes. That buzzer says we have got a vote, and I will return. We should be able to hear at least two or three more witnesses this afternoon before we go over until tomorrow morning.

(Whereupon, there was a short recess.)

Senator Moss. All right. We will now resume our hearings and go on the record.

Mr. Louis Clapper is here to testify for the National Wildlife Federation. The record had shown Mr. Kimball was to appear, but Mr. Clapper, who is chief of the Division of Conservation Education, is here.

STATEMENT OF LOUIS S. CLAPPER, CHIEF, DIVISION OF CONSERVATION EDUCATION, NATIONAL WILDLIFE FEDERATION

Mr. CLAPPER. Thank you, Senator.

I would like to express Mr. Kimball's regrets for being unable to be here. He is on a trip and he was not able to make it.

I would like to summarize some of the comments in the statement.

Senator Moss. That will be done, and the statement will go in the record in full as though delivered, and you may summarize or highlight as you may see fit.

Mr. CLAPPER. The identification of our organization is there in the first two paragraphs, and I will just go on to the third.

The National Wildlife Federation, Mr. Chairman, is in the peculiar and unenvied position of being located "in between" two friends in the controversy which provoked the introduction of S. 2951 and S. 3212, and a host of similar House bills. Over the years, our organization has appreciated, respected, and supported wildlife conservation programs of agencies of the Federal Government when we thought they were on sound courses of wildlife management. In a like manner, we have appreciated, respected, and supported wildlife programs of agencies of the State governments when in accord with principles of sound management.

Generally speaking, we believe that the traditional approach has been a sound one and we have been distressed at the development of a controversy over Federal-State jurisdiction. This traditional approach recognized primacy of the Federal Government in matters involving migratory species of wildlife, especially those which cross interstate and/or international boundaries; and primacy of State governments authority with respect to management of resident wildlife. This division of responsibilities has worked efficiently well in the past and we would be pleased if it continues in the future when the current controversy is resolved.

To make a personal observation, I would be pleased if the States devoted less of their attention to migratory species and if the Federal Government refrained from primary management of resident wildlife.

In 1967, Mr. Chairman, the National Wildlife Federation adopted a resolution—No. 22, copy attached—which expressed the belief that State governments have the exclusive basic right and responsibility for managing resident wildlife. Then earlier this year, the board of directors of the National Wildlife Federation decided that the organization should become an amicus curiae—friend of the court—against the Federal Government on behalf of the States in a legal action involving Carlsbad Caverns National Park in New Mexico. Thus, the National Wildlife Federation favors the position of the States in the current jurisdictional controversy.

Two main factors bear significantly upon this position.

First, it is our belief that the basis for State jurisdiction over wildlife has its genesis in Roman common law. In this, wild creatures had no owner and belonged in common to all citizens of the state. Thus, wildlife was a resource common to all people, like the air, light, rivers, and the sea. This tenet of common law ownership was carried into English law.

The English kings claimed that ownership of wildlife was vested in the sovereigns as rulers as distinguished between the kings as individuals. The Magna Carta set out that the sovereign held such property as wildlife in "sacred trust" for the people. This principle is part of common or unwritten law, rather than a statutory enactment. When the Colonists settled in America and established governments ultimately leading to State constitutions, it was judicially determined that English common law had become the common law of the States.

In effect, the Colonies and subsequently the individual States replaced the king as sovereign and, therefore, had the responsibility for

holding wildlife in trust for the people. Mr. Kimball then, sir, lists a number of legal decisions and opinion which uphold the States' position, and I would like to skip over to page 7.

Second, to upset this basic principle is to undermine the basic reason for governmental management of wildlife resources. If ownership and the right and responsiblity for wildlife management passes from the States, the State has no justification for imposing licenses or fees on individuals for the privileges of hunting and fishing. These fees, of course, are imposed for the purpose of enforcing laws to protect wildlife or for managing it for purposes of enhancement.

In other words, a void would be created in the management of wildlife. From the practical point of view, neither the Federal Government nor individual landowners would be able to fill such a void. To put it bluntly, the Federal Government would be hard-pressed today if required to handle migratory birds properly without the cooperative efforts of these State agencies, especially with respect to law enforcement. Further, it would be impossible for the Federal Government to finance the law enforcement, habitat development, research, and wildlife management activities of the 50 States, as they are presently constituted.

Now, the National Wildlife Federation wishes to make its position clear on several points relative to this controversy:

1. The Federal Government, like any other landowner, must have the authority to restrict the use of Federal property for legitimate reasons. Like any landowner, the Federal Government can restrict to the extent of prohibiting entry or trespass on its lands, for hunting or fishing or any other purpose not in the public interest. In this context, for example, we would oppose any attempt to open a national park or monument to recreational hunting but would applaud a cooperative effort in the removal of excess wildlife populations doing damage to park values as determined solely by the National Park Service.

2. Also, like any other landowner, the Federal Government should continue to have the right to manage habitat for wildlife on any of its properties.

3. The Federal Government should continue to have primacy over migratory species of wildlife, as defined by the Migratory Bird Treaty Act. For this reason, any consideration of these bills should protect the rights and powers of the United States for the protection of fish and wildlife pursuant to express language in any act of the Congress, particularly a treaty which takes precedence over both State and Federal law.

Specifically, we believe that nothing in these bills should be construed as changing the current status of the Bald Eagle Act—as amended to also cover golden eagles—the Endangered Species Act, or the Migratory Bird Treaty Act.

4. When a State ceded exclusive jurisdiction of wildlife to the Federal Government, we feel that the State's ownership of wildlife on that property passed to the Federal Government.

As we read them, many of the principles expressed earlier in this statement are embodied in S. 2951 and in S. 3212, and we generally support them. However, we believe these bills go too far in saying that the States have "the sole, exclusive, and undisputed legal right to management, regulate, and control" * * * of "all fish and wildlife"—

S. 2951, section 2(5). Essentially, the same would be provided by S. 3212, section 2, wherein all right, title, and interest of the United States "to all fish and wildlife" would be ceded to the States.

Mr. Chairman, in conclusion, Mr. Kimball would like to express the hope that the Congress soon will act to clarify this issue. It has been festering like an open wound for far too long and the overall wildlife conservation program has suffered. Divisiveness and contention over jurisdiction over wildlife should be ended as soon as possible in order that the optimum time and effort can be directed toward solving the multitude of problems that exist with respect to wildlife protection and management. This, too, is in the public interest.

I am sure Mr. Kimball would be very interested in seeing the statement of the Secretary of the Interior just released with regard to the policy, and I am sure he would want to commend the Secretary for taking this action.

Thank you, Mr. Chairman.

(The complete prepared statement of Mr. Kimball, above-referred to, follows:)

STATEMENT OF THOMAS L. KIMBALL ON BEHALF OF THE NATIONAL WILDLIFE FEDERATION

Mr. Chairman, I am Thomas L. Kimball, Executive Director of the National Wildlife Federation, which has its headquarters at 1412 Sixteenth Street, N.W., here in Washington, D.C.

By way of identification, the National Wildlife Federation has independent affiliated organizations in 49 of the states. These affiliates, in turn, are composed of local groups and individuals. When combined with associate members and other supporters of the National Wildlife Federation, these number about 2½ million persons.

We welcome the invitation and opportunity to appear here today.

The National Wildlife Federation, Mr. Chairman, is in the peculiar and unenvied position of being located "in between" two friends in the controversy which provoked the introduction of S. 2951 and S. 3212 and a host of similar House bills. Over the years, our organization has appreciated, respected, and supported wildlife conservation programs of agencies of the Federal Government when we thought they were on sound courses of wildlife management. In a like manner, we have appreciated, respected, and supported wildlife programs of agencies of the State governments when in accord with principles of sound management.

Generally speaking, we believe that the traditional approach has been a sound one and we have been distressed at the development of a controversy over Federal-State jurisdiction. This traditional approach recognized primacy of the Federal Government in matters involving migratory species of wildlife, especially those which cross interstate and/or international boundaries; and primacy of state governments authority with respect to management of resident wildlife. This division of responsibilities has worked efficiently well in the past and we would be pleased if it continues in the future when the current controversy is resolved. To make a personal observation, I would be pleased if the States devoted less of their attention to migratory species and if the Federal Government refrained from primary management of resident wildlife.

In 1967, Mr. Chairman, the National Wildlife Federation adopted a resolution No. 22, copy attached) which expressed the belief that state governments have the exclusive basic right and responsibility for managing resident wildlife. Then earlier this year, the Board of Directors of the National Wildlife Federation decided that the oragnization should become an *amicus curiae* (friend of the court) against the Federal government on behalf of the states in a legal action involving Carlsbad Caverns National Park in New Mexico. Thus, the National Wildlife Federation favors the position of the states in the current jurisdictional controversy.

Two main factors bear significantly upon this position.

First, it is our belief that the basis for state jurisdiction over wildlife has its genesis in Roman common law. In this, wild creatures had no owner and

belonged in common to all citizens of the state. Thus, wildlife was a resource common to all people, like the air, light, rivers, and the sea. This tenet of common law ownership was carried on into English law. The English kings claimed that ownership of wildlife was vested in the sovereigns as rulers as distinguished between the kings as individuals. The Magna Carta set out that the sovereign held such property as wildlife in "sacred trust" for the people. This principle is part of common or unwritten law, rather than a statutory enactment. When the colonists settled in America and established governments ultimately leading to state constitutions, it was judicially determined that English common law had become the common law of the states. In effect, the colonies and subsequently the individual states replaced the king as sovereign and, therefore, had the responsibility for holding wildlife in trust for the people.

Many legal decisions uphold the state position on this question. Excerpts from a few are listed below:

"The decision on this matter depends upon the nature or status, under our laws, of animals *ferae naturae*, and the rights which individuals, whether citizens and residents or non-residents, may have therein or thereto. In the case of *Geer v. Connecticut*, 161 U.S. 519, this matter is quite elaborately treated, and the right of a state to regulate and control the manner in which wild game may be appropriated by individuals is sustained upon two grounds: (1) the sovereign ownership of animals *ferae naturae* by the state in trust for the benefit of its citizens; and (2) the police power of the state, which flows from its duty to preserve for its people a valuable food supply."—*In re Eberle*, 98 Fed. Rep. (C.C.) 295.

"We therefore conceive it to be settled by authority and by long recognition in the law that the owner of land has a right to take fish and wild game upon his own land, which inheres to him by reason of his ownership of the soil. It is a distinct property right, as much as any other distinct right incident to his ownership of the soil. It is not, however, an unqualified and absolute right, but it bounded by these limitations: that it must always yield to the state's ownership and title, held for the purposes of regulation and preservation for the public use. These two ownerships or rights—that is to say, the general ownership of the state for one purpose, and the qualified or limited ownership of the individual, growing out of his ownership of the soil—are entirely consistent with each other, and in no wise conflict. The transistory nature of the property renders the benefits so diffusive that all may join in the enjoyment thereof, and for that reason the sovereign holds as the representative of the public, so as to regulate and protect the common use. Still the right of the landowner to hunt and fish on his own lands is to that extent a special property right, though subordinate to the others."—*State v. Mallory*, 73 Ark.236; 83 S.W.955, 956, 957, 959.

"The fish within our waters constitute the most important constituent of that species of property commonly designated as wild game, the general right and ownership of which is in the people of the State, as in England it was in the king; and the right and power to protect and preserve such property for the common use and benefit is one of the recognized prerogatives of the sovereign, coming to us from the common law and preserved and expressly provided for by the statutes of this and every other State of the Union."—*People v. Truckee Lumber Co.*, 115 Cal.397, 400.

"Wild game belongs to the whole people, and the Legislature may dispose of it as may seem to it best—subject only to constitutional limitations against discriminations. Within those limitations the Legislature, for the purpose of protecting game, may pass such laws as to it seem most wise; and the measures best adapted to that end are for the Legislature to determine, and courts cannot review its discretion."—*Ex parte Kennke*, 136 Cal. 527,528.

"Thus it will be seen, the highest judicial authority in the land has laid down the principle that the State, in its sovereign capacity, has power to limit and qualify the ownership which a person may acquire in game, with such conditions and restrictions as it may deem necessary for the public interest, and that there is a fundamental distinction between the ownership which one may acquire in game and the perfect nature of ownership in other property."—*Hornbeke* v. *White*, 20 Colo. App. 13, 22.

"The Constitution of the State does not forbid the passage of special or local laws upon the subject of game, and it contains no express provision as to game; therefore, the Legislature may by a duly enacted law make any provision within its discretion for the preservation and conservation of the game in the state for the use and benefit of the people of the state, by regulating the taking or killing and use of certain or all kinds of game in any part of the state and during any

periods, when such laws do not deny to any one having rights in the premises due process of law or the equal protection of the laws that are guaranteed to all persons by the State and Federal Constitution."—*Harper* v. *Galloway*, 58 Fla. 255, 260.

". . . To hunt and kill game is a boon or privilege granted either expressly or impliedly, by the sovereign authority—not a right inhering in each individual; and, consequently, nothing is taken away from the individual when he is denied the privilege, at stated seasons, of hunting and killing game. It is, perhaps, accurate to say that the ownership of the sovereign authority is in trust for all the people of the state, and hence, by implication, it is the duty of the Legislature to enact such laws as will best preserve the subject of the trust and secure its beneficial use, in the future, to the people of the states. But, in any view, the question of individual enjoyment is one of public policy, and not a private right."—*Magner* v. *People*, 97 Ill. 320, 333, 334.

"We do not think any person is so deprived by the act of any right or privilege which another may lawfully enjoy. Section 11 of the act declares the ownership and title to the animals designated to be protected to be in the State of Illinois. Prior to the enactment the state had general ownership of animals *ferae naturae*, not, however, as a proprietor, but in its sovereign capacity, as the representative of the people and for the benefit of all the people in common. Section 11 places the title and ownership in the state as a proprietor, and the individual may no longer acquire ownership by capturing, killing or reclaiming such animals, except in so far as permitted so to do by other provisions of the act."—*Meul* v. *People*, 198 Ill. 258, 262, 263.

"The title to wild game is in the state, without reference to the ownership of the lands upon which it may be found, and the state has the undoubted right, therefore, to protect and prohibit or regulate the taking or killing of the same."—*Cummings* v. *People*, 211, Ill. 392, 405.

"Wild game is under the control of the state, and only becomes the subject of private ownership when reclaimed by the art and industry of man."—*State* v. *Repp*, 104 Iowa 305, 306. (N.B. By Statute in Iowa the ownership and title to all wild game, animals and birds is declared to be in the state. See *State* v. *Ward*, 170 Iowa 185, 189–190.)

"The fish in the waters of the state and the game in its forests belong to the people of the state in their sovereign capacity, who, through their representatives, the Legislature, have sole control thereof and may permit or prohibit their taking."—*State* v. *Snowman*, Me. 99, 111.

"In this Commonwealth the title to wild animals and game is in the Commonwealth in trust for the public, to be devoted to the common welfare."—*Dapson* v. *Daly*, 257 Mass. 195, 196.

"We take it to be the correct doctrine in this country that the ownership of wild animals, so far as they are capable of ownership, is in the state, not as a proprietor, but in its sovereign capacity, as the representative and for the benefit of all its people in common."—*State* v. *Rodman*, 58 Minn. 393, 400.

"The authorities agree that the ownership of all game animals and birds is in the people in their sovereign capacity, that is, in the State and no individual has any property in game other than such as the State may permit him to acquire, and even when game has been captured and reduced to possession by the individual with the permission of the State, his ownership in it may be regulated and restrained by appropriate legislation enacted for considerations of state or for the benefit of the community."—*Stevens* v. *State*, 89 Md. 669, 672, 673.

"It has been held with practical unanimity in all jurisdictions that animals *ferae naturae* are not the subject of private ownership until reduced to actual possession; that the ownership of such animals, so far as they are capable of ownership, is in the State, not as proprietor, but in its soverign capacity, as the representative and for the benefit of all its people in common; and that the State may regulate and restrict the taking of such animals, or absolutely prohibit it, if deemed necessary for their preservation or for the public good."—*Ex parte Fritz*, 86 Miss. 210, 218.

"The authorities are uniform in holding that the absolute ownership of wild game is vested in the people of the state, and that such is not the subject of private ownership. As no person has in such game any property rights to be affected, it follows that the legislature, as the representative of the people of the State, and clothed by them with authority to make laws, may grant to individuals the right to hunt and kill game at such times, and upon such terms,

and under such restrictions as it may see proper, or prohibit it altogether, as the Legislature may deem best."—*State* v. *Heger*, 194 Mo. 707, 711.

"That the ownership of wild animals is in the State, held by it in its sovereign capacity for the use and benefit of the people generally, and that neither such animals nor parts thereof are subject to private ownership except in so far as the State may choose to make them so, are principles now too firmly established to be open to controversy."—*Rosenfield* v. *Jakways*, 67 Mont. 558, 562, 563.

"The protection of wild animals suited for the purpose of food from indiscriminate slaughter by hunters has been the object of legislation from the most ancient times. The theory upon which the law-making power assumes to act is, that all wild game belongs to the State in its sovereign capacity as trustee for the whole of the public, and that, consequently, the State may, as a proper exercise of its police power, adopt such rules and regulations with reference to its preservation, and such penalties with reference to a violation of such regulations, as are necessary to accomplish the end desired—the preservation to the people of the State of the pleasure, sport and profit derived from hunting, pursuit and capture of the wild animals living therein."—*McConnell* v. *McKillip*, 71 Neb. 712, 713, 714.

". . . The taking and killing of certain kinds of fish and game at certain seasons of the year tend to the destruction of the privilege by the destruction consequent upon the unrestrained exercise of the right. This is regarded as injurious to the community, and therefore it is within the authority of the Legislature to impose restrictions and limitations upon the time and manner of taking fish and game considered valuable as articles of food or merchandise. For this purpose fish and games laws are enacted. The power to enact such laws was exercised previous to the adoption of the Constitution, and it has been so long used, and so beneficially for the public, that it ought not now be called in question."—*State* v. *Roberts*, 59 N.H. 256, 257.

"That the Legislature, for the purpose of protecting wild game, birds and fish within the State, has the right to establish open seasons in which certain kinds may be taken, and to prescribe the manner and limit of such taking, as well as to prohibit other kinds from being taken at all, is unquestioned."—*Dieterich* v. *Fargo*, 104 N.Y. Supp. 334, 336.

"The ownership of game is in the people of the State, and the Legislature may withhold or grant to individuals the right to hunt and kill game, or qualify or restrict it, as in its opinion will best subserve the public welfare . . . At common law, title to game was in the king (with us now in the sovereign people), and no one could hunt game even on his own land without a franchise from the sovereign. Wild game within a State belongs to its people in their collective sovereign capacity . . . Maine, in his 'village communities,' 142 says, this ownership of game by the sovereign has been in the common law from the earliest time."—*State* v. *Gallop*, 126 N.C. 979, 982, 983.

"The ownership of fish and game, so far as they are capable of ownership, until reduced to actual possession, is in the State, and their protection and preservation by the State has always been regarded and treated as within the proper domain of its police power, and the validity of laws limiting the season within which game may be killed, and prescribing the terms and conditions upon which, and at the time and manner in which fish may be taken or caught in public wters within the territorial limits of the State have been repeatedly and almost uniformly upheld by the courts."—*State* v. *Hanlon*, 77 Ohio St. 19, 28.

"It is a generally recognized principle that migratory fish in the navigable waters of a State, like game within its borders, are classed as animals *ferae naturae*, the title to which so far as that claim is capable of being asserted before possession is obtained, is held by the State, in its sovereign capacity in trust for all its citizens; and as an incident of the assumed ownership, the legislative assembly may enact such laws as tend to protect the species from injury by human means and from extinction by exhaustive methods of capture . . . The State being thus invested with the title to animals *ferae naturae*, they cannot be lawfully captured by any person without the express or implied permission of the State."—*State* v. *Hume*. 52 Ore. 1. 5. 6.

"As stated by the learned trial judge: 'The right to hunt game is but a privilege given by the Legislature, and is not an inherent right in the residents of the State. Wild animals and game of all sorts have from time immemorial been the property of the sovereign, and in Pennsylvania the property of the State. Its power to regulate and prohibit the hunting and killing of game has always been conceded.' "—*Comm.* v. *Patsone*, 231 Pa. 46, 48, 49.

"At common law the title to and the property in all species of wild game is declared to be vested in the sovereign. In most of the States this principle has been expressly recognized and adopted by statutory enactments, as in this State . . ."—*State* v. *Pollock*, 42 S.D. 360, 363.

"We understand it to be well settled in at least American jurisprudence that, without the aid of a statute, and as a part of the common law of this country, the title of game animals, birds and fish is in the State as trustee for the benefit of its citizens."—*Acklen* v. *Thompson*, 122 Tenn. 43, 51.

". . . Fish and game, being by legislative enactment and declaration the common property of the whole people and part of the food supply of the State, the Legislature has not only the authority to regulate the slaughter of such game, but to make such laws as may be necessary to accomplish this purpose and as may and will defeat evasions and prevent violation of this law."—*Ex parte Blardone*, 55 Tex. Crim. 189, 194. (Texas had statute declaring that wild game in Texas is property of the State).

"The State, the representative of the people, the common owner of all things *ferae naturae*, not only has the right, but is under a duty, to preserve and increase such common property."—*State* v. *Theriault*, 70 Vt. 617, 622.

"The rule is everywhere recognized that animals *ferae naturae* at large in the State belong to the people of the State in their collective and sovereign capacity and not in their individual and private capacity, except so far as private ownership may be acquired therein under the Constitution, subject always to such proper regulations as the Legislature may make."—*Jones* v. *Metcalf*, 96 Vt. 327, 331.

"Without reviewing the early common law upon the subject of game, it may be said that the recognized doctrine is that title to game belongs to the State in its sovereign capacity, and that the State holds this title in trust for the use and benefit of the people of the State. The State, through its legislature, has the right to control for the common good the killing, taking, and use of game, so long as the rights guaranteed either by the State or Federal Constitution are not encroached upon."—*Traves* v. *Dunlap*, 87 Wash. 648, 651.

"We believe it has never been seriously denied (and it is now certainly too late to deny) that the State has the right, in the exercise of its police power, to make all reasonable regulations for the preservation of fish and game within its limits."—*State* v. *Nergaard*, 124 Wis. 414, 420.

Second, to upset this basic principle is to undermine the basic reason for governmental management of wildlife resources. If ownership and the right and responsibility for wildlife management passes from the States, the State has no justification for imposing licenses or fees on individuals for the privileges of hunting and fishing. These fees, of course, are imposed for the purpose of enforcing laws to protect wildlife or for managing it for purposes of enhancement. In other words, a void would be created in the management of wildlife. From the practical point-of-view, neither the Federal government nor individual landowners would be able to fill such a void. To put it bluntly, the Federal government would be hard-pressed today if required to handle migratory birds properly without the cooperative efforts of these State agencies, especially with respect to law enforcement. Further, it would be impossible for the Federal government to finance the law enforcement, habitat development, research, and wildlife management activities of the 50 states.

Now, the National Wildlife Federation wishes to make its position clear on several points relative to this controversy:

1. The Federal government, like any other landowner, must have the authority to *restrict* the use of Federal property for legitimate reasons. Like any landowner, the Federal government can restrict to the extent of prohibiting entry or trespass on its lands, for hunting or fishing or any other purpose not in the public interest. In this context, for example, we would oppose any attempt to open a national park or monument to recreational hunting but would applaud a cooperative effort in the removal of excess wildlife populations doing damage to park values as determined solely by the National Park Service.

2. Also like any other landowner, the Federal government should continue to have the right to manage *habitat* for wildlife on any of its properties.

3. The Federal government should continue to have primacy over migratory species of wildlife, as defined by the Migratory Bird Treaty Act. For this reason, any consideration of these bills should protect the rights and powers of the United States for the protection of fish and wildlife pursuant to express language in any Act of the Congress, particularly a treaty which takes precedence over both State and Federal law. Specifically, we believe that nothing in these

bills should be construed as changing the current status of the Bald Eagle Protection Act (as amended to also cover Golden Eagles), the Endangered Species Act, or the Migratory Bird Treaty Act.

4. When a State ceded exclusive jurisdiction of wildlife to the Federal government, we feel that the State's ownership of wildlife on that property passed to the Federal government.

As we read them, many of the principles expressed earlier in this statement are embodied in S. 2951 and in S. 3212, and we generally support them. However, we believe these bills go too far in saying that the States have "the *sole, exclusive,* and *undisputed* legal right to management, regulate, and control" . . . of "*all* fish and wildlife" (S. 2951, sec. 2(5)). Essentially, the same would be provided by S. 3212, section 2, wherein all right, title and interest of the U.S. "to *all* fish and wildlife" would be ceded to the States.

Mr. Chairman, in conclusion, I should like to express the hope that the Congress soon will act to clarify this issue. It has been festering like an open wound for far too long and the overall wildlife conservation program has suffered. Divisiveness and contention over jurisdiction over wildlife should be ended as soon as possible in order that the optimum time and effort can be directed toward solving the multitude of problems that exist with respect to wildlife protection and management. This, too, is in the public interest.

Thank you again for the opportunity of making these remarks.

NATIONAL WILDLIFE FEDERATION, 31ST ANNUAL CONVENTION, SAN FRANCISCO, CALIF., MARCH 10 TO 12, 1967, RESOLUTION NO. 22

STATE CONTROL OF FISH AND WILDLIFE ON FEDERAL LANDS

Whereas, by law, history, and tradition, in the United States the ownership of wildlife has been separated from the land, a system differing from that prevalent in Europe where the landowner owns the game thereon; and

Whereas, all species of wildlife are held in trust for the people of each State by the individual States and their official agencies; and

Whereas, responsibilities of the Federal Government for the management of wildlife relate only to those migratory species which are subjects to international treaties; and

Whereas, contrary to Supreme Court decisions and sound fish and game management policies, the U.S. Solicitor General recently held that the Federal Government has full and exclusive power and control over both migratory and resident wildlife on all Federally-owned lands: Now therefore be it

Resolved, That the National Wildlife Federation, in annual convention assembled March 11, 1967, in San Francisco, California, hereby expresses its belief in the principle that the respective State Governments have the exclusive basic right and responsibility of conserving, managing, and regulating the resident species of wildlife on all lands and waters within their boundaries (except on properties wherein jurisdiction has been relinquished) and that the Federal Government has only that authority reserved to any landowner.

Senator Moss. Thank you, Mr. Clapper, for presenting this statement prepared by the National Wildlife Federation, and giving it on behalf of Thomas Kimball.

The full statement, including the resolution appended, will appear in the record, as was announced, and we appreciate having the opinion of your fine organization.

We are very well acquainted with the good work that it does. I particularly noted that you stated herein that the landowner should, of course, have exclusive control of the habitat. By this, you mean that there should be no restriction of any sort of the landowner, in this case the Federal Government, on how——

Mr. CLAPPER. He could do with the land what he would wish, sir, like any present landowner.

Senator Moss. That had to do with the land itself.

Mr. CLAPPER. Yes, sir.

Senator Moss. It is on the principle that all wildlife belongs to the Crown, the Sovereign, that you think the State's management ought to remain over residents, over fish and wildlife.

Mr. CLAPPER. It is transitory, where the habitat is not in this respect.

Senator Moss. Thank you very much. I do appreciate your testimony.

Mr. CLAPPER. Thank you.

Senator Moss. And it has been most helpful to have it.

We will call Michael McCloskey next, representing the Sierra Club.

The reason I ask for this is that he is from out of town. I do not see him here now.

Well, we may get back to him.

Mr. "Pink" Gutermuth. I see our good friend "Pink" Gutermuth. We will hear from you next, representing the Wildlife Management Institute. Good to have you, "Pink."

STATEMENT OF C. R. GUTERMUTH, VICE PRESIDENT, WILDLIFE MANAGEMENT INSTITUTE

Mr. GUTERMUTH. Thank you, Mr. Chairman.

I am C. R. Gutermuth, vice president of the Wildlife Management Institute. The institute is one of the older national conservation organizations, and its program has been devoted to the restoration and improved management of natural resources in the public interest for more than 50 years.

Like several of the other conservation organizations, the institute has been urging the State agencies, acting through their International Association of Game, Fish, and Conservation Commissioners, and the Interior Department to resolve their differences through negotiation rather than to require legislative determination. We prefer negotiation to legislation because of the complex nature of the problem. Legislation might not respond as effectively to its solution. It could, in fact, create problems which are even more troublesome than those now experienced by the State and Federal agencies.

The two parties have made efforts to reach an agreement over the past several years, including additional meetings held in Washington last week. The earlier meetings have been useful, but they did not bring measurable success. We understand that the recent session in Washington resulted in the drafting of a policy statement for the consideration of Secretary Udall. We had not seen the statement and had little information about its contents prior to the opening of this hearing. It is hoped, however, that ultimately will prove to be acceptable to the Secretary and to the State fish and wildlife agencies.

Much of what could be said about this issue has been covered in the statements of the international association and the Interior Department. The institute will not attempt to trace the evolution of the problem or to comment specifically on the bills that have been introduced.

Our brief statement will be directed instead to a facet of the problem which often is obscured by the debate over the responsibilities and obligations of the State and Federal agencies. It involves the fish and wildlife resources themselves. Like many other conservationists, we firmly believe that the future well-being of much of the Nation's fish and wildlife resources hinges on the recognition and the retention of the fundamental division of responsibility that has

evolved by law, practice, and custom in this country. Any action that would seriously erode or disrupt the system that has been undergoing development since the earliest days of our Nation can seriously challenge these important resources. The protection and perpetuation of these invaluable resources must be given the highest priority.

The basic foundation of the system is the States' power and authority over species of fish and resident wildlife on all lands within their borders, except for species covered under international treaties, special acts, on areas where exclusive jurisdiction has been ceded to the Federal Government, and in other well-defined situations.

This system has facilitated the orderly management and protection of our Nation's resident fish and wildlife. It provides law enforcement to protect the valuable resources from those who would misuse them. It makes possible State wildlife refuges and public hunting grounds, encourages research to uncover useful information about the habits and needs of the animals, stimulates cooperative programs with private landowners to improve their properties for fish and fishing and for wildlife and hunting, and contributes in many other ways to overall program designed primarily to perpetuate fish and wildlife.

The continuance of this system is based on the issuance of hunting and fishing licenses and permits by the State agencies so as to secure money to finance the enforcement, research, and management programs that are so essential to the well-being of fish and wildlife. If action is taken that would shift power and authority over wildlife to the owners of the land upon which those resources are found, the long-standing and successful system for managing and caring for fish and wildlife would be destroyed. There would be no central basis for formulating rules and regulations regarding the taking of fish and wildlife and the source of money for protecting and managing the resources would disappear.

Some individuals and groups have been saying that this is a far-fetched apprehension, Mr. Chairman, but the Institute, like many others, sees this as a serious danger. Those who are not aware of the evolution of fish and wildlife management in this country are not in a position to judge fairly the dangers that are inherent in a shift in the national policy regarding responsibility for fish and resident wildlife.

Some of those who have been advocating such a shift apparently do not recall the early days when fish and wildlife agencies were dominated by political considerations rather than by biology. They apparently do not realize the great advancements that have been made in restoring wildlife and in assuring that fishing and hunting will be conducted within carefully established frameworks to assure the perpetuation of the resources on which those sports are based.

These individuals seemingly forget that the decimation of many of America's wildlife around the turn of the century was brought on by the absence of protection by indifference and by the lack of knowledge and understanding. Thanks to the programs of the State agencies, and often in cooperation with some of the Federal agencies, wildlife are found on lands today where they were absent or seriously decimated only a few decades ago. We do not want anything to happen that will upset the system that has made this restoration possible, Mr. Chairman.

At the same time, we do not want to see any extension of State authority that would interfere with the administration of Federal lands

by the agencies having responsibility for them. We share the view of others that the Federal Government has many of the same rights with respect to species of fish and resident wildlife inhabiting its lands as does any other landowner.

The taking of resident wildlife, except on lands where exclusive jurisdiction has been granted, must be done within the framework of the State regulations concerning each of the species. There always will be borderline cases, such as in some national parks where animals may pose a hazard to other natural values, but these situations are relatively few and are capable of amicable solution. Both parties should recognize them as minor problems in their mutual interest to foster fish and wildlife resources and should seek actively to facilitate their resolution.

I wish to make perfectly clear, Mr. Chairman, that the Institute does not advocate hunting in the national parks. In fact, we always have worked to assist the National Park Service to uphold the widely supported policy that public hunting should not be permitted in national parks. We believe that animals found damaging vegetation and other park values because of excessive numbers should be controlled by park personnel and not by public hunting or any special program which is a disguise for public hunting.

On seashore and similar recreation areas administered by National Park Service, on wildlife refuges, and other special recreation areas we are in general agreement with the more or less standard language that has been written into the authorization bills that permits hunting and fishing in designated zones consistent with and within the framework of appropriate State regulations. This arrangement has been generally satisfactory and presents no insurmountable problems.

On public lands other than national parks where it is necessary to reduce such animals as deer and elk in order to prevent overgrazing and destruction of other resources, it is hoped that the States will cooperate, as they have done in the past, by setting the kinds of seasons and bag limits that will achieve the desired reduction.

Their failure to do this could negate other resources programs of the Federal agencies and could contribute to the deterioration of the habitat to the long-term detriment of the wildlife and society. Additionally, in the national parks where exclusive jurisdiction has not been ceded, it is hoped that the States will honor the primary mission of the National Park Service in the management of those splendid areas and will cooperate fully by issuing necessary permits and in other ways making it possible for that agency to develop and conduct its own program so as to discharge its many responsibilities to all of the American people.

We have been assured that this is what is intended in the International Association's public statement on the Jurisdiction of Fish and Resident Species of Wildlife, issued March 13 of this year at Houston, Tex. I have a copy of the statement with me, Mr. Chairman, and would be pleased to offer it for the record if it has not been incorporated already.

Senator Moss. I think it has already been incorporated in the record, Mr. Gutermuth.

Mr. GUTERMUTH. The statement does not respond as directly to the question of national parks as we would like, but we have been assured

that it is not the intention of the State agencies to impede or to interfere with the essential national parks program.

In closing, Mr. Chairman, I want to express the hope that the committee is more concerned with gathering information than with legislating at this time. It is believed that the policy statement negotiated tentatively last week—I notice now it is apparently accepted by the Secretary—would be a working agreement and would be acceptable to the International Association.

Unfortunately, I observed that Mr. Shannon indicated that he did not feel that this was quite acceptable. I hope that there will be a reconsideration of this on the part of the State agencies because I believe, again, as Mr. Callison indicated, we are actually dealing here with a tempest in a teapot. I do not think it would make a great deal of difference one way or the other if this thing were accepted or if it were not.

Even if you were to enact legislation making the declaration that that has been asked for, I do not think it is going to change a great deal materially in this country. I would suggest that the committee proceed to give very serious consideration to all of the recommendations of those who testify, and then let us see, as the chairman suggested a little bit ago, whether or not this policy statement that has now been submitted by the Secretary of the Interior is workable and will solve our problems. Thank you very much.

Senator Moss. Thank you, Mr. Gutermuth, for your fine testimony. I reiterate that this is a matter now of getting all of the information we can and the points of view expressed and on the record so that from all of that which is spread before us the decision can then be made as to whether legislation is needed or not needed or what time it should have if legislation is needed.

The bills we have are the point of departure, the thing that starts us off on this quest. They are not necessarily the terms of legislation that will be enacted in the end, as you well know from your long experience.

Mr. GUTERMUTH. I would like to make it abundantly clear, Mr. Chairman, that we have always felt that the property rights and trespass laws positively must be adhered to in this country. The Federal Government, like any other landowner, should have the right to say whether hunting and fishing and that sort of thing is going to be permitted on that property. It is when it is done, when hunting and fishing is permitted, we have always contended that it must be within the State rules and regulations and under State control.

Senator Moss. Thank you very much. We appreciate your testifying before us today.

Mr. Penfold, Joe Penfold, the conservation director of the Izaak Walton League. We are very glad to have you with us today, Joe, and we will be happy to have you testify now.

STATEMENT OF J. W. PENFOLD, CONSERVATION DIRECTOR, THE IZAAK WALTON LEAGUE OF AMERICA

Mr. PENFOLD. Thank you, Mr. Chairman.

I am J. W. Penfold, conservation director of the Izaak Walton League of America.

I would like my full statement to go in the record, Mr. Chairman, and I will try to brief it to save the committee's time.

Senator Moss. Thank you. It will go in the record in full as though read.

Mr. PENFOLD. Mr. Chairman, we believe the implications of the legislation are far reaching. We are not sure that the issues are as simple as some believe. It is not a matter of an easy choice between Federal and State jurisdiction. The issue concerns living resources which can be perpetuated only with a very high degree of cooperation and coordination among the concerned agencies of Government and the public. The progress made in the past half century or more demonstrates this beyond any doubt. The future will surely depend upon it.

We are glad the committee has scheduled these hearings, Mr. Chairman. We believe the issue should be aired and thoroughly discussed in public. The public should be well-informed about the complex problems involved. But, we do not believe that legislation will solve the problems. If legislation can serve to clarify some of the complexities, we have no objection to such legislation.

The language of S. 2951, as well as statements of proponents claim that without enactment of the bill, the income to the States from the sale of hunting and fishing licenses will be threatened and State wildlife programs thereby impaired. We doubt this. We do not believe license income is a real issue in the case.

S. 2951 declares that title and ownership of resident fish and wildlife reside in the several States in trust for the benefit of the people and independent of jurisdiction over or ownership of land. We accept this, as a matter of commonsense as well as common law.

S. 2951 declares it is in the best interest of the States and the Nation that the States have "sole, exclusive and undisputed legal right to manage, regulate and control fish and wildlife in accordance with State laws and regulations. . . ." This appears to be the real purpose of the legislation.

Historically, the league has always accepted the basic concept that the States have the right and the authority to regulate and control the taking of wildlife, to set seasons and bag limits, to license hunters and fishermen and to enforce the game and fish laws of the State. We continue to accept this and we do not believe it is at issue.

But, S. 2951 brings a subtle element into the picture "sole, exclusive and undisputed right to manage." The term "manage" is used very loosely, because all of us, I suspect, just take its meaning for granted. But in the instance of the issue before the committee we should look at the term more carefully.

Aldo Leopold, who is generally accepted as the father of modern scientific game management, in his 1933 textbook, "Game Management" identified the basic elements of management as five in number: (1) Restriction of hunting; (2) predator control; (3) reservation of game lands (as parks, forests, refuges, et cetera); (4) artificial replenishment (restocking and game farming); and (5) environmental controls (control of food, cover, special factors, and disease).

Leopold gives particular emphasis to environmental controls in stating that:

> North America has reached the stage where controls of the fifth class are becoming necessary. The present game conservation movement is groping toward the realization of this fact.

It is quite clear that the great advances in game management over the past three decades have been in this area.

But, if Leopold's identification of the crucial factors in game management are correct, one must question just how much right and authority the States have ever had to manage wildlife.

(1) We can concede that the States have the right and authority to restrict hunting, that is, to set seasons and bag limits, by areas, sex, hours, and so forth, and to license sportsmen, enforce the regulations and the like.

(2) The States can establish and pay bounties on predators. They can carry out predator control programs on State lands but on other lands only with the consent of the landowner.

(3) The States can establish parks, forests, and wildlife refuges on their own lands, but on other lands only with the consent of the landowner.

(4) The States can operate game farms and produce game for stocking or restocking purposes, but again can stock lands which it does not own only with the consent of the landowner.

(5) The State can carry out environmental controls—manipulating habitat, food and cover and so forth—on its own lands, but on other lands only with the consent of the landowner.

The International Association of Game, Fish & Conservation Commissioners, principal proponent of S. 2951, in a statement issued March 13 in Houston says the association:

> Fully subscribes to the traditional right of a landowner to manage his lands. We agree that the Federal Government has the same rights that any other landowner has under the laws of the respective States.

In recognizing the traditional right of landowners to manage their lands and recognizing, as they must, that environmental controls and other essential controls—except hunting restrictions—are subject to the consent of the landowner, the international can hardly disagree that the States never have had "sole, exclusive and undisputed legal right to manage" wildlife except on their own lands.

Rather, the progress made in wildlife management has been due in great measure to the developing interest, concern and cooperative actions of landowners including the Federal Government that has permitted use of all the control measures that Leopold describes. In our judgment, progress in the future will be made on the same basis. This is no disparagement of the State game and fish departments. On the contrary, it demonstrates their competence and devotion to the wildlife cause for which citizens should be most grateful. But, we see no prospect of State game and fish departments taking over in their own right the full management and control of wildlife, because that would be tantamount to taking over all the rights and prerogatives of land ownership itself.

On the national forests and the public domain which account for 89 percent of the Federal lands there is a mutuality of interest between Federal and State as to the values and purposes of wildlife and its management.

There is mutuality of interest between the wildlife refuge system—2 percent of the Federal lands—of the Bureau of Sport Fisheries and Wildlife and the State game and fish programs in values and purposes of wildlife and its management.

Military lands which have occasioned some of the sharpest controversies in the past are subject now to more enlightened management with respect to wildlife than was once the case. Though here, too, the primary mission of the landowner may require more strict limitations on hunting and fishing than State laws might permit.

Then there are the national parks in which the values and purposes of wildlife are different from what they are elsewhere. The parks have been established for other purposes and with other values in mind. In these areas a purpose of wildlife is not as a target. Hunting is not permitted. The objective is not to produce wildlife for hunter harvest. Rather, wildlife is a part of the natural scence and environment to be preserved in its natural setting and responding to the natural influences of its environment—to be seen, studied, enjoyed and left alone as nearly as possible. In the national parks wildlife is valuable for its own sake. Management goals are designed to maintain wildlife unimpaired in its natural unimpaired environment, to be enjoyed by all the people whether or not they ever go afield for sport elsewhere.

The Izaak Walton League holds to this concept of wildlife management within the national parks. Certainly, the Nation can afford to set aside 1 percent of its territory for these wildlife purposes.

In closing, I hope the adversaries in this dispute return to calm and openminded dialog, put aside bureaucratic rigidities, seek out accord and reach mutually satisfactory agreement. Certainly the interests of wildlife conservation will be better served by a spirit of cooperation than by extended argument about jurisdictional abstractions.

We thank you, Mr. Chairman, for the privilege.

(The full prepared statement of Mr. Penfold follows:)

STATEMENT OF THE IZAAK WALTON LEAGUE OF AMERICA

Mr. Chairman: I am J. W. Penfold, conservation director of the Izaak Walton League of America. The League is a national organization of citizens dedicated to the conservation and wise use of the Nation's natural resources, including its wildlife resources. League membership is a representative cross section of the public. A majority of our members are sportsmen who enjoy hunting and fishing as well as other outdoor pursuits. Like most other Americans, they believe wildlife is important to the Nation and part of a proud heritage. They believe wildlife is important in its own right, having an evolutionary history as ancient as that of man himself.

League membership believes wildlife should be perpetuated for reasons beyond its dead weight value in the bag or creel. They believe that no species, whether considered game or not, should be callously or thoughtlessly eliminated from our world. As sportsmen and thinking citizens, they welcome the controls and regulations needed to husband our wildlife populations. They willingly accept these restraints on their outdoor activities. They were part of the public which over the years has demanded such restraints and their vigorous enforcement. Consequently, the League has an interest in the legislation before you.

We believe the implications of the legislation are far-reaching. We are not sure that the issues are as simple as some believe. It is not a matter of an easy choice beween Federal and State jurisdiction. The issue concerns living resources which can be perpetuated only with a very high degree of cooperation and coordination among the concerned agencies of government and the public. The progress made in the past half century or more demonstrates this beyond any doubt. The future will surely depend upon it.

We are glad the Committee has scheduled these hearings, Mr. Chairman. We believe the issue should be aired and thoroughly discussed in public. The public should be well-informed about the complex problems involved. But, *we do not believe that legislation will solve the problems.* If legislation can serve to clarify some of the complexities, we would have no objection to such legislation.

The language of S. 2951, as well as statements of proponents claim that without enactment of the bill, the income to the States from the sale of hunting and fishing licenses will be threatened and State wildlife programs thereby impaired. We doubt this. We know of no effort by any responsible group to destroy State License structures or to diminish State Game & Fish Department income from hunting and fishing licenses. Sportsmen are proud of the fact that their license fees have been the major source of funds for fish and wildlife work. We in the Izaak Walton League are proud of that too. Over the years the League has been in the vanguard of support for necessary increases in license fees to enable State Game and Fish agencies to expand their programs. The League has consistently supported the excise taxes on arms, ammunition and sport fishing equipment which channel funds through the Pittman-Robertson and Dingell-Johnson Acts to finance State fish and wildlife restoration programs. The great mass of sportsmen in the country have this same kind of attitude. So, *we don't believe that license income is a real issue in the case.*

S. 2951 declares that title and ownership of resident fish and wildlife reside in the several States in trust for the benefit of the people and independent of jurisdiction over or ownership of land. We accept this, as a matter of common sense as well as common law.

S. 2951 declares it is in the best interest of the States and the Nation that the States have "sole, exclusive and undisputed legal right to manage, regulate and control fish and wildlife in accordance with State laws and regulations . . .". This appears to be the real purpose of the legislation. We presume that the "best interest of the States" and the Nation is synonymous with the best interests of the wildlife, though that further thought is omitted from the bill.

Before addressing our comments to the real issue, I want to make clear one aspect of League attitude.

Over the past several years Congress has authorized the establishment of several new recreation areas to be administered by the Department of the Interior. In each instance the League has supported the inclusion of hunting and fishing as desirable activities and has insisted that hunting and fishing be carried on under the laws of the particular State. We recognize the right of the administering agency, after consultation with the appropriate State agencies, to determine times and places within the area that hunting and fishing would not be appropriate. Our position has been similar to that of the States and other wildlife and conservation groups.

The League has joined with other wildlife and conservation groups in years past to insist that hunting and fishing on military establishments be carried on within the laws of the respective States.

Historically, the League has always accepted the basic concept that the States have the right and authority to regulate and control the *taking* of wildlife, to set seasons and bag limits, to license hunters and fishermen and to enforce the game and fish laws of the State. We continue to accept this and we do not believe it is at issue.

But, S. 2951 brings a subtle element into the picture— "—sole, exclusive and undisputed right to *manage*." The term "*manage*" is used very loosely, because all of us, I suspect, just take its meaning for granted. But in the instance of the issue before the Committee we should look at the term more carefully.

Aldo Leopold, who is generally accepted as the father of modern scientific game management, in his 1933 text book "Game Management" identified the basic elements of management as 5 in number:

"1. Restriction of hunting.

"2. Predator control,

"3. Reservation of game lands (as parks, forests, refuges, etc.).

"4. Artificial replenishment (restocking and game farming).

"5. Environmental controls (control of food, cover, special factors and disease)."

Leopold gives particular emphasis to environmental controls in stating that, "North America has reached the stage where controls of the fifth class are becoming necessary. The present game conservation movement is groping toward the realization of this fact." It is quite clear that the great advances in game management over the past 3 decades have been in this area.

But, if Leopold's identification of the crucial factors in game management are correct, one must question just how much right and authority the States have ever had to *manage* wildlife.

1. We can concede that the States have the right and authority to restrict

hunting—that is, to set seasons and bag limits, by areas, sex, hours etc. and to license sportsmen, enforce the regulations, and the like.

2. The States can establish and pay bounties on predators. They can carry out predator control programs on State lands but on other lands *only with the consent of the landowner.*

3. The States can establish parks, forests and wildlife refuges on their own lands but on other lands *only with the consent of the land owner.*

4. The State can operate game farms and produce game for stocking or restocking purposes, but again can stock lands which it does not own *only with the consent of the landowner.*

5. The State can carry out environmental controls—manipulating habitat, food and cover etc.—on its own lands but on other lands *only with the consent of the landowner.*

State and county land ownership amounts to about 5%of the U.S. land surface. Privately owned land, including lands held in trust for the Indians totals 61%. Federal lands total about 34% including Alaska.

The International Association of Game, Fish and Conservation Commissioners, principal proponent of S. 2951, in a statement issued March 13 in Houston says the Association "fully subscribes to the traditional right of a landowner to manage his lands. We agree that the Federal Government has the same rights that any other landowner has under the laws of the respective states."

In recognizing the traditional right of landowners to manage their lands and recognizing, as they must, that environmental controls and other essential controls (except hunting restrictions) are subject to the consent of the landowner, the International can hardly disagree that the States never have had "sole, exclusive and undisputed legal right to *manage*" wildlife except on their own lands.

Rather, the progress made in wildlife management has been due in great measure to the developing interest, concern and cooperative actions of landowners including the Federal Government that has permitted use of all the control measures Leopold describes. In our judgement, progress in the future will be made on the same basis. This is no disparagement of the State Game and Fish Departments. On the contrary, it demonstrates their competence and devotion to the wildlife cause for which citizens should be most grateful. But, we see no prospect of State Game and Fish Departments taking over in their own right the full management and control of wildlife, because that would be tantamount to taking over all the rights and prerogatives of land ownership itself.

On the national forests and the public domain which account for 89% of the Federal lands there is a mutuality of interest between Federal and State as to the values and purposes of wildlife and its management. The International in its statement concedes "The Federal responsibility for conserving and developing fish and wildlife habitat on Federal lands."

There is a mutuality of interest between the wildlife refuge system (2% of the Federal lands) of the Bureau of Sport Fisheries and Wildlife and the State game and fish programs in values and purposes of wildlife and its management. In the instance of some refuges the national public interest exerted through the prerogatives of land ownership may supersede a state interest. The Aransas Refuge and the Whooping Crane may be an example. The International concedes the present status of laws and concepts toward rare and endangered species and migratory birds.

Military lands which have occasioned some of the sharpest controversies in the past are subject now to more enlightened management with respect to wildlife than was once the case. Though here, too, the primary mission of the landowner may require more strict limitations on hunting and fishing than State laws might permit.

Then there are the National Parks in which the values and purposes of wildlife are different from what they are elsewhere. The Parks have been established for other purposes and with other values in mind. In these areas a purpose of wildlife is not as a target. Hunting is not permitted. The objective is not to produce wildlife for hunter harvest. Rather, wildlife is a part of the natural scene and environment to be preserved in its natural setting and responding to the natural influences of its environment—to be seen, studied, enjoyed and left alone as nearly as possible. In the National Parks wildlife is valuable for its own sake. Management goals are designed to maintain wildlife unimpaired in its natural unimpaired environment, to be enjoyed by all the people whether or not they ever go afield for sport elsewhere.

The Izaak Walton League holds to this concept of wildlife management within the National Parks. Certainly, the Nation can afford to set aside one percent of its territory for these wildlife purposes.

In closing, I hope the adversaries in this dispute return to calm and open-minded dialogue, put aside bureaucratic rigidities, seek out accord and reach mutually satisfactory agreement. Certainly the interest of wildlife conservation will be better served by a spirit of cooperation than by extended argument about jurisdictional abstractions.

Mr. Chairman, I thank you for the privilege of appearing here today.

Senator Moss. Thank you, Mr. Penfold. We appreciate your fine statement and the position taken by the Izaak Walton League. This is one of our very fine and respected national organizations, and we appreciate your experience in giving expression to your beliefs. I think your statement is very, very complete, and I do not have any further questions.

Maybe to confirm one thing that I have asked other witnesses, you, of course, I assume, believe that there ought to be a consistent policy among the various Federal departments on how they respond to this problem, Agriculture, Interior, Defense, and all the departments that manage Federal lands?

Mr. PENFOLD. Yes, sir.

I think basically that is the case, but recognizing that the problems are not identical, let us say, on a national forest or public domain and in a national park, but the general approach and the general basic policies, I think, should be similar.

Senator Moss. Thank you very much.

Mr. PENFOLD. Thank you.

Senator Moss. We will only be able to hear, I think, one more witness.

Is Mr. McCloskey in the room? Would you come forward, please? We will be glad to hear you at this time.

Mr. McCloskey is Director of Conservation of the Sierra Club.

STATEMENT OF MICHAEL McCLOSKEY, CONSERVATION DIRECTOR, SIERRA CLUB

Mr. MCCLOSKEY. It is a pleasure to be here today, Mr. Chairman. I am its conservation director from San Francisco.

The Sierra Club was founded by John Muir. It is now in its 76th year, with 53,000 members throughout the United States and in other nations.

From its inception, the club has been dedicated to preserving the scenic resources of the United States, which include its wildlife. Out of its experience in defending and extending Yosemite National Park, the club has developed a basic conviction that the national-park formula is one of the best this Nation has developed to protect its most outstanding scenic resources. What started with Yosemite and Yellowstone has now, of course, grown into a magnificent system, which is still growing. The national park system owes it success and popularity, we believe, to the clear desire of the American people to see the strongest powers which the Nation possesses devoted to protecting its most outstanding natural areas.

This desire would be subverted by S. 2951 and S. 3212. For that reason we must oppose them. We believe other compelling reasons

also indicate this legislation is undesirable. These involve the need to continue effective management of America's system of wildlife refuges and ranges, and continuance of special legislation to protect rare and endangered species.

The Sierra Club believes that the Federal Government must have overriding control over all wildlife within units of the national park system and the national wildlife refuge system so that the purposes of these systems may be achieved in an effective and coherent manner.

In both systems, a primary management aim is to decide which species of animals in what numbers and places are desirable and are compatible with the purposes of the unit. In the parks, for instance, efforts are made to eliminate exotic or nonnative species and to restore native species, which may have been displaced or exterminated long ago. Similarly, the refuges are designed to attract and propagate certain species over others, because they may be generally in short supply. And in both systems all species must be kept within the limits of what the habitat can support.

If the Federal Government is to be able to pursue these goals effectively over a large and integrated system of units, its powers must not be vulnerable to interference from other jurisdictions. To vest exclusive control over resident wildlife in the 50 States would be to expose Federal programs for these systems to possible interference from 50 different sources. As a practical matter, probably there will be cooperation most of the time, rather than interference. But even occasional interference from one or two States could seriously affect a whole Federal program, as, for instance, the future of rare species.

To be able to harbor and display given species in given numbers and places the Federal Government must not only have unassailable power to protect animals on its land, it must also have unassailable power to remove undesirable animals from its land, either by transferring them or killing them. This power is inherently necessary to achieve the wildlife purposes of the units, as well as to protect the land itself from deterioration. If States are empowered to withhold licenses to remove undesired animals from parks and refuges, the wildlife purpose of the units can be frustrated. Exotic species may proliferate. Unwanted hybridizations may occur. Excess numbers of common species may compete too strongly with marginal species, which are desirable to retain for educational purposes. Herd vigor may decline as numbers press too strongly against the limits of the habitat.

In all of these cases, legitimate differences of opinion may develop between wildlife experts of the States and those of the Federal Government. The wildlife purposes of parks and refuges are much more specialized than those of the States. The specialized managers of these Federal reservations must be able to make their own interpretations of their purposes. They should not be dependent on the concurrence of the general game managers in each of the States.

Moreover, the predominant orientation of State game departments toward hunting does not properly sensitize them to understand the protective wildlife purposes of refuges and parks. This fundamental difference in orientation will invite misunderstandings and variant interpretations of the needs of refuges and parks. We have no objection to hunting, as such, outside of various protective reservations, but we do not think game managers are well suited to pass upon wildlife programs for parks and refuges.

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Just as Chief Justice Marshall held that, in State hands, "the power to tax is the power to destroy," so also the States' power to license can likewise prove to be the power to obstruct wildlife programs on Federal reservations. We believe that under the property clause (art. IV, sec. 3) and the supremacy clause (art. VI) of the Constitution, the Federal Government can assert control over resident wildlife in refuges and parks.

On lands the United States has acquired for parks and refuges, the Congress has vested power in the Secretary of the Interior to conserve the wildlife within them for various specified purposes. These acts of Congress and all the necessary and reasonable means to realize them should prevail, under the supremacy clause, over the State laws on wildlife, which otherwise operate in the absence of Federal legislation. In these Federal reservations, the Federal Government clearly does not limit itself to the role of just another landowner. As a sovereign, the Federal Government uses its police power to enforce the rules which it makes for its property. As a matter of established practice, the Federal Government uses its police power in parks to prevent the taking of animals. If it can use this power to prevent a taking, surely it can also use it to allow the taking of wild animals which are unowned until reduced to possession.

By virtue of S. 2951 and S. 3212 the International Association of Game and Fish Commissioners is trying to overturn well-established doctrine that wild animals—ferae naturae—are unowned and to vest nearly absolute possessory title in the States. By such a move, the association hopes to argue that the Federal Government cannot tamper with property of the States which may exist on Federal land. With the exception of dicta in the case of *Geer* v. *Connecticut* (161 U.S. 519 (1895)), we believe there is no support in court decrees for the proposition that title to resident wildlife is vested in the States. The cases have merely affirmed a certain measure of State jurisdiction over the means of reducing wildlife to possession and over the disposition of such wildlife. By the same logic which led a Federal district court recently (*Sickman* v. *United States*, 184 F. 2d. 616 (1950)) to hold it would be illogical to say that the United States owns migratory waterfowl over which it has jurisdiction, when it is in the United States, because of the inference that ownership would have to shift automatically to another country when it migrates across an international border—if ownership and jurisdiction are linked together—so also it is illogical to assert that the States must own wildlife over which they have customary jurisdiction. Every time a jackrabbit hops back and forth across a State line certainly title is not also hopping back and forth among the States with the rabbit's every hop across the fictitious line. On the other hand, if ownership does not so change, then we face the possibility, for instance, of having Oregon and California jackrabbits badly intermingled along the State line with no way to tell who really owns which animals. Along a State line, how will the game managers of each State really know which are their animals to allow their residents to shoot?

Clearly the idea of possessory title to wildlife is a legal fiction which can only lead to more confusion and litigation. The heart of the matter is legal jurisdiction, not title. While we have no desire to disturb the basic programs of State game departments, neither do we wish to see

established programs of the National Park Service and the Fish and Wildlife Service exposed to the confusion that this legislation would bring. Despite the exclusions of section 4 of the bills, at least 44 national park units are affected by this legislation in that exclusive jurisdiction over them has not been ceded by the States. Many units of the refuge and range system will also be affected despite the exclusions of section 4. We also do not wish to see anything disturb such pieces of landmark legislation as the Rare and Endangered Species Act and the Bald Eagle Act, which might be repealed by sections 4 and 7 of these bills.

We urge that this legislation not be adopted. We believe it to be unnecessary and undesirable. Thank you for the privilege of testifying.

Senator Moss. Thank you, Mr. McCloskey, for your statement.

Your recommendation is that neither of these bills is needed and, therefore, neither one should be adopted.

Do you have any opinion on the regulation or the statement of policy that was read for the Secretary of the Interior at the beginning of this hearing? Did you hear that?

Mr. McCloskey. Yes, I did.

I, in general, think it is a step in the right direction, but I have some misgivings about it. I believe it was section A–4 which required State concurrence for any reduction of wildlife in the refuges, in effect.

I would have no objection to that section as it applied to the Bureau of Land Management lands, and perhaps, certainly not to national forest lands, but to refuge lands I think they ought to be treated just the way national park lands are treated in section B.

Senator Moss. The position of the Sierra Club is that we must have complete restriction of any kind of game hunting in parks and monuments and refuges.

Mr. McCloskey. No; I would not go so far as to say within refuges. I think the established policy of allowing hunting on a selective basis in refuges is an acceptable policy, although we might take exception from time to time about a given plan for implementing it in a certain refuge. But we do not object to the general approach at the present time.

Senator Moss. Thank you, Mr. McCloskey, for bringing us the point of view of your very notable and fine organization that has done so much in the field of conservation.

It will be necessary now to recess this hearing until 9:30 tomorrow morning. We will meet again in this room. We have heard seven fine witnesses today, and I think we will have an equal number tomorrow. So we should be able to complete the hearing before noon. We will start promptly at 9:30.

(Whereupon, at 4:15 p.m., the hearing in the above-entitled matter was adjourned, to reconvene at 9:30 a.m., Wednesday, June 19, 1968.)

MANAGEMENT OF FISH AND RESIDENT WILDLIFE ON FEDERAL LANDS

WEDNESDAY, JUNE 19, 1968

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met at 9:30 a.m., in room 6202, New Senate Office Building, the Honorable Frank E. Moss presiding.

Present: Senator Moss.

Senator Moss. The subcommittee will come to order and we will continue our hearing on S. 2951 and S. 3212, having to do with management and control of fish and game resources.

We had a very good hearing yesterday and heard seven witnesses.

We will begin this morning with Edward P. Cliff, Chief of the Forest Service in the Department of Agriculture.

Mr. Cliff has jurisdiction over the national forests which constitute a large portion of the federally owned land in the various States, and he is perhaps the Federal official most concerned with these problems of management of fish and game on Federal lands that lie within the boundaries of the several States.

We are very pleased to have you with us this morning, Mr. Cliff, and you may proceed.

STATEMENT OF EDWARD P. CLIFF, CHIEF, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. CLIFF. Thank you, Mr. Chairman.

I am pleased to appear before this committee to express the views of the Department of Agriculture on S. 2951 and S. 3212. I do not have a prepared statement.

The Department has submitted a report which expresses its views on S. 2951 and on the related bills before the Congress. With your permission I would like to read an excerpt from that report which expresses in concrete terms the position of the Department of Agriculture. I quote from that report:

> As it concerns this Department, these bills would affect primarily the administration of the national forests and national grasslands.
>
> Wildlife and their habitat are closely related resources. The wildlife are totally dependent on their habitat. Where the habitat is federally owned, as on national forest system lands, close cooperation between the land administering agencies and the State is necessary to assure that wildlife population and habitat are kept in proper balance. The public interest lies in the administration of the national forests and other public lands for the protection and enhancement of all the resource values, including fish and wildlife, of those lands.
>
> This Department does not act generally to establish hunting and fishing seasons or fix bag or creel limits for the taking of game and fish on the national forest system. It does have the authority and the responsibility to administer such lands for wildlife and fish habitat as well as for other purposes. This is rec-

ognized in the Multiple Use Act of June 12, 1960 (16 U.S.C. 528–531), which provided that, "It is the policy of the Congress that the national forests are established and shall be administered for * * * wildlife and fish purposes." At the same time, that act specifically said that "Nothing herein shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish on the national forests."

The policy and practice of this Department always has been to cooperate to the fullest with State fish and wildlife conservation agencies in the protection and management of wildlife and fish in or on the national forests and other lands and waters administered by this Department. Secretary's Regulation W–2, concurred in by the International Association of Game, Fish, and Conservation Commissioners in 1941, provides that:

"The Chief of the Forest Service, through the regional foresters and forest supervisors, shall determine the extent to which national forests or portions thereof may be devoted to wildlife production in combination with other uses and services of the national forests, and, in cooperation with the Fish and Game Department or other constituted authority of the State concerned, he will formulate plans for securing and maintaining desirable populations of wildlife species, and he may enter into such general or specific cooperative agreements with appropriate State officials as are necessary and desirable for such purposes. Officials of the Forest Service will cooperate with State game officials in the planned and orderly removal in accordance with the requirements of State laws of the crop of game, fish, fur-bearers, and other wildlife on national forest lands."

In accordance with this regulation, the Forest Service has cooperative arrangements with the appropriate State agencies in all of the States in which major units of national forest system lands are located. The general substance of these arrangements is to recognize the responsibility of the States to regulate and control the wildlife and fish. The States fix the seasons and the bag and creel limits. The Forest Service develops and manages the habitat. Some States, under formal cooperative agreement, participate in such habitat development. The success of this approach to wildlife management on the national forest system lands is evident in the fish and wildlife population, the fisherman and hunter successes, and the generally healthy condition of the resource.

The success of the longstanding policy and practice of this Department for cooperation with the States in the conservation and management of the fish and wildlife resources on the national forests and national grasslands shows that, insofar as this Department is concerned, there are no issues that need to be resolved by enactment of legislation such as S. 2951.

That concludes my statement, Mr. Chairman, and I am glad to answer any questions at this time that you may have.

Senator Moss. Thank you, Mr. Cliff.

And the report of the Department has gone in the record, too, so we are glad to have your testimony.

Other than the cooperative agreements which you have with the States, are they reopened and updated at any periodic time; or how do they work?

Mr. CLIFF. They may be revised from time to time with the mutual agreement of both parties. Some of them have been in effect for many years but they are reviewed by both the States and the Federal Government periodically. If either party to the agreement wants to update it, or to perfect it, they can suggest such an amendment, and, if it is mutually agreeable, it is made.

Senator Moss. Well, the agreements do have some degree of variance, then, in accordance with the conditions in the individual States?

Mr. CLIFF. Yes, sir; they are not exactly the same, but they follow the same pattern.

I can present for the committee a copy of one of our agreements that has been entered into just recently, which is typical of all of them.

Senator Moss. I wish you would submit that and we can put it in the record following your testimony.

Mr. CLIFF. The one that I have is an agreement signed just recently with the State of California, I think in 1967, and it is typical of the agreements that we have with the other States. I think there are 42 or 43 States that are involved in these agreements.

Senator MOSS. What about the other seven?

Mr. CLIFF. There are no national forest or other major units administered by the Forest Service in the others.

Senator MOSS. None at all?

Mr. CLIFF. That is correct.

Senator MOSS. Have you had any serious differences on policy during your jurisdiction in this area?

Mr. CLIFF. No. I think our cooperative program is working very well.

I would not say that there have been no differences of opinion. Matters of wildlife management sometimes are controversial; but, in general, I think we have made a great deal of progress.

Without exception, the States have progressed in their wildlife management programs on the national forests. We have come a long way in this cooperative approach in the last 28 years.

Senator MOSS. Well, for example, if the deer herd was getting so large that it was damaging the forageable land at that time in certain areas, do you have any problems with the State urging you to have special hunts, or other means of reducing the herd?

Mr. CLIFF. Yes, we have these kinds of problems. We consider that they are mutual problems and we face them together.

We examine the ranges together and our fieldmen work with the fieldmen of the State in examination of the ranges. Generally they reach agreement on the conditions.

We can't always move as fast as either party or both parties would like to move, because of public attitudes in some cases. In general the States have very good professional people on their staffs and we think we have good professional people on our staff. The relationships have been very good.

Senator MOSS. What about the pigs in Florida; do we have a problem on that?

Mr. CLIFF. No; I would not say we have a problem on the pigs in Florida.

This is one case where we had a difference of opinion as to whether hogs running at large in the national forests should be treated as game animals or whether they should be regarded as domestic animals.

The State game director approached us on several occasions and expressed a desire to classify them as feral hogs and as game animals. We tried to dissuade him because of the difficulties that would be involved.

In the past we have found a large number of domestic hogs running in trespass on national forest land in some of the southern forests.

These hogs are very destructive, damaging tree reproduction, and they are disruptive in campgrounds.

They are actually owned by people, they are private property, and it is impossible to distinguish between a domestic razorback, a half domestic razorback, and a wild razorback. You can readily see the problems that would be involved if you classified them as game animals. You would have hunters shooting hogs that are owned by private citizens.

We have been trying to eliminate that trespass by the usual means, and to discourage the growing of these kinds of hogs on the national forest.

As far as I know, we have settled this matter amicably.

Senator Moss. Has it existed in other places, other than Florida?

Mr. CLIFF. This is the only place I know of where we have had a question of whether they should be classified as game animals or not.

In general our relationships with the Florida Game Commission have been excellent and we have the same kind of cooperative agreement that we have with other States. They manage the hunts on the three national forests that we have there.

These three national forests are among the best hunting areas in the State. I would say without qualification they are the most important public hunting areas in the State.

Our relationship across the board with Florida has been excellent.

Senator Moss. Now, you indicate you see no issue that needs to be resolved by enactment of either of these bills. Do you have any objection to the enactment of either one of them, other than cluttering up the statute books with something that is unnecessary?

Mr. CLIFF. I would see no objection to legislation that would clarify the issue as to the State's authority to issue licenses and adjust seasons and set bag limits, and enforce the game laws. This is what we do anyway.

When you get into the question of management, management is broader than setting bag limits and setting seasons. Management involves the manipulation of the vegetation, management of the habitat, food, and cover. That gets into a field we are responsible for, and I think there needs to be a definition of terms.

We think as far as we are concerned we are getting along very well. We haven't been a party to this dispute.

I have been disturbed over it because I was afraid it might disrupt some of our fine relationships. We would be happy just to see things go along, as far as we are concerned, the way they are.

We have made a great deal of progress, Senator, and I am sure we have gone further down the road toward good habitat and game management than if either tried to go it alone. We have got a good thing going.

Senator Moss. Now, in some cases the State fish and game people transplant some species, like bringing elk that had been trapped, say in the Yellowstone area, and putting them on the national forest—or moose, or some other game animal. In cases like that do you participate in the planning and concur with the State as to where the transplant would be made, and whether it would support the animal, and so on?

Mr. CLIFF. Yes; we confer on those things. And, of course, it is the prerogative of the landowner to determine whether or not the land will support additional wildlife. We are consulted and we reach agreement with the States wherever these transplants are made.

Senator Moss. Well, if the landowner determines that for safety matters or for other reasons there should be no hunting permitted,

have you had any conflict with the States on designating areas like that?

Mr. CLIFF. No. I know of no conflict.

The States are just as interested in public safety as we are.

We do have the problem of regulating the use of firearms around campgrounds and places that are heavily used by the public. There has been no question but that the Federal Government has the right to regulate the occupancy and use of the national forests.

Wherever we have had this situation, the States to my knowledge have always gone along with our suggestions about the zoning of areas against firearms. I know of no difficulty and I don't see why there should be any.

Senator Moss. Do you cooperate interdepartmentalwise on this particular subject, we'll say, with the Interior and the Department of Defense, which are the other large public landowners?

Mr. CLIFF. Yes; mainly with Interior; but in some places there are Defense installations that border the national forests and some are located inside the national forests.

We work with the Interior and the Department of Defense as well as with the States on our game range studies and game range surveys. I think a good example of the way we operate is in Utah.

In Utah we have an interagency technical committee which is made up of representatives of the Forest Service, the Interior agencies, the State agencies. They jointly make surveys and reviews of the range sites, the habitat situation, and the population trends in every herd management area in the State. And they make joint recommendations to the board of big game control on the seasons and the bag limits. It is a very close and well-operated cooperative effort.

We have similar arrangements in most of the other States.

You see, Senator, these game animals don't recognize property lines, and typically in the West the deer and the elk, and other big game animals, may summer on national forest land and they may spend part of the year on private land and part of it out on BLM land.

It seems to me that this situation requires, when you try to manage big game herds—and this applies to other species as well—that you have to take into consideration the entire habitat. That makes it absolutely necessary to have a cooperative approach.

Senator Moss. I take it from that, then, that you would agree that there ought to be uniformity of policy for all Federal departments and the State management of game and that perhaps there might be a need for a restatement of that policy.

Mr. CLIFF. I think uniformity of policy is desirable. I am not sure that it is entirely feasible to apply the same kind of a policy to the national forests as to the national wildlife refuges and other areas set up for different purposes, but the general direction should be the same.

Senator Moss. Well, thank you very much, Mr. Cliff. We do appreciate your coming to testify and make the record here.

We are trying to get everything, all points of view out on the record so we can look at it and decide what, if anything, needs to be done.

Mr. CLIFF. Thank you. Mr. Chairman.

(Memorandum of understanding referred to above follows:)

[Title 2600: Wildlife Management]

MEMORANDUM OF UNDERSTANDING

DEPARTMENT OF FISH AND GAME, STATE OF CALIFORNIA—FOREST SERVICE, REGION 6, U.S. DEPARTMENT OF AGRICULTURE

This memorandum of Understanding, made in duplicate this 7th day of August, 1967, is entered into by and between the California Department of Fish and Game, hereinafter called the Department, and the United States Forest Service, through the Regional Forester, Region 6, hereinafter called the Forest Service.

Whereas, the Department, together with the Fish and Game Commission, has been created under the laws of the State of California to provide for the protection, propagation and control of fish and wildlife within the State, and

Whereas, the Forest Service is authorized by Acts of Congress and by Regulations issued by the Secretary of Agriculture to administer the resources of the National Forests, and

Whereas, it is the mutual desire of the Department and the Forest Service to work in harmony for the common purpose of developing, maintaining and managing all of the fish and wildlife resources for the best interests of the people of California and the United States.

The Forest Service agrees:

(a) To recognize and give emphasis to those forms of land and resource management that will benefit fish and wildlife as fully as practicable, in coordination with other uses and values of the Forest.

(b) To recognize the Department and the Fish and Game Commission as being primarily responsible for determining the means by which game animals, fur animals and fish shall be used beneficially.

(c) To assist the Department in the enforcement of the State Fish and Game laws to the extent permitted by Federal laws and regulations.

(d) To make available to members of the Department such National Forest improvements, facilities and equipment as would be used normally in fish and wildlife work, provided they are not currently being used by the Forest Service. Such use will be restricted to projects of direct interest or concern to the Forest Service which are located on Forest Service lands.

(e) To permit the erection and maintenance of structures needed to facilitate fish and wildlife management activities of the Department within the National Forests, provided such structures conform in character and location with the usual requirements of the Forest Service, and their intended use is not in conflict with Forest Service policy or plans.

(f) To provide the Department with reports and copies of all vital correspondence directly related to this memorandum and to furnish the Department with copies of the general fish and wildlife reports prepared annually by the Forest Service.

(g) To permit the Department to undertake and maintain fish and wildlife habitat improvements on the National Forests pursuant to laws and regulations governing use of these lands, and provided such improvements are in accord with Forest Service land use plans, provided further, that such projects are covered by individual cooperative agreements.

(h) To facilitate the work of the Department by making available such records and data as may be available and pertinent to its work, such as maps, survey data and waterflow records.

The Department agrees:

(a) To manage fish and game populations to the extent permitted by State laws and regulations so that damage to other National Forest resources is avoided.

(b) To recognize the Forest Service as the agency responsible for determining the proper use of National Forest lands.

(c) To sanction or make no artificial stocking of fish or wildlife which may affect National Forest land management until a joint investigation has been made and mutual agreement reached regarding its effect upon all resources.

(d) To make no use of poisons for the control of predatory animals or other wildlife on the National Forest without prior approval of the Forest Service.

(e) To make available to the Forest Service such facilities, equipment and personnel as can be assigned for the prevention and suppression of forest fires on or near the National Forests insofar as is compatible with their normal use or duties.

(f) To erect no signs or structures and perform no construction or other acts not herein provided for without first securing the concurrence of the Forest Supervisor.

(g) To notify the Forest Service promptly of changes in the game, fur and fish laws or regulations.

(h) To provide the Forest Service with reports, findings, news releases, or other written material relating to wildlife use on the National Forests and copies of other material and vital correspondence relating to this memorandum.

(i) To recognize the U.S. Fish and Wildlife Service as the Agency responsible for Federal activities in the fields of predator control, rodent control, and zoological research on National Forest lands.

The Department and Forest Service mutually agree:

(a) To promote a united approach by all interested parties to the problems relating to wildlife and fisheries management.

(b) To cooperate in the restoration and management of fish and wildlife resources of the State of California in proper relation with the land use plans of the Forest Service.

(c) To cooperate in the formulation and application of practical plans and programs to guide the management of fish and wildlife upon National Forest lands.

(d) To meet jointly at least once annually, and more often if necessary, for discussion of matters relating to the management of fish and wildlife resources in or affecting the National Forest, and to provide for other such meetings at various administrative levels as may be relevant to the fish and wildlife resources and their habitat.

(e) To discuss on the ground with local representatives of the Department and the Forest Service questions pertaining to the cooperative work of the two agencies which arise in the field, and refer matters of disagreement to the Regional Forester and to the Director of the Department for a decision.

(f) When the views of one agency are contrary to the accepted policy or plans of the other, representatives of both agencies shall meet and attempt to work out the differences before either agency expresses in public a view contrary to the accepted policy or plans of the other agency.

(g) To require close cooperation insofar as is practicable between the Department and the Forest Service, including prompt and complete interchange of information in all matters such as, but not limited to, law enforcement, game and fish stocking, predator control, game and fish surveys, emergency feeding, habitat improvement, public education, refuges, and studies.

(h) Develop separate and individual agreements whenever specific areas of National Forests are set aside for a program of intensive cooperative wildlife management which in part or whole are financed by deposits in a cooperative work fund.

(i) That each and every provision of this memorandum of understanding is subject to the laws of the State of California and the laws of the United States.

(j) That nothing in this memorandum shall be construed as obligating the Department or the State of California in the expenditure of funds or for the future payment of money in excess of appropriations authorized by law.

(k) That nothing in this memorandum shall be construed as obligating the Forest Service or the United States Government in the expenditure of funds or for the future payment of money in excess of appropriations authorized by law.

(l) That nothing herein contained shall be construed as limiting or affecting in any way the authority of the Regional Forester in connection with the proper administration and protection of the National Forest in accordance with the purpose for which the lands contained therein were acquired and reserved.

(m) That nothing herein contained shall be construed as limiting or affecting in any way the authority of the Director in connection with proper

administration, protection or management of the fish and wildlife resources for which he is responsible.

(n) That this memorandum shall become effective as soon as it is signed by the parties hereto and shall continue in force until terminated by either party upon thirty (30) days' notice in writing to the other of its intention to terminate upon a date indicated.

(o) That no member of or delegate to Congress, or resident Commissioner, shall be admitted to any share or part of this memorandum, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this memorandum if made for a corporation for its general benefit.

(p) That amendments to this memorandum of understanding may be proposed by either party and shall become effective upon approval by both parties.

CALIFORNIA DEPARTMENT OF FISH AND GAME,
By W. T. SHANNON, *Director.*

JULY 14, 1967.

UNITED STATES FOREST SERVICE,
By A. E. SPAULDING, *Acting Regional Forester.*

AUGUST 7, 1967.

Senator Moss. Mr. Schwan representing the National Governors' Conference.

Very glad to have you, Mr. Schwan.

STATEMENT OF CHARLES F. SCHWAN, STAFF MEMBER, NATIONAL GOVERNORS' CONFERENCE

Mr. SCHWAN. Thank you, sir.

My statement is very short, Mr. Chairman, and I believe time would be saved if I simply read it.

Mr. Chairman, my name is Charles F. Schwan, Jr. I am a member of the staff of the National Governors' Conference. On behalf of the conference, I should like to indicate its support for S. 2951.

Mr. Chairman, attached to this statement are copies of resolutions on the subject of jurisdiction over fish and wildlife. One was adopted at the most recent meeting of the National Governors' Conference. The Western Governors' Conference is the source of the other three.

As you can see, Mr. Chairman, the position of the Governors on this subject has been expressed often and forcefully. The Governors leave no doubt about their feeling concerning the jurisdiction of the States with respect to fish and wildlife management.

The dispute over jurisdiction to which S. 2951 is addressed is not a new one. In one way or another, over the past 20 or more years, there have been clashes between any one of several Federal agencies and various States concerning jurisdiction over fish and wildlife management on federally owned lands.

It is the position of the States—a position that would be affirmed by S. 2951—that the States have exclusive authority to control and regulate the taking of fish and wildlife on all lands within the State, including federally owned lands. The States recognize three situations, as does S. 2951, in which such power resides in the Federal Government. These exceptions arise from situations in which:

1. Such powers were vested in the Federal Government by virtue of an international treaty or convention;

2. Exclusive jurisdiction over certain lands was ceded to the United States; and

3. With respect to a particular specie, jurisdiction was ceded by the States to the United States.

Apart from these situations, however, we can see no justification at all for questioning the traditional authority of the States with respect to fish and wildlife management. On the other hand, assertion of jurisdiction by the United States could lead to Federal licensing. In turn, this could result in serious loss of revenue by the States, particularly those States in which Federal landholdings are large. Since State fish and game programs are heavily dependent for revenue on license fees, there could be serious dislocation, if not elimination, of these conservation programs at least for a temporary period.

Even more serious consequences could ensue were the Federal assertion of jurisdiction to be sustained. If the Federal Government as landowner has the right to regulate and control fish and wildlife on its lands, could not the same right be asserted by a private landowner?

Mr. Chairman, enactment of S. 2951 would clear up the present uncertainty concerning the exclusive authority of the States to regulate and control fish and wildlife management. In no way would it interfere with the carrying out of Federal functions by Federal agencies on Federal lands. The current controversy arose, not because the States sought to interfere with the performance of Federal functions, but from an attempt by the Department of the Interior to gain for Federal agencies as landowners a preferred place over other landowners. Enactment of the bill before you would create no new rights for States, but would affirm right which traditionally they have held and exercised. The National Governors' Conference supports the bill and requests respectfully that you give it a favorable report.

Thank you, Mr. Chairman, for affording the Conference this opportunity to testify.

Senator Moss. Thank you, Mr. Schwan. The resolutions will be printed in full that are appended to your statement.

Mr. SCHWAN. Thank you, sir.

(Resolutions follow:)

59TH ANNUAL MEETING, NATIONAL GOVERNORS' CONFERENCE, OCTOBER 20, 1967

RESOLUTION II. REAFFIRMING STATES' JURISDICTION OVER FISH AND WILDLIFE MANAGEMENT

Whereas, since colonial times in this country, the ownership of wildlife, by law, history and tradition, has been separated from the ownership of the land, in contrast to the European system in which the landowner owns the game thereon; and

Whereas, it has been held by the U.S. Supreme Court that all species of wildlife are held in trust by the individual States for the people of each State, the principal exception to this rule arising under the treaty-making power of the United States which makes the migratory bird treaties and federal legislation dealing with migratory birds pursuant to and limited by said treaties the supreme law of the land; and

Whereas, contrary to Supreme Court decisions and dictates of sound unified fish and game management policies, the Solicitor of the Department of the Interior has held, and the Secretary of the Interior, Stewart L. Udall, has concurred therewith, that the federal government has full and exclusive power and control over both migratory and resident wildlife on all federally-owned land: now, therefore, be it,

Resolved, That the National Governors' Conference reaffirms the basic right of the States to conserve, manage and regulate the use and harvest of resident species of fish and game on all lands, including those lands owned by the federal government, within each individual State on which said jurisdiction has not been relinquished to the federal government; and be it further

Resolved, That, to prevent further encroachment upon the States' responsibilities in the management of wildlife and fish resources, the following basic policies be adopted: the federal government, through existing international treaties and agreements, bears direct responsibility and jurisdiction over specified migratory birds, certain endangered species, basic research, certain oceanic resources, and fauna of certain territorial lands beyond the continental United States, and fish and resident species of wildlife are and should remain state resources under the direct jurisdiction and responsibility of the individual States; and be it further

Resolved, That the National Governors' Conference supports the basic tenets of H.R. 8377, introduced in the First Session of the 90th Congress, which purports to declare and determine the policy by the Congress, with respect to the primary authority of the several States to control, regulate and manage fish and wildlife within their territorial limits.

1968 ANNUAL MEETING, WESTERN GOVERNORS' CONFERENCE

RESOLUTION VI. FISH AND WILDLIFE MANAGEMENT

Whereas, Resolution II of the 1966 Western Governers' Conference and Resolution VI of the 1967 Western Governors' Conference reaffirmed the basic right of the states to conserve, manage and regulate the use and harvest of resident species of fish and game on all lands within each individual state on which said jurisdiction has not been relinquished to the federal government; and

Whereas, the International Association of Game, Fish and Conservation Commissioners is supporting legislation to effect this policy, making it abundantly clear that there is no desire to change the international treaty involving the regulation of migratory birds, the Rare and Endangered Species Act, the Bald Eagle Act, the rights of Indians, and natives of Alaska to hunt and fish as established by treaties or acts of the Congress, the management of lands or control over wildlife species which have been ceded by any state to the United States, and the federal responsibility for conserving and developing fish and wildlife habitat on federal lands: Now, therefore, be it

Resolved, That the 1968 Annual Meeting of the Western Governers' Conference in Honolulu, Hawaii, supports legislation to effect the policy set forth above.

1967 ANNUAL MEETING, WESTERN GOVERNORS' CONFERENCE

RESOLUTION VI. FEDERAL-STATE RELATIONS IN FISH AND WILDLIFE MANAGEMENT

Whereas, Resolution Number II of the 1966 Western Governors' Conference reaffirmed the basic right of the states to conserve, manage and regulate the use and harvest of resident species of fish and game on all lands within each individual state on which said jurisdiction has not been relinquished to the federal government; and

Whereas, it is the continued feeling of this body that the federal government, through existing international treaties and agreements, should bear direct responsibility and jurisdiction over specified migratory birds, certain endangered species, basic research, certain oceanic resources, and fauna of certain territorial lands beyond the continental United States, and fish and resident species of wildlife are and should remain state resources under the direct jurisdiction and responsibility of the individual states; and

Whereas, the International Association of Game, Fish and Conservation Commissioners is proposing legislation to effect this policy; Now, therefore, be it

Resolved by the 1967 Annual Meeting of the Western Governors' Conference at West Yellowstone, Montana, That the conference does support legislation to effect this policy.

1966 ANNUAL MEETING, WESTERN GOVERNORS' CONFERENCE

RESOLUTION II. FEDERAL-STATE RELATIONS IN FISH AND WILDLIFE MANAGEMENT

Whereas, since colonial times in this country, the ownership of wildlife, by law, history and tradition, has been separated from the ownership of the land, in con-

trast to the European system in which the landowner owns the game thereon, and the management and control of fish and wildlife have traditionally been under the jurisdiction of the states:

Now, therefore, be it

Resolved, That the Western Governors' Conference reaffirms the basic right of the states to conserve, manage and regulate the use and harvest of resident species of fish and game on all lands within each individual state on which said jurisdiction has not been relinquished to the federal government; and be it further

Resolved, That, to prevent further encroachment upon the states' responsibilities in the management of wildlife and fish resources, the following basic policies be adopted: The federal government through existing international treaties and agreements, bears direct responsibility and jurisdiction over specified migratory birds, certain endangered species, basic research, certain oceanic resources, and fauna of certain territorial lands beyond the continental United States, and fish and resident species of wildlife are and should remain state resources under the direct jurisdiction and responsibility of the individual states.

Senator Moss. We are pleased to have this expression from the Governors from the Western States and the full Governors' conference. I infer there is something of a problem otherwise we wouldn't be having these hearings, and I think to have in the record the position taken by the Governors is most important.

Mr. SCHWAN. Thank you, sir.

Senator Moss. Thank you very much.

Richard A. Stroud, executive vice president of the Sport Fishing Institute. Mr. Stroud here this morning?

William E. Towell.

Mr. Towell is executive vice president of the American Forestry Association. We are very glad to have you, sir.

STATEMENT OF WILLIAM E. TOWELL, EXECUTIVE VICE PRESIDENT, THE AMERICAN FORESTRY ASSOCIATION

Mr. TOWELL. Thank you.

Mr. Chairman, I am William E. Towell, executive vice president of the American Forestry Association with headquarters here in Washington. Our association is an independent, nonpolitical conservation organization composed of some 58,000 members distributed throughout the country. I cannot say with certainty that all these members support my views, but our position does have the endorsement of their elected board of directors.

It is regrettable that this legislation has come before the Congress because it should not have been necessary. These bills to clarify the States' role in regulation and management of fish and resident game are a last ditch effort to protect the historical and traditional rights of the States to manage resident wildlife. This role has been challenged repeatedly by part of the Federal Establishment and all attempts to resolve the dispute by compromise methods have failed.

I have been intimately involved in this controversy for several years, Mr. Chairman, as director of conservation in the State of Missouri and as an officer of the International Association of Fish, Game & Conservation Commissioners. Last July I prepared an article on the subject of this legislation for our association magazine, American Forests, entitled "Do Residents Control Resident Game?" It traces the history of events leading up to these bills and the reason behind them, and I would like to offer a copy of this article, Mr. Chairman, in the record.

Senator Moss. It may be reprinted at this point.

(The article referred to follows:)

DO RESIDENTS CONTROL RESIDENT GAME?

(By William E. Towell)

Who will set fishing seasons and establish daily limits for trout in National Parks? Who will manage a bighorn sheep hunt on a National Recreational Area? Who decides how many deer can be harvested from a Federal Wildlife Refuge? When, and by what means? Are anadromous fish resident or migratory wildlife? Does the U.S. Fish and Wildlife Service have greater authority over resident game on federal refuges than any other owner on his own land?

These questions and many others like them are growing in number and frequency as state fish and game agencies square off with the Department of Interior in a jurisdictional dispute. One of the hottest states' rights issues in a quarter century is about to break into an open Congressional fight. The issue? Who shall regulate the harvest of fish and resident game on federal lands, Uncle Sam or the states.

Almost unanimously state fish and game administrators claim traditional and historical authority to control all resident wildlife. They concede to their federal counterparts only normal landowner authority over resident game but do acknowledge full federal jurisdiction over migratory birds as provided by international treaty. Fish and resident game belong to the people, they claim, not to the landowners on whose property they reside, and regulations to fish or hunt shall be made only by the states.

On the other side, Secretary of the Interior Stewart Udall, top boss over the U.S. Bureau of Sport Fisheries and Wildlife, said recently in a letter to a Denver attorney that: "The Federal Government has the right to control, regulate and manage the wildlife resources on federal lands acquired or reserved for federal purposes. We do not question the states' jurisdiction to manage and control resident wildlife on non-federal lands."

This is not a new fight, it has been simmering over the past four years between the Department of Interior and the International Association of Game, Fish and Conservation Commissioners representing the 50 states. But, it reached Congress for the first time in April in the form of a bill, H.R. 8377, introduced prematurely by Representative E. S. Johnny Walker of New Mexico. The International Association had been contemplating legislation for some time to settle their dispute but still was negotiating with federal wildlife official over its language. Copies of a draft bill were circulated to the states and offered to the U.S. Fish and Wildlife Service for review and comment. One found its way "accidentally" into the legislative hopper. Further negotiations, naturally, have become somewhat hampered by the threat of this legislation, strongly favoring the states' position and vigorously opposed by federal officials.

H.R. 8377 says in part:—". . . it is declared and determined to be in the public interest that title to and ownership of all fish and wildlife, including the regulation, management and control thereof, in or on any land or water within the territorial boundaries of the respective states, including lands owned or controlled by the United States, be vested in the several states."

And further,—"The exclusive right and power to conserve, control, and manage said fish and wildlife for public use and benefit in accordance with applicable state law be and they are, subject to the provisions hereof, recognized, continued, established, assigned, granted and transferred to the respective states."

"The United States does hereby relinquish, disavow and disclaim the power, if any, which it may have with respect to the management, regulation and control of fish and wildlife found in the respective states including that found on lands owned or controlled by the United States, unto the said states, except as otherwise observed herein."

Excepted specifically and exempted from states' jurisdiction are: (1) fish and wildlife under any international treaty or convention to which the United States is a party (migratory birds); (2) areas over which the states have ceded exclusive jurisdiction; and (3) rights and powers over any species of fish and wildlife ceded or granted to the United States by any state.

One section provides that no agency of the federal government shall promulgate or enforce any rule or regulation with respect to fish and wildlife within the state without the consent of the state involved.

And, as a final thrust, the bill concludes:—"Notwithstanding anything in any act of the Congress or in any rule or regulation promulgated by any federal

department or agency it is hereby declared to be the intent of the Congress, that no provision of any act shall be construed or implemented in any manner as to displace, preempt or deprive the several states of their primary and historically recognized authority to control, regulate and manage fish and wildlife in or on any lands within their territorial boundaries, including all lands owned by the United States or in which the United States Government has an interest; provided, however, that this act shall not be construed as depriving the United States of the right to protect and preserve its lands from destruction or depredation by wildlife to the same extent and in the same manner permitted any owner of land by the laws of the state in which such land is located."

STRONG LANGUAGE

This is strong language, and, as would be expected, the bill is bitterly opposed by federal officials. Although aimed primarily at lands administered by the Fish and Wildlife Service, the bill is all inclusive and makes no differentiation between federal wildlife areas, BLM lands, national forests, or even areas of the national park system.

But what brought on the dispute in the first place? What's the fight all about?

It's rather a long story that goes back to a 1964 Interior Department solicitor's opinion, resulting from growing concern by the states over federal wildlife policies that appeared to violate traditional states' rights. Having failed in a bid to open more national parks and monuments to public hunting of surplus big game animals, the western states in particular saw signs of encroachment of federal control over hunting and fishing on other federal areas.

A special *Ad Hoc* Committee of the International Association on "Federal Invasion of States' Rights" headed by Director Frank Groves of Nevada approached the U.S. Fish and Wildlife Service in 1964 with a document entitled "Aims, Objectives and Responsibilities Concerning America's Natural Resources—Recommended Policies and Procedures Concerning the U.S. Fish and Wildlife Service and the State Fish and Game Agency." Included were several recommendations for better federal-state relations dealing with such problems as fish hatcheries and fish stocking, abandonment of federal refuges, controls of pesticides, river basin studies, and federal aid programs; but, heading the list was "management of resident species."

With a preamble that suggested a cooperative approach in order to eliminate causes of friction and misunderstanding, Item #1 under Policies and Procedures recommended: ". . . that the Fish and Wildlife Service refrain from assuming the authority to fix regulations controlling the taking of fish and resident game species on lands the Service has acquired, as such function belongs solely to the states."

This was the red flag that kicked off the big dispute. The federal wildlife's agency's reply was that the solicitor's office had been requested to prepare a legal position paper on the federal government's authority to control hunting and fishing on federally-owned land. In due time along came the now famous solicitor's opinion, 1964 (71 I.D. 469), which states, in essence, that the federal government does have full and exclusive power and control over both migratory and resident wildlife on all federally-owned lands. And nothing has been the same since.

Numerous attempts were made to have the solicitor's opinion withdrawn or modified, but to no avail. A legal committee of the International Association, headed by Nick Olds of Michigan, prepared a lengthy brief that took pot shots at the solicitor's opinion and confirmed, to the states' satisfaction at least, their long jealously guarded prerogative of exclusive control over resident wildlife. A legal stalemate has existed ever since and a considerable amount of "friendly" negotiation has done little more than strengthen convictions of both sides.

Efforts to arrive at mutual statements of policy or agreement between the Secretary of Interior and the states have kept the dispute out of the courts. A temporary truce and agreement on language to maintain the "status quo" finally brought joint support and passage of the Endangered Species Bill. But, practically every congressional authorization for new national seashores, riverways or recreation areas in recent years has contained a provision spelling out that hunting and fishing shall be permitted under state regulation but the Secretary reserves authority to designate zones where, or times when, hunting shall not be allowed for reasons of public safety or administrative control.

UDALL'S POLICY STATEMENT

A one point in 1965 negotiations led to a policy statement by Secretary Udall that was reasonably acceptable to both sides. It would have preserved for U.S. agents landowner control of hunter trespass on federal areas but at the same time left the role of hunting and fishing regulations to the states. It was hoped that such a mutually acceptable statement of policy would bury the solicitor's opinion once and for all. To the chagrin of the states, however, when the statement finally was issued by the Secretary, it reaffirmed once again that—"The Solicitor's 1964 opinion (71 I.D. 469) on this same subject delineated the Department's authorities in this field."

A decision to try to resolve the question of jurisdiction over fish and resident game through federal legislation was made by the International Association. A draft bill was prepared and an effort made by the states to get U.S. approval before it was introduced. While awaiting federal comments on the draft, which unquestionably would have been in opposition, the bill as originally written found its way into the congressional hopper. Hearings have not even been scheduled but the bill stands as an almost insurmountable barrier between strongly opposed viewpoints.

There is more to this dispute than who is better qualified to control resident game. Basically, it is another states' rights quarrel with local government resisting the encroachment of federal authority. States are jealous of their historical prerogatives to set seasons and limits on fish and game. They resent any threat to their authority which, through the power to prescribe seasons and limits and to sell hunting and fishing licenses, finances their very existence.

The magnitude of the problem is in direct ratio to the acreage of federal land in any given state, with most concern being expressed in the western states where there is more government ownership. It is not difficult to imagine how a state like Nevada with 87 percent federal land ownership would react to an assertion that Uncle Sam could regulate fish and wildlife on federal lands.

A few examples have cropped up where federal wildlife experts have differed with state officials on seasons or bag limits and attempted to set regulations of their own. State people contend that if any federal area is open at all to hunting or fishing that it should be in conformity with the statewide rules. Federal managers, however, want to reserve the right to be more restrictive than the state laws if their opinions on wildlife abundance differ.

No one has challenged the state's exclusive right to issue hunting and fishing licenses as a prerequisite to these sports even on federal areas. This was not always true, however, because back in the early forties the U.S. Forest Service on the Pisgah National Forest in North Carolina attempted to claim jurisdiction over deer on the federal forests and prescribed seasons and licenses independently of state authority. It was a brief but bitter battle with the states' banding together to protect their rights and they won.

More important than merely resolving the specific issue in North Carolina was the long-term partnership formed between the states and U.S. Department of Agriculture and formalized in Regulation W–2 issued by the Chief of the Forest Service in 1941. This regulation has remained in full effect since that date and has prevented further disputes over control of wildlife on the National Forests. Regulation W–2 reads as follows:

"The Chief of the Forest Service, through the Regional Forester and Forest Supervisors, shall determine the extent for which National Forests or portions thereof may be devoted to wildlife production in combination with other uses and services of the National Forests and in cooperation with the Fish and Game Department or other constituted authority of the states concerned, he will formulate plans for securing and maintaining desirable populations of wildlife species, and he may enter into such general or specific cooperative agreements with appropriate state officials as are necessary and desirable for such purposes. Officials of the Forest Service will cooperate with state game officials in the planned and orderly removal in accordance with the requirements of state laws of the crop of game, fish, furbearers, and other wildlife on National Forest lands."

The regulation worked so well for more than a quarter-century that state fish and game directors asked the Secretary of Interior to make a similar ruling for lands under his supervision. This request was denied, however, when Secretary Udall pointed out that the Fish and Wildlife Service, unlike the Forest Service has a *primary* legal responsibility for fish and game, and, further, that his de-

partment is responsible for a variety of public lands and such a regulation would not be equally applicable to each type.

While state administrators seek to establish their rights once and for all through legislation, Interior Department Officials hope to get acceptance of the Secretary's policy statement issued as a departmental directive before it was accepted by the states. The policy, now in effect on areas of the federal refuge system, was a compromise statement worked out through months of negotiations with state wildlife representatives. Its provisions most likely would have been accepted by the states had not the solicitor's opinion been cited as final authority in the field. The statement provides, in part, that: ". . . it is the general policy of this Department to permit public hunting and fishing in accordance with state regulations in any areas of the system (National Wildlife Refuge System) to the extent that the Secretary determines, within statutory limitations, that such recreational use is compatible with and not in conflict with the primary objectives for which these areas were established. This policy will continue.

In furtherance of this policy:

(1) The Department will continue to permit, on such areas within the System, the harvest of fish and resident wildlife in accordance with state regulations unless the Secretary determines after consultation with the states that public access to these areas for the purpose of hunting or fishing should be restricted or limited;

(2) A state license or permit for public hunting or fishing on such areas is required;

(3) The Secretary of the Interior will continue to consult with the appropriate state agency when it is necessary to develop management plans for limiting overabundant populations of fish and resident wildlife on areas within the system, and secure the concurrence of the state agency except where injury is occurring or about to occur;

(4) The Secretary of the Interior will continue to consult with other interested groups and persons in carrying out his fish and wildlife policies on areas within the system."

SIKES ACT CITED

Backing their case for legislation to resolve the dispute, the states cite as a precedent the Sikes Military Reservation Act of 1960. In some states, prior to this law, military reservations were private federal domains where generals and their guests could hunt or fish to their hearts' content without regard for seasons, limits, or state licenses. The Sikes bill provided that all hunting and fishing done on military reservations would be done under state regulations, including the purchase of state licenses by civilian and military personnel alike.

Of particular concern to state conservation people is the accelerated rate at which private land is going into federal ownership and the threat that much of it will be closed to public hunting. The states support most of these new parks, recreation areas, seashores, wild rivers and wilderness areas, but wherever possible want to insure that they remain open to hunting and fishing and that it is done under state regulations and licenses.

As a former state conservation director I understand the states' position in this jurisdictional dispute, though I must confess that I view it less dispassionately than in the past. However, it now is easier to understand and appreciate the federal position also. It would be difficult to predict the outcome. In my opinion, the legislation has little chance of getting through Congress unless it is modified considerably in order to reflect more of a compromise view. Legislation may be the only way to resolve these federal-state differences, but it is regrettable that the solicitor's opinion was ever requested in the first place. If the opinion could be buried deeply in the innermost recesses of the Interior building and forgotten, it would go a long way toward solving the whole problem.

Mr. TOWELL. You will hear testimony, have heard testimony, at these hearings, that express concern for migratory game birds under international treaty. It may be implied that the legislation you are considering would change or lessen the Federal role in control and management of migratory birds. There has never been any desire or intent on the part of the States to assume this Federal responsibility. Repeatedly the State game administrators have assured all concerned that they do not intend to challenge Federal authority for waterfowl

or other migratory game birds; for responsibilities under the Rare and Endangered Species Act; for protection of bald or golden eagles; for rights of Indians to hunt and fish under treaties or acts of Congress; for management of lands or wildlife over which control has been ceded to the United States; or for restricting all hunting and fishing through control of trespass which is the inherent right of any landowner.

The States merely wish to establish the policy that they alone prescribe regulations for taking of fish and resident wildlife—that if any Federal lands are opened to hunting and fishing it shall be done under State laws, State seasons, and State licenses. It is not desired that States shall have the authority to force opening of any Federal lands to hunting and certainly not to open national parks and national monuments, a fear that has been expressed by some. This legislation is not intended to change the status of national parks in any way, nor do the States seek any such changes.

The mere fact that it has been found necessary to resort to legislation to clarify the authority of the States in this regard is evidence that the rights of the States have been challenged. The Solicitor's opinion referred to in my article has not been repudiated, revised, or withdrawn but continually held up as the legal justification for exercise of Federal control over resident game. The Secretary of Interior by his own words has confirmed his belief that "the Federal Government has the right to control, regulate, and manage the wildlife resources on Federal lands acquired or reserved for Federal purposes." A court decision now being appealed in New Mexico resulted from an assumption of Federal jurisdiction in defiance of State authority in the destruction and waste of a State wildlife resource. It all adds up to an unquestionable effort on the part of one Federal department to assert superior authority over control of fish and resident game on Federal lands.

If such authority actually does exist for the Department of Interior, Mr. Chairman, it exists for all other Federal agencies that own and manage land. And, it exists also for any other landowner as well, public or private, because it would be based upon the false premise that ownership of land entails ownership of the game found on it. If the Federal Government has the authority that some of its representatives claim it does, the States would be out of the business of regulating fish and game. They would control only what was found on State-owned lands, relinquishing all other authority for wildlife to the individual landowners. The implication of this Federal challenge of jurisdiction is as serious as the States losing all or nearly all of their current hunting and fishing license revenues.

If Congress can find some way to resolve this dispute without passing a law I am sure the States would welcome any solution that confirmed their traditional right to regulate harvest of all fish and resident game. I feel confident, too, that State fish and game administrators will agree to whatever assurances that might be necessary to convince those who fear a loss of existing Federal authorities through legislation designed to protect the rights of the States.

So many bills have been written and introduced in the Congress that I hesitate to endorse or oppose any one in particular. I do urge you and your committee to act favorably in support of the States'

position. You should provide whatever assurances you feel necessary to eliminate all doubts about the undesirable or unintentional effects that existing legislation contains. But, for the good of conservation, this Federal-State jurisdictional dispute should be resolved quickly by confirming the States' exclusive regulatory control over fish and resident game. At the same time the Federal Government should be assured the rights of any other landowner.

Mr. Chairman, I have just a couple of comments I would like to add based upon previous testimony that I have heard.

I think with regard to the policy statement that the Secretary has issued, commendable as it is, that it should be pointed out that a previous policy statement was issued in 1965, very essentially the same, and this did not resolve the dispute with the States.

I think there is some significance, too, Mr. Chairman, that the current statement was issued just on the eve of these hearings. Whether the timing had any particular significance or not I do not know, but a previous statement 3 years ago had little or no beneficial effect toward resolving this controversy.

I might point out, too, that there has been a precedent for law to resolve a similar dispute. The Military Establishment back in the 1950's had a considerable controversy with the States on hunting and fishing on military reservations, and you may recall that this was resolved by the Sikes Act of 1960, which provided that if any hunting and fishing at all were done on military lands, military reservations, it would be done under State law and would require State licenses by the participants, so there is precedent.

I would like to point out, too, that excellent relationships between the U.S. Forest Service and the States have existed for many years, and the case that was cited earlier about the Pisgah National Forest back in the early 1940's, I believe it was, was the last serious controversy on national forest lands, and Mr. Cliff, I think, was a little bit modest. The Forest Service and the States have had a wonderful working relationship. It is too bad that a similar type of Executive order could not have been issued and supported by other Federal departments. If it had, this legislation would not be before you.

I think very strongly, sir, that Congress is going to have to resolve the dispute in one way or another. I think it perhaps can be done simply, if the States could be assured that they, and they alone, are the regulatory agency for fish and resident game, I think this would go a long way toward solving the problem. If it can be done without law, any way that Congress can establish a policy, I think, would suffice. But I feel very strongly that it must be done through this channel.

Senator Moss. Thank you very much, Mr. Towell.

You have given us a good insight into this problem, and obviously it is one that you have been concerned with for some time, and you have good knowledge about it.

Did the *New Mexico* case arise subsequent to the previous policy decision of the Secretary of the Interior?

Mr. Towell. Yes. The 1965 was the previous policy statement. This is referred to in this article that I inserted in the record. The *New Mexico* case arose just this past year, 1967.

Senator Moss. Your point is even though there was a policy deci-

sion it didn't prevent the conditions that brought on the *New Mexico* case?

Mr. TOWELL. This is true. Nor do I think the proposed policy, as good as it looks and I must admit that it is a commendable effort, I don't think it will resolve the issue permanently.

Senator MOSS. We thank you very much, and we are happy to have that article that you prepared as part of our record. It will help us.

Thank you.

Dr. Alfred G. Etter representing the Defenders of Wildlife. Dr. Etter, we are very glad to have you, sir.

STATEMENT OF DR. ALFRED G. ETTER, REPRESENTATIVE, DEFENDERS OF WILDLIFE

Mr. ETTER. Thank you. It is a pleasure to be here. My statement is a little bit long, but I think it is rather interesting and also to the point so I will read most of it.

Senator MOSS. You may proceed in any manner you wish. I can assure you the entire statement will be printed in the record if you should decide you want to skip any parts of it.

Mr. ETTER. I am Alfred G. Etter, Aspen, Colo., field representative for Defenders of Wildlife. Defenders of Wildlife is a national nonprofit educational organization with approximate membership of 15,000 members distributed over the entire United States. The organization is primarily concerned with representing the interests of wild animals wherever these interests are threatened by man. We are not opposed to hunting but are alert to practices, legislation, and policies which might lead to unprincipled killing, undue exploitation, extermination, extinction of species or populations. We are especially concerned about the increasing need to provide opportunities for the general population to experience close familiarity with wildlife in a natural, unhunted state.

The bills which are the subject of this hearing have plainly been written from the point of view of the average person interested in beholding wildlife and the wonder of the world. These bills project the views of a special interest group more concerned about its own survival than with that of the wildlife it claims to protect. These bills would curtail the freedom of the agencies of the Federal Government to preserve, protect, manage, and study wildlife on Federal lands, and could interfere with programs of a national nature to protect endangered species. We therefore oppose these bills and present the following reasons in detail.

Definition of wildlife is included in this bill, both bills, S. 2951 and S. 3212. Wildlife is defined as wild vertebrates including mollusks and crustacea. This definition eliminates from concern such important groups as insects, sponges, starfish, worms, spiders, and other interesting segments of the natural fauna. These groups are vital to a healthful, efficient world. Directly or indirectly they provide the basic foods for most "game" species and commercial species as well. They are at least as important as slugs, snails, and fiddler crabs, which are included under mollusks and crustacea.

Legislation which allegedly has the best interest of wildlife in mind cannot negate the value of an animal because it is not "harvestable" by

man. The narrowness of this definition puts into focus immediately the narrow outlook of the subject bills and of those who wrote them. When State game and fish administrators and commissions accept responsbility for defending all species of life and not merely those that can produce license money, then it will be time enough to consider offering them a broader basis for their jurisdiction.

It should also be pointed out that a definition of wildlife that considers mollusks and crustaceans to be vertebrates reveals a biological ignorance that reflects unfavorably on the authors of the bills.

The "game and fish" fixation which seems quite rigid. It deeply concerns Defenders of Wildlife that in the vast majority of our States—at least four-fifths of them—it is impossible to find an agency specifically devoted to wildlife. Wildlife concerns are lumped under an antique title such as "Department of Game and Fish," or "Division of Fish and Game." Even the International Association of Game, Fish, and Conservation Commissioners still refrains from using the term "wildlife." Game people argue that financial support of wildlife conservation is almost entirely provided by hunters and fishermen and that these groups must therefore be favored and their cause extolled. Yet few game and fish agencies are making a determined effort to obtain broader public support. Hunting and fishing interests want to preserve the special position they acquire through payment of the lion's share of the costs through license fees. They are also afraid that if the entire public contributed to the support of wildlife activities the hunter's voice would often be drowned out by the percentage of the population that does not hunt.

We repeat that if the States want complete authority over wildlife they should show complete concern for it. Persistence of the fish and game agency and its continued preoccupation of the fish and game agency and its continued preoccupation with a few primary target species such as deer, elk, pheasants, waterfowl, and trout, almost to the exclusion of other life, indicate that so far this complete concern has been only a gesture. As an example we might cite the fact that so long as persistent hydrocarbon pesticides seemed to be affecting only song birds, game and fish departments could not have been less interested, but when it became evident that hatchery fry were suffering pesticide-induced mortality, administrators began to speak out.

It has been stated in these hearings by various parts that the national parks are not a target of this legislation.

State game and fish administrators and their commissions seem to prefer to remain just that, rather than to get involved in the complexities of administering wildlife for everyone. Some of them are even attempting to extend the hunters preferential position. It should be no secret that Harry Woodward director of the Colorado Department of Game, Fish, and Parks is in favor of hunting in the national parks, for I have heard him speak openly to this effect. Rocky Mountain National Park is one of his targets. Proponents of the bills we are discussing deny that they have any such objective, but with Mr. Woodward in his position as chairman of the executive committee of the International Association of Game, Fish and Conservation Commissioners, the drafters of the legislation we are considering, one can hardly accept this denial with much confidence.

The current controversy in New Mexico concerning the right of

national park personnel to kill a limited number of deer in Carlsbad Caverns National Park for research purposes without first obtaining a permit from the New Mexico Department of Game and Fish is related to the discussion of S. 2951 and related bills. Our comments on this will be there can be no doubt this will only be accomplished in the fight to restrict Federal wildlife authority, and that New Mexico is one of the States most vitally interested in these efforts to gain control over park wildlife.

It is appropriate to quote from the March 1, 1968 issue of Outdoor News Bulletin, published by the Wildlife Management Institute:

> Public hunting has been authorized in a number of state parks as the result of a ruling by the New Mexico Park and Recreation Commission. . . . The new law provides that the Commission may open any park to hunting where it appears appropriate . . . The openings were based on recommendations of the New Mexico Department of Game and Fish.

Obviously the present campaign against the national parks by the New Mexico Department of Game and Fish has similar objectives.

It is rather interesting that the destruction of deer in Carlsbad National Park has been criticized on the basis that the carcasses have just been left to rot. This statement has been used, that is the statement made by the National Parks Service personnel, that these would be left in the land to return to the land or rot, that statement has been used by sportswriters and others to strike terror among hunting interests. The idea of allowing anything to die and rot! Hunters seem to forget that after every hunting season great numbers of deer, ducks, pheasants, and quail are wounded and allowed to die and rot. While the Park Service planned to kill only 50 animals over a period of 2 years, hunting interests grasped at this statement as evidence of mismanagement.

This reaction shows the ambivalence of hunter reaction, and at the same time shows the hunter's lack of understanding and appreciation of the role of a national park in preserving natural conditions. Death is as necessary as life. A piece of land which raises an animal is entitled to receive back its dead so that they can be dismantled by organisms which salvage the energy and nutrition left in the carcass, cleanse it, and recirculate it. These salvage organisms constitute an important segment of the biota. To allow an animal to rot is not to waste it but to restore it to life in many other forms.

The National Park Service has a need to conduct research on its resident fauna when problems develop. It should be free to conduct this research in such a way as to achieve its objectives without being forced to conform to regulations designed by agencies primarily concerned with the promotion of hunting.

The deer problem at Carlsbad involves a combination of at least four factors: (1) Hunting pressure on the outside of the park causes deer to "escape" into the park. (2) Range conditions on surrounding lands are often very poor. (3) Predator control programs have eliminated effective natural controls on deer population and movement. (4) The national park, through its protection policy, has created an unusually attractive habitat.

Doubtless it is frustrating for hunters to find the deer escaping into a sanctuary where they cannot reach them, but the solution is not to invade the sanctuary but to improve conditions on the outside. The bills we are considering, however, would not encourage this, but would more than likely lead to a situation in which the State would refuse

to allow the Park Service to control its own deer and would require public hunting as a solution.

We have heard remarks, I believe, Mr. Penfold made the remark, that license money was not one of the issues here, but we would be inclined to dispute that. We feel that the current ferment concerning ownership of wildlife reflects the needs of State fish and game people to find new sources of income to finance their ever-growing operations. The proportion of hunters in the population is declining, more and more land is being posted or developed, and vast areas of brush and timber land are being bulldozed, sprayed, flooded, or dried up by private and public interests. Hunting in parks and refuges could help provide the needed revenues.

Efforts are constantly being made to find new ways to sell more licenses. Some of the developments are bizzare. I go into the matter of the Tule Elk hunt out in California where hunters are required to be accompanied by a Department of Fish and Game officer. He tells them which animal to shoot, and if they don't kill it he goes out and kills it for them, and in our opinion this chaperoned killing is neither sport nor recreation and it should not be sold as such. It is primarily a source of income and prestige for the State fish and game department.

Control of ungulate population on protected lands by artificial means is an inevitable consequence of man's disruption of environments and animal activities, but this regrettable disruption should not be augmented by disruption of sanctuaries by hunter activity. Decisions as to how control will be conducted on areas primarily valued for their natural and undisturbed character should not be forced on the administrators of those areas by people primarily interested in license sales.

Now, there seems to be some confusion about the rights which this proposed legislation would confer or would take away on the various parties involved.

The following provision is included—well, I won't read the provision. Section 2, paragraph 5, has to do with the legal right to manage, regulate, and so forth. This provision would make the Federal Government less a property owner than private individuals in some States. A study by James G. Teer and others, titled "Ecology and Management of White-Tailed Deer in the Llano Basin of Texas," describes the privileges enjoyed by private property owners in that State, which, incidentally, is not altogether unique. Teer writes as follows:

> Even though fish and nonmigratory game are by legislative act the property of the state, under trespass law landowners have complete control of access to game in their pastures. This law is very rigid and vigorously enforced by peace officers and conservation officers. * * * In effect, the trespass law has transferred ownership of game to the landowners. * * * Control of the rangeland and deer herd by landowners is practically absolute. (This publication was issued by the Wildlife Society in 1956.)

Although Teer acknowledges that "I am not unaware of the downgrading in the quality of hunting that the commercialized system promises for many sportsmen," and although the States have virtually no control of the deer herd, nevertheless the system is not only tolerated but defended. Why do administrators permit a private landowner to fence off a deer herd on an overbrowsed pasture, making the

herd and the landscape available only to a few paying hunters, yet object to the National Park Service when it manages its land in exemplary fashion, restoring beauty and productivity, protecting the health of watersheds, making all the wildlife thereon available for the enjoyment of the public, and leaving the animals unconfined and free to repopulate adjacent areas? The answer, obviously, in that so-called State conservation agencies are more interested in monetary support than they are in conservation, and more interested in the hunter than anyone else. These private reserves still permit the States to sell deer licenses, while the people who patronize the national parks contribute nothing to State game departments.

The subject legislation which we are discussing plainly indicates the dominant concern of the administrators for money in section 2, paragraph 3; that is, of S. 2951. That statement is quite plain and I don't think there is any mistaking the fact that money is a very important factor in this whole picture.

The States are running out of commodities. The parks possess them. The States want the right to see them; but that is not what parks are for. Perhaps I shouldn't limit that particularly to parks because his argument extends to the wildlife refuges also.

Now the Pan-American Convention has been mentioned. The specific passages have not been quoted which are pertinent. In one case, the Pan-American Convention states that the resources of these reserves, that is national parks, shall not be subject to exploitation for commercial profit. We wonder is it any the less commercial when the State sells hunting privileges than when a shooting preserve operator does the same thing?

The treaty also provides "the contracting governments to prohibit hunting, killing, and capturing of members of the fauna and destruction or collection of representatives of the flora in national parks except by or under the direction or control of the park authorities, or for duly authorized scientific investigations."

The provisions of this convention would seem to prevent the United States from relinquishing its jurisdiction over the wildlife in its parks to the several States. Senate bill S. 2951 seems to recognize this in section 4, when is states:

> There is herby specifically reserved and excepted from the operation of this law: (*a*) All rights and powers of the Congress of the U.S. to control and regulate the taking of fish and wildlife under any international or Indian treaty or convention to which the United States is a party. * * *

But, to this provision is added the following exception:

> * * * but only with respect to those species of fish or wildlife expressly named in said treaties.

Since the Pan-American Convention mentions no species—except a few in the annex where several endangered species are listed—the entire intent of the treaty would be negated by "sleeping" provision in S. 2951.

In conclusion, Defenders of Wildlife wholeheartedly condemns both of these bills that would separate from the Federal Government its right to manage wildlife on lands belonging to the people of the United States in accordance with established preservation policies determined through decisions of its administrators and the Congress.

At this time in the development of the United States, the prime objective of the Federal Government should be the rejuvenation of the landscape through the protection and extension of natural areas and the preservation of every species of life still existing, so that the nonconsumptive user, who now outnumbers the hunter at least 20 to 1, is given the advantage of witnessing nature as undisturbed by human influence as possible. The "harvesting" of a wildlife crop in order to support an agency or program or even a field of commerce is not any longer the recreational activity of highest priority in the Nation.

It would not be wise or prudent to relinquish any of the existing jurisdiction over wildlife help by the Federal Government on its lands to the States until such time as the various State agencies concerned with wildlife acquire a feeling of responsibility toward the entire population rather than toward the gun-handling portion only.

That concludes my statement.

Senator Moss. Thank you, Mr. Etter, for bringing this statement here. It is in opposition to the bill and it states a position that, of course, ought to be before the committee.

I wonder, in your statement you appear to be totally opposed to the taking of any wildlife in the national parks. Would you oppose the policy of destroying part of the deer herd in Yellowstone as has been done by the National Park Service?

Mr. ETTER. I would oppose destroying any part of the herd through hunting means, yes, that is through public hunting.

Senator Moss. What is the difference between having a ranger stand there and shoot 30 or 40 animals or having private hunters with a permit do that same thing?

Mr. ETTER. Well, I think that we have pointed out some of these differences in this testimony, but in the first place, I think it is a degradation of the hunting, of the sport of hunting, to bring people in to shoot deer under those conditions. I don't believe it is sport and I don't think it is recreation. I think it should be done the same way in which we destroy dogs and animals which we no longer want, domestic animals. I think that it should be done in as obscure, I mean in as unobtrusive, a fashion as possible, and the idea of hiring killers from the general public just doesn't appeal to us.

Senator Moss. Well, the difference escapes me as to why it is any different to have a ranger shoot down the animals than it is to have a hunter who is able to take one animal, perhaps under the State license and the permit that he has, and take it away.

Mr. ETTER. You referred to actual hunting on national park property?

Senator Moss. We are talking about, I was bringing up, this instance of Yellowstone Park where the National Park Service had determined that under the conditions that existed the herd had to be reduced by a number of animals, I think it was about 5,000, and to accomplish this they simply had a number of rangers go out and shoot them, and ——

Mr. ETTER. Let me elaborate on my objections. In the first place in using public hunters, we run into the problem that most of the killing is all done at once. I think, and I am not sure just how the National Park Service would plan to conduct such control measures or has in the past, but I think the ideal arrangement would be, to do it as close to a natural way as possible. When it is done by hunting, by

the average hunter with a license, it all happens at once. It should happen in a natural way in which it is done periodically throughout the year and at certain seasons. It should be concentrated and it should follow a natural pattern. We have eliminated the effective predators in many of these areas, especially the wolf, and I think our efforts should be on national park properties especially to reproduce the natural hunting pressure or I should say the natural predator pressure insofar as we possibly can. In the harvesting, in the actual taking of the carcass off of the property, the actual sudden killing of the large number of animals all at once disrupts the ecology of the national park fauna.

Senator Moss. Well, what I was really trying to clarify is, Do you object to using this method for managing the herd and keeping it within the limits of its environment or is your objection simply to having public hunters do it?

Mr. ETTER. We have no objection to the control of populations which have gone out of their bounds as a result of human interference, but we are definitely opposed to the use of hunters, public hunters, as a means of this control.

Senator Moss. Well now, in my State we have a very large deer herd and as part of the management of that herd it was determined at various times that in some areas that animal should be harvested and permits are issued permitting a hunter to take perhaps two animals instead of one. Is this an objectionable practice?

Mr. ETTER. It is not particularly objectionable except it is far from natural. I would object to their taking two deer at once and putting them on top of the car and putting them in the sunshine and letting them decay on the way home. If they could be persuaded or distributed—the pressure could be distributed more widely through the season. I don't particularly enjoy the possibility of having hunters all over mountain country at all times of the year, but I think it is highly artificial to have all this killing take place in a few short weeks in the fall. I think if we are going to take two deer maybe it should be done at a different time of the year. I may be getting in deep water here, but I think you see my general intent is if we are ever going to restore the deer herd to any kind of a balance that we are going to have to follow natural principles a little bit more than we have, and hunting is a highly artificial form of predation. It hardly duplicates a natural predation in any way. It doesn't serve to scatter the herd at particular times and, as I say, it leaves large numbers of wounded or dead animals all at once and then during the next part of the season, the winter or the early spring especially, not nearly as many animals will die off as would ordinarily die off and you may not have as many animals for the natural predator population to exist on. So it disrupts things.

So, of course, we admit we are an idealistic organization and we won't ever be able to get man to become the predator that the wolf is, but I think that we should try to adapt our hunting methods to be just a little bit more natural and not so greedy. I think this is one of the things that irritates me that the hunters feel that they should have the whole wildlife population at their disposal.

Senator Moss. Well, I would assume that the hunting season is ordinarily set in the fall because that would be the advantageous time

for hunting the animals. If they were left over the winter as you pointed out, a number of them are going to die anyway by the severe conditions and perhaps the proper time to take them would be in the fall and then those that went through the winter all right, to propagate the next spring and summer and the herd would rise back again in size.

Mr. ETTER. Well, perhaps I can cite a particular example practically in my backyard in Colorado. We have intensive concentrations of deer in very limited areas where the sunshine is bright and the hillside faces south and west, and by the time April comes around many of these deer are on the verge of starvation or death. They just go to these particular spots so that they can rough it through the winter on the fat they have accumulated in the spring. There really is practically no food there at all.

Now, when you go hunting in the fall, the chances of getting—of limiting that particular population are not too great. The deer that come to that particular slope come from quite a wide area, and apparently even with the existing hunting it hasn't served to control the population. We found on this one hill which is only a couple of square miles in extent, some 500 to 600 deer in April, and some 15 of them were dead and many others were quite weak, and I think that we—I should say that this situation is intensified by the development of the snow mass ski area which has eliminated some winter deer habitat, and many other developments including a four-lane highway up the valley, and all of these factors push the remaining deer into these small wintering areas, and so maybe we are going to have to use a little more imagination in the management of our deer herd than we have been using so far and this may include some new concepts in hunting which parallel to some extent the natural predation that would ordinarily take place.

Senator Moss. Thank you, Dr. Etter, for coming to testify and to make our record more complete.

We are very glad to have your point of view and that of your organization which you represent.

Mr. ETTER. Thank you.

Senator Moss. The next witness will be Coy Powell who is Assistant Secretary of Defense (Installations and Logistics) of the Department of Defense.

The Department of Defense is, I think, the third largest owner of lands within the several States and as such has an interesting role to play in the problem we are discussing here in these hearings. We are pleased to have you, Mr. Powell, and you may proceed in any manner that you choose.

STATEMENT OF COY W. POWELL, DIRECTORATE OF REAL ESTATE, OFFICE, ASSISTANT SECRETARY OF DEFENSE (INSTALLATIONS AND LOGISTICS)

Mr. POWELL. Senator, I would like to say first I am not the Assistant Secretary of Defense for Installations and Logistics. I am identified with that office and immediately with the Directorate of Real Property.

Senator Moss. Directorate of Real Property.

Mr. POWELL. That is right.

Senator Moss. Thank you.

Mr. POWELL. First, I want to say that the requirement to be here was not made known to me until this morning and I have no prepared statement.

Senator Moss. All right, sir.

Mr. POWELL. I have just read this legislation, and I would like to—I understand the derivation of your request for us to appear here and would like to first talk about the scope of the application of the legislation if enacted as it affects the Department of Defense.

Senator Moss. All right, sir.

Mr. POWELL. The total land area of the United States is something in excess of 2,271 million acres. Of that amount the Government owns approximately 33 percent or 760 million acres.

Of that which the Government owns the Department of Defense controls in the United States, about 27 million acres. And the Corps of Engineers performing civil works functions for the Department of Army controls about 3 million acres making a total of about 30 million acres or 4 percent of what the Government owns.

This legislation is something regarding which the Department of Defense has never taken a position. We have under the provisions of existing statutes certain obligations with respect to fish and wildlife which affect our military installations. Basically our operations permit us to prosecute various programs together with the Department of Agriculture and the Department of Interior. We have agreements with both those agencies which relate to our management obligations and the implementation of the laws for which we are responsible that affect the conservation of fish and wildlife resources at military installations, and the conservation of forests, ground cover, soil and water on those installations.

We implement these understandings also in cooperation with the States. There are over 200 military installations where we have in effect a tripartite agreement affecting fish and wildlife controls that has been entered into together with representatives of the various State fish and game commissions, the Bureau of Wildlife and Fisheries of the Interior, and the local commanders of installations. To the extent that we depend upon them they provide us with technical assistance, advising us how to grow and harvest, protect, conserve, and preserve fish and wildlife.

Of course, the Department of Defense cannot permit uncontrolled public use of our properties for hunting and fishing because we are engaged in the defense of the United States which involves some limitations relative to the utilization of our lands. The conduct of our research and test operations, the presence of explosive ammunition, the requirement for training, the presence of aircraft in an area, may all preclude public access and use of our property in some instances unless we could control it.

Furthermore, there are matters of national security involved in the handling and management of our military real property.

All of these matters should be considered in providing, if possible, the kinds of exception for the Department of Defense as is provided in other legislation.

I don't have any other direct recommendations to make in this respect right now.

I understand that you have some questions you would like to direct to Defense. I don't know how long to go on talking here about these two pieces of legislation. I must say that generally we would probably defer to the Department of Interior views since we have agreements with them that govern the thing we are talking about. It may be possible that you have considered or wish to consider the effects of this legislation on the Outer Continental Shelf, I am not acquainted with your desires in this respect.

Senator Moss. No, I don't think the Outer Continental Shelf is involved in this at all. We are, I think, talking about here federally owned lands that are within the boundaries of the State.

Mr. POWELL. A military installation.

Senator Moss. Yes, and your base, of course, would be military lands. I think you said that the Military Establishment has agreements with the States on all of their areas, you said 200 areas?

Mr. POWELL. No, over 200 of them where we have effected agreements with the State, Department of Interior and our local commanders of our military installations. The responsibility for administering these programs is decentralized to the installation level, and it is decentralized because while we can promulgate and issue and have issued policy with respect to the use and control and utilization of our land for all purposes, the local commander in the final analysis has a mission obligation to perform and only he can make a determination of what he can do and what he cannot do and still perform his defense mission.

Senator Moss. Well, as the landowner, of course, your primary function is to use that land for the purpose for which it was acquired?

Mr. POWELL. That is right.

Senator Moss. And that would be defense purposes, training——

Mr. POWELL. That is right.

Senator Moss. Targets or whatever else. But you are acquainted, I believe, with the Sikes Act that arose out of the Eglin situation?

Mr. POWELL. Yes, sir.

Senator Moss. And it provides, as I understand it, that in the event that fishing or hunting is to be permitted on military installations, that the person—first of all, it must be open equally to all members of the public, but that they would be required to have whatever State license is required within the boundaries of that State.

Mr. POWELL. Yes, sir; we do require that within manageable quotas.

Senator Moss. And would be governed by the bag limit and the times of day and other elements of State law for taking either the fish or the game.

Mr. POWELL. That is correct. And all of our agreements reflect this understanding.

Senator Moss. Do you know of any installations that either have no agreement or have any kind of variation from this general statement of the Sikes law?

Mr. POWELL. There may be—to answer your question in a general way, no; I don't know of one that does not have any. There are possibly several, and it would be because of the limitations that I expressed, where, for instance, we may be conducting experiments that involve

toxic fuels or atomic energy or we might have ammunition dumps, where only very controlled public access could be permitted or none at all, because the hazard is too great. It may involve an area over which we are firing a missile and because of the destruct capability or possibility or necessity, you couldn't afford to have, to accept, the risk on behalf of the Government, and you would want to protect the people by preventing them from coming in there.

This does not mean we do not have a fish and wildlife program being conducted at all military installations. To the extent we can, we are doing so. This, of course, is governed to a large extent by the character and use of the property and our financial capability, because we obtain money for defense and it is not always available for fish and wildlife purposes. There is legislation proposed to assist us in this respect, however.

Senator Moss. You spoke of tripartite consultation with Interior and the Forest Service.

Mr. POWELL. Interior and the State and the local commander.

Senator Moss. I see.

Mr. POWELL. We also have working arrangements with the Department of Agriculture governing soil conservation and these kinds of matters, forestry matters, and we consult with them on that. They provide us technical assistance.

Senator Moss. Does part of your management of these lands include the preservation or improvement of habitant where possible?

Mr. POWELL. To the extent we are financially capable to do so; and at present the only actual funds available under the authorities of the Sikes Act which permit us to charge people for the right to hunt and fish and utilize that money at an installation for this purpose.

In addition, there are other evidences in our possession where the people at an installation will volunteer to do this kind of thing in addition to what we can provide them in the way of assistance.

Senator Moss. Do you know of any problems you have of overpopulation of game which is controlled then by added hunting.

Mr. POWELL. We have had only one instance that I can personally remember where an overpopulation was alleged, and the State, together with the Bureau of Wildlife and Fisheries, investigated to make a determination of what to do about it, and it was found to be a diseased herd. Instructions have been developed to destroy the herd because it cannot be cured.

Senator Moss. Are you aware of any unresolved conflict with any of the States on the regulations which you apply to fish and game on military reservations?

Mr. POWELL. Senator, I think that every State probably has some kind of a disagreement with the Department of Defense. I hesitate to answer you like that. I can't say "Yes" and I can't say "No." I don't know of any disheartening disagreements or anything we have been unable to resolve. There will always be questions about our policy. "Why can't you let me come in here, even if you are blowing bombs off every half mile?" And it is difficult to answer this kind of question. You can't train your people with big pieces of equipment and, at the same time have hunters and fishermen going all over your land. You must restrict them. So there will always be objection to this kind of a policy which restricts or limits in any way the use of the land and perhaps even some comment about the fact that we are wasting or

destroying it. But our policy objectives state otherwise. Our directives and instructions on every phase of this subject are firm and based on good criteria and standards that we believe tend to underscore the imbalances of nature that man has created and trying to resolve those things to the best of our ability.

Senator Moss. So far as you know would the Department of Defense oppose a bill like the two that are before us that declare that the State has the jurisdiction to manage resident game and fish within the boundaries of the State?

Mr. POWELL. Well, as I have explained, we attempt and would like to, at every installation, have the understanding that the State can have the kind of control it wants; but, as I have also explained, there would be reason for the Department of Defense to oppose this legislation because we must have control of our land without interference, to assure exclusive use and control.

Senator Moss. I don't think this legislation, as I read it anyway, would take any of the control away from the landowner to the extent that he may prevent trespass, he can control the uses of the land. But what it does say is that he cannot control the taking of fish and wildlife in a condition different from whatever the State management law is in that area.

Mr. POWELL. Well, if I have an agreement with the State and all of their policies and legal requirements are reflected in this agreement, the need for this legislation doesn't exist; does it?

Senator Moss. I don't know whether I can answer that or not.

Mr. POWELL. I am not asking the question, Senator. I am trying to rationalize. They wouldn't have any more——

Senator Moss. I am just trying to find out if there was any objection that you know of that the Department would have to enacting the legislation. You say you think it is unnecessary; but do you know of any objection to it?

Mr. POWELL. I would say we would object on general principles; because, if the legislation is enacted—I haven't studied the effects of it yet, and it appears that the State would come back with the agreement they have with me and say "Now, it is law" when we have already agreed to all the controls they want. We have sought their advice and assistance.

Senator Moss. Well, I would appreciate it if you could send in, in writing, the position of the Department saying whether it is opposed to the bill or not opposed to the bill.

Mr. POWELL. That will be submitted, Senator. It is in the process of preparation. I am sorry it wasn't submitted prior to my presence here.

Senator Moss. I see.

Mr. POWELL. But that is in the process of preparation and our views will be reflected there.

Senator Moss. All right, sir. Very good.

(The statement referred to follows:)

DEPARTMENT OF THE ARMY,
Washington, D.C., September 24, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of Defense for the views of the Department of Defense on S. 2951, 90th Congress,

a bill "To declare and determine the policy of the Congress with respect to the primary authority of the several States to control, regulate, and manage fish and wildlife within their territorial boundaries; to confirm to the several States such primary authority and responsibility with respect to the management, regulation, and control of fish and wildlife on lands owned by the United States; and to specify the exceptions applicable thereto; and to provide procedure under which Federal agencies may otherwise regulate the taking of fish and game on such lands." The Department of the Army has been assigned responsibility for expressing the views of the Department of Defense on this bill.

The purpose of the bill is stated in its title.

The primary responsibility of the Department of Defense and its military components is the defense of the United States. Of course, as stewards of the third largest aggregate land area within the Federal Government, containing approximately four percent of the total land area of the United States, the military departments are also responsible for the application of management principles which will assure the conservation, preservation and protection of all natural resources including fish and wildlife at installations under their control.

The Department of Defense has promulgated policy, prescribed standards and criteria, furnished guidance and developed reporting procedures which govern military programs at defense installations intended to meet objectives authorized by present law. There is a vital concern at all military levels with associated program plans which involve all air, water and land resources having a direct relationship and impact on the production, maintenance, harvest and renewal of fish, wildlife and recreation capability.

Since 1960, vigorous efforts have been pursued by Department of Defense elements to implement statutory obligations specifically affecting hunting and fishing at military installations through the development of agreements between local commanders, the State game and fish commissions, and the Bureau of Sports Fisheries and Wildlife, Department of the Interior.

In this manner, the Department of Defense seeks conformance to local and Federal policy, regulation and law governing fish and wildlife within the various States, and the resolution of any possible conflict in objectives of the participating parties. To date, the Department of Defense has found the States cooperative and generous in their consideration, but the question of ownership of the fish and wildlife has not been at issue. Consideration is invited as to the need for S. 2951 in the light of the foregoing arrangements so far as concerns military installations and facilities.

The success of the long standing policy and practice of this Department for cooperation with the States in the conservation and management of the fish and wildlife resources on military installations and at military facilities shows that insofar as this Department is concerned there are no issues that need to be resolved by enactment of legislation such as S. 2951. Also, we understand efforts are being made to resolve administratively questions with respect to jurisdiction over and management of fish and wildlife on other federally owned lands.

Furthermore, if this legislation were enacted this Department would find problems with the following:

Public Law 86–797, as amended by Public Law 90–465, commonly called the "Sikes Act", calls for tripartite agreement for the management of fish and wildlife resources on military reservations between the Secretary of Defense, the Secretary of Interior and the appropriate State agency. The conservation programs under the "Sikes Act" have been highly effective (See H. Report 1508 and S. Report 1458, 90th Congress) and are not inconsistent with S. 2951's affirmation of primary State authority over fish and wildlife. It is recommended that the bill be amended to make it clear that it does not modify this Act.

The broad sweep of S. 2951, including in particular Section 6, creates reservations as to the continued vitality of Section 2671 of Title 10, United States Code. Section 2671 covers fish and wildlife activities on military installations and facilities in a State or a Territory. Subsection (a)(3) of Section 2671 subordinates access of State fish and game officials to military installations to the requirements of safety and military security. Because there is an implication that S. 2951 may supersede Section 2671, the bill should be amended to make clear that the limitations of Section 2671 are not affected. To the same effect, although it is assumed that nothing contained in S. 2951 is intended to interfere with the authority of the military commander without regard to the status of legislative jurisdiction, to deny access to all persons for reasons of safety and military security, the bill should be amended to make clear that such authority remains unimpaired.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

STANLEY R. RESOR,
Secretary of the Army.

Senator Moss. I think I have no more questions. We appreciate your coming, Mr. Powell, and appearing before the committee. We do have some problems that we need to look into and we need the broadest record we can get from comments from all of the departments as well as the national organizations and other citizens.

Mr. POWELL. Senator, we are happy to be here. If we can help you any more let me know.

Senator Moss. Thank you.

Is Mr. Brandborg here, representing the Wilderness Society?

Dr. Fred G. Evenden, representing the Wildlife Society?

Dr. Walter Boardman, representing the National Park Association?

Dr. Boardman, we are very glad to have you, sir.

STATEMENT OF ANTHONY WAYNE SMITH, PRESIDENT AND GENERAL COUNSEL, NATIONAL PARKS ASSOCIATION, PRESENTED BY WALTER S. BOARDMAN

Mr. BOARDMAN. Mr. Chairman, my name is Walter S. Boardman, Washington, D.C., and the statement I am presenting was prepared by Mr. Anthony Wayne Smith, president and general counsel of the National Parks Association.

Senator Moss. Very good, sir.

Mr. BOARDMAN. My name is Anthony Wayne Smith, I am president and general counsel of the National Parks Association, Washington, D.C.

I appreciate the invitation from the chairman of the Senate Committee on Commerce to testify in these hearings.

The National Parks Association is a private, nonprofit institution, educational and scientific in character, having nearly 40,000 members in the United States and abroad, all of whom receive the monthly National Parks magazine.

The main responsibility of the association lies in the protection of the national park system, but it is also concerned with the protection and restoration of the natural environment everywhere.

The National Park Service Act of 1916 charges the National Park Service with the protection and management of the national parks, monuments and other units of the national park system in conformity with their fundamental purpose, which is declared by Congress to be to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations (16 U.S.C. 1).

It seems hard to conceive of language more precise than that of the National Park Service Act in pinning responsibility for wildlife management in the units of the national park system on the Federal agency known as the National Park Service, and setting up the very

definite standard of nonimpairment for that purpose. This act leaves no managerial authority in the hands of any State government, and the question of the existence of any proprietary rights or where they may be vested becomes an exercise in futility.

Any declaration of a proprietary interest on the part of the State governments in the wildlife in any unit of the national park system, even supposing it to be a correct statement of the law, which we do not concede, would be pointless, because the managerial rights conferred by Congress on the National Park Service in respect to all units of the national park system under the National Park Service Act are exclusive.

In our judgment the National Park Service was completely within its proprietary and managerial rights in declining to seek a State permit for the taking of wildlife for research purposes, and we trust that a review of lower court decision in this matter will confirm that opinion; the obligation to protest, in our opinion, carries with it the right of research and the right to take specimens without State permit.

At the very least, any declaration favoring State governments in respect to managerial or proprietary interests in wildlife should be stricken from the present bills in the public interest insofar as any unit of the national park system is concerned.

But in our considered, objective, and we hope unbiased opinion, as specialists in the natural resources management problems of the Federal Government, any declaration of proprietary or managerial rights favoring the State governments in respect to any other Federal land would be equally objectionable and in conflict with the national interest.

It may be true that the U.S. Forest Service has accommodated itself generously and in a pragmatic fashion to the concern of the State game and fish commissions with wildlife management in the national forests within the boundaries of their respective States. There is much to be said from an administrative point of view, in terms of decentralization for the coopertaive arrangements which have been developed, and we do not question them at this time.

But to say that such cooperative arrangements between the Federal and State Governments may be expedient is quite a different thing from declaring in any proprietary or managerial right on the part of the State governments in wildlife on federally owned land. It is quite essential that any basic proprietary and managerial rights to wildlife on all Federal land must be retained by the Government of the United States in behalf of the people of the entire Nation.

The Congress might conceivably enact legislation, although we would deem it unwise, conferring on State governments a measure of managerial authority over wildlife in the national forests. The present cooperative arrangements, essentially contractual in nature, would seem to be entirely satisfactory and much more prudent in terms of the national interest. We see no reason at this time for disturbing them.

However, if the somewhat imperialistic attitude on the part of the State governments toward the Federal Government in these matters should continue, it might be wise for Congress to enact legislation confirming the proprietary and managerial rights of the Federal Government as against those of the States. We think tht some such trend may be developing in public opinion in this country at this time; undue

pressure from the State governments might well touch off a reaction against them and lead to confirmation of the Federal proprietary and managerial interests in these matters.

What has been said with respect to the national parks and national forests is clearly applicable to the national wildlife refuges, and perhaps even more applicable. These refuges were set up, not for the benefit of any particular State agency in any given State, nor for any small specialized group of people in any such area, but for the protection of the wildlife of America in behalf of the people of America. It is quite imperative that the laws governing these matters declare specifically that the proprietary and managerial interests in respect to wildlife in the wildlife refuges are vested in and cannot be divested by the Government of the United States.

A much more thorough investigation of the constitutional and statutory law on these subjects should be made than has thus far been developed. We propose to participate in a thorough legal analysis of these matters in the course of the present calendar year. It would not be possible to achieve an adequate examination of the authorities and a satisfactory theoretical analysis of these problems in the brief period of weeks which remains in the life of the present Congress. We urge upon the committee that it would be undesirable for the committee to act without such a thorough examination of the law purporting to be declared by these measures.

Preliminary examinations of the law indicate, however, and rather definitely, that no proprietary interest in wildlife exists in the State governments, whether with respect to Federal land or even with respect to land not owned by the Federal Government within the boundaries of the State. It is entirely possible that any proprietary interest whatsoever in wildlife is a fiction, a fantasy not supported by either constitutional or statutory law, nor by judicial decisions. It seems quite possible that wildlife is indeed wild.

If this be so, and only a far more thorough study than has thus far been made can determine that question, then the problem is not who owns the wildlife but which agencies of the Government have authority to manage the wildlife. It seems to us to be plain that the Federal Government must have managerial authority on Federal lands; if it wishes to cede such authority temporarily by agreement or even by legislation to the State Governments, it may have the constitutional power to do so; but it does not have the power to alienate completely or permanently its right to occupy this field and to reassume its managerial authority if it decides to do so at any time.

The American people have a great interest in the wildlife of the continent. Since the days of the first migratory bird treaties they have made it clear that they wish to protect the wildlife of the continent against destruction. The Fish and Game Departments have often played a constructive role in protecting sport fish and game animals against overfishing and overhunting and in protecting habitat; but the national parks have been wildlife refuges of primary importance since the establishment of Yellowstone National Park in 1872; the people of this Nation have made it clear, time after time, that they wish the national parks to be protected from private hunters.

This means that the people of this Nation are interested in wildlife for purposes other than and in addition to the purposes which concern

the State fish and game commissions. They are interested in the opportunity to see wildlife in its natural setting, to enjoy it, photograph it, meet it, and within limits tame it. These are natural and ancient human impulses which probably had much to do with the original contacts with what are now domestic animals. Furthermore, the national parks and wildlife refuges, and the national forests as well, serve as scientific laboratories of utmost importance. Objectives of this kind have been entrusted, in the large Federal reservations, to the Federal Government, and the State fish and game departments are not particularly well qualified to serve them. As I have suggested, it seems quite possible that if the State agencies overreach themselves in this matter a reaction will set in which will permanently federalize wildlife operations everywhere.

We feel sure that the Commerce Committee will wish to make a very thorough investigation of the actual state of constitutional and statutory law and related judicial decisions before taking hasty action on a measure which arose out of controversy and is being pressed by agencies which have a special ax to grind. It is to be hoped that thorough legal analyses of these problems can be presented to the committees in due course by impartial private organizations as well as the affected Government agencies, and that the proper course of action will become apparent to all before long. It would be an unseemly thing, however, to move ahead with the presently proposed legislation in the hasty manner which has been suggested by some of its advocates.

I thank you for this opportunity.

Senator Moss. Thank you, Dr. Boardman, for bringing the statement which has been prepared by Anthony Wayne Smith.

I am not sure that this is a hasty matter. It is a problem that has been in existence for many years and has come up time and again in Committee. I think these bills perhaps are just a few months old but certainly the problem is an old one and, therefore, we are not acting in haste in beginning to make a record on the matter and getting it all set down here.

I am a little astonished by some of the statements of Mr. Smith, and I recognize these are his words and not yours, but particularly on page 5 where he says "preliminary examinations of the law indicate, however, and rather definitely, that no proprietary interest in wildlife exists in the State governments, whether with respect to Federal land or even with respect to land not owned by the Federal Government within the boundaries of the State." Do you subscribe to that?

Mr. BOARDMAN. I must confess on that particular point, I am not a lawyer and I have not researched that particular point.

Senator Moss. Well, this is very strong and, of course, the whole paper is a little strong, but that is exactly the position of Mr. Smith, and he represents the position of the National Parks Association and naturally we are going to consider it with all seriousness and weigh it against the other testimony, but it just seemed to me that he has taken a position quite far over from the court decisions that we have on the management of wildlife, resident wildlife, and fish within the several States.

Mr. BOARDMAN. If I may, sir, add my own thought: As to the national parks, I do believe that it is important that the control of wildlife be kept in Federal hands lest hunting encroach upon them, and I

know some people who are advocating this do have as the ultimate view of getting their guns into the national parks. They resent seeing an elk standing up on a ridge that they can't shoot.

I might add that in the discussion on the destruction of wildlife in the parks to eliminate overnumbers, it seems to me the wiser policy would be to eliminate the females, to eliminate the weak; that the predatory kind of hunting, in other words whether it is hunters or whether it is park personnel, that the elimination should not be of the trophy animals but rather of the weak to strengthen the herds. There is a difference in purpose.

Senator Moss. Yes. Well, thank you very much, Dr. Boardman, we appreciate your coming and bringing this statement to us.

Now, is Mr. Stroud here, did Mr. Stroud come? We called him earlier and he was not here.

Apparently then Mr. Stroud, Mr. Brandborg, and Mr. Evenden have not appeared.

Is there anyone else who came as a witness whom we have overlooked in any way? Well, the hearing then will be recessed. There will be additional hearings held later this year in the field. There may even be a further hearing here in Washington to accommodate Senators and Congressmen who have not been invited to attend this hearing to complete our record here.

I have a number of communications that have been received from various State organizations and others who have expressed an interest in this matter. I will now order that these be printed as an appendix to the hearing record. (See p. 127.)

Senator Moss. The hearings are now in recess.

(Whereupon at 11:25 a.m., the hearing was recessed.)

MANAGEMENT OF FISH AND RESIDENT WILDLIFE ON FEDERAL LANDS

WEDNESDAY, JUNE 26, 1968

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met at 9:40 a.m., in room 5110, New Senate Office Building, the Honorable Frank E. Moss presiding.

Present: Senators Moss and Pearson.

Senator Moss. The committee will come to order.

I want to say briefly that these hearings today are held to accommodate some Members of the Senate and House of Representatives who wished to testify in Washington. The original plan was to hear from the departments and the national organizations who are concerned with this problem and then go to the field with hearings in the various States, or at least the regions of the country where we expect to hear from the State personnel and local persons, and it was thought that the Senators and Congressmen would there testify. But there has been a request that testimony be heard here. So, the committee is very happy to accommodate those who wish to be heard, and we will proceed today and, if necessary, we will hold further hearings if there are others who wish to be heard in Washington. With that, we will proceed.

Senator Bennett, we will proceed with your testimony.

STATEMENT OF HON. WALLACE F. BENNETT, A U.S. SENATOR FROM THE STATE OF UTAH

Senator BENNETT. Mr. Chairman, I appreciate this opportunity to appear before the committee today to present my views on this important legislation. I have the privilege of cosponsoring both bills before the committee.

I have a longer and more formal statement that I would like to leave for the record, but I will summarize my remarks.

Senator Moss. Senator, I have that statement, and it will be included in the record at this point.

(The statement follows:)

STATEMENT BY HON. WALLACE F. BENNETT, A U.S. SENATOR FROM THE STATE OF UTAH

Mr. Chairman, I appreciate the opportunity to testify in full support of S. 2951 and S. 3212, which I have the honor to co-sponsor. This legislation will serve to clarify questions of jurisdiction over resident species of fish and wildlife since it restates the established law that Federal ownership of land does not carry with it Federal ownership of the resident species of fish and game on that land.

This legislation will resolve one of the most vexing natural resource problems relating to the current controversy about jurisdiction over resident species of wildlife on Federal properties. It is clear the Federal Government has no more or no less jurisdiction over resident wildlife than any other landowner. While

the Federal Government, like any other landowner, can restrict to the point of prohibiting hunting and fishing on Federal lands, it should not be authorized to enlarge upon State statutes and regulations, and, in effect, set its own on non-migratory species. To do so will erode the hunting and fishing license structure which supports wildlife conservation programs in all states and may lead to the adoption of the European concept of wildlife ownership that the title of fish and game rest with royalty or the landed gentry rather than the people.

I was very pleased when the Senate recently passed the Flaming Gorge National Recreation Area bill which contained my amendment protecting state fish and game rights. This amendment protects the people of Utah and Wyoming by spelling out very clearly the role of the States in the management of fish and game in the recreation area. It is designed to protect the States' long-time, court-supported rights in this field, and guarantees to the States of Utah and Wyoming the right to apply state hunting and fishing laws within the Federal area.

Since colonial times in our country, the ownership of wildlife has been by law, history and tradition separated from ownership of the land. I feel so strongly about this principle that I have joined in sponsoring all legislation clarifying the Federal-State fish and game relationship.

For years, the States, through the International Association of Game, Fish, and Conservation Commissioners, have tried to reach accord with the Department of the Interior, but their efforts have been unsuccessful because of the Department's insistence on the validity of a Solicitor's controversial opinion in 1964. The Federal Government, through the Department of the Interior, is claiming ownership of all resident species of fish and wildlife found on Federal land in defiance of the long precedent of U.S. Supreme Court and other Federal and State court decisions which clearly establish that resident species of fish and wildlife located within the boundaries of a State, whether on Federal, State or private land, are owned by that respective State in trust for its citizens.

The latest challenge to the ownership of wild game came early last fall when National Park Service employees killed a number of deer in the Carlsbad Caverns National Park in New Mexico in direct violation of the laws of that State. The deer were shot, their stomachs removed and the carcasses left to rot as part of a research project. Offers by the New Mexico officials to assist in the study and to issue collecting permits according to the laws of New Mexico were scorned by the Park Service. In one single sentence Superintendent Guse summed up the basic point of issue, "Inasmuch as this is a Federal project carried out on Federal lands, we do not consider it necessary that our men have collecting permits issued by your Department."

I feel that this is yet another indication of what Earnest Swift described as "a growing arrogance that only the people representing the Federal Government have the intelligence, integrity and know-how to steer the resource ship. They believe they are among the few of God's annointed that can plan and make no mistakes, that they alone sit on the right hand of Jehovah."

A Federal District judge recently ruled in favor of New Mexico, but the decision is expected to be appealed. Thomas L. Kimball, Executive Director of the National Wildlife Federation, stated: "If the Federal government can set its own regulations on resident wildlife (including the killing of wild birds and animals when they please), other landowners could claim the same right. Chaos would result. Carried into widespread practice, the authority of the States to issue licenses and permits for hunting and fishing could be eroded away. Most state conservation departments subsist on the revenue derived from the sale of hunting and fishing licenses. The loss of this income would certainly restrict, if not stop, wildlife management programs by state fish and game departments which benefit not only resident game species, but a wide range of other wildlife as well. The States agree that the Federal government, like any landowner, has the full right and authority to restrict hunting and fishing, even to the point of prohibiting hunting and fishing. They do not agree, however, that the Federal Government has the legal right or authority to permit the killing of game and fish above or beyond state laws, rules and regulations applicable to all the rest of the lands within State borders."

It should be emphasized that in attempting to resolve this dispute through legislation there is no desire to change the present status of certain laws and concepts which have to do with:

1. Any international treaty involving the regulation of migratory birds.
2. The Rare and Endangered Species Act.
3. The Bald Eagle Act.

4. Rights of Indians and natives of Alaska to hunt and fish as established by treaties or acts of the Congress.

5. The management of lands or control over wildlife species which have been ceded by any state to the United States.

6. The Federal responsibility for conserving and developing fish and wildlife habitat on Federal lands.

However, I feel strongly that unless Congress enacts this legislation, we may well see the end of many State wildlife conservation programs, the possible establishment of a Federal hunting and fishing license, and the disruption of fish and game management within each State. In my own State of Utah where more than 70 per cent of the land is owned by the Federal Government, if the Department of the Interior's position is allowed to stand, the sound conservation practices of the Utah Department of Fish and Game may be replaced by a host of different hunting and fishing regulations issued by the National Park Service, the Bureau of Land Management, the Bureau of Sport Fisheries, the U.S. Air Force, the U.S. Army, or any other Federal department, agency, or bureau encouraged by the Interior's position to assume like powers.

I might add that not all Federal agencies closely identified with the game problem support the Department of the Interior contentions. The Forest Service in the Department of Agriculture is committed to the present cooperative system where it works with and even through game departments in a relationship that has proved mutually satisfactory for a number of years.

There is no reason for upsetting the present game management and ownership system which is definitely in the public interest. If special conditions exist where it is necessary or desirable for the Federal Government to have superseding powers, these should be worked out by the States and Federal agencies involved in a cooperative rather than competitive spirit to achieve the greatest public benefit.

Mr. Chairman, I urge this Committee to take favorable action on this legislation to resolve this jurisdictional controversy by reaffirming the States' rights to manage, regulate, and control fish and resident wildlife, on all lands, including those owned by the Federal Government.

Thank you, Mr. Chairman.

Senator BENNETT. In a nutshell it is my feeling, and I think the feeling of most fish and game experts throughout the country, that fish and game management should be left to the individual States. This has been the case for many years now by law, history and tradition.

There is no reason for upsetting the present game management and ownership system which is definitely in the public interest.

I think that if special conditions exist where it is necessary or desirable for the Federal Government to have superceding powers, these should be worked out by the States and Federal agencies involved in a cooperative spirit to achieve the greatest public benefit, but I believe they should be based on the basic premise that has existed over all the years under which the basic management of fish and game resources has been left to the States. If a Federal program is developed, it should be the exception rather than the rule.

I realize that this legislation would not be needed had it not been for a recent decision by the Solicitor of the Interior Department which is trying to take over jurisdiction of fish and game on all public land.

Since colonial times in our country, the ownership of wildlife has been separated from ownership of land. Now, however, the Interior Department, in its wisdom, is claiming ownership of all resident species of fish and wildlife found on Federal land in defiance of the long precedents of U.S. Supreme Court and other Federal and State decisions.

In my own State of Utah more than 70 percent of the land is owned by the Federal Government. If the Interior Department decision is allowed to stand, chaos would result. The sound conservation prac-

tices of the Utah Department of Fish and Game may be replaced by a host of different hunting and fishing regulations issued by each of the large number of Federal agencies and bureaus which control land in that State who might be encouraged by the department's position to assume like powers.

I urge immediate passage in this session of Congress hopefully of the essence of the bills before this committee so that this vexing problem can be solved quickly and equitably.

Senator Moss. Thank you, Senator, and your prepared statement, of course, appears in the record in toto.

The problem is dividing the management of the land and the land surface which the landowner controls and the controlling of wildlife that enters thereon. I don't think that technically under the law it is ownership of the wildlife. This is ferae naturae, as they say in law, and until it is reduced to captivity no one owns it, the problem being who has the management of it. This is supposedly the right of the State to manage it in trust for all the people. So, this is where the conflict comes.

I take it from your statement that you do not oppose that the landowner, which is the Federal Government in a large percentage of the land, be deprived in anyway of managing his land rights?

Senator Bennett. No, no. The courts have faced this problem since the beginning, and it is my understanding that the basic doctrine that the resident wildlife is separate from the ownership of the land goes all the way back to English law, and that it passed into our law through the adoption of the English principles after the Revolution. Of course, these wild animals can't recognize signs. They don't know when they are crossing from public land to private land. If we should develop a situation, particularly in a State like ours, where the Federal Government or its agencies is going to attempt to regulate the hunting and fishing, then, inevitably the State power which has been accepted for all these years would disappear in a State where 74 or 75 percent of the land belongs to the Federal Government.

I feel, and I am sure most other representatives of the Western States, including the chairman here who is also a sponsor of this bill, that in the end since we must have essential uniformity in our fishing and hunting laws, we would be better off to let the State manage it rather than the Federal Government.

The Federal Government comes into the State in a variety of authorities. We have a good part of our land under the control of the Army, the Forest Service, the Bureau of Land Management, and some other agencies, and I think the State authority which covers all of the area in the State is the logical authority to manage it.

I have read through some of the decisions that have been made. I have the impression that the decisions of the Court would follow the recommendations of this bill rather than the request of the Interior Department.

Senator Moss. In some European countries the ownership of the wildlife does follow the land; but you are making the point that our derivation of law coming from the common law of England where it was the king as the sovereign who held in trust for the people ownership or at least the direction of the taking of natural game has established that in the States and the States have not delegated that authority to the Federal Government in anyway at this point.

Senator BENNETT. You take the situation of a State in the east where there is no particularly federally held area, where, for instance, the Bureau of Land Management which is so important in terms of the acreages that it manages out in our country doesn't exist, you would have a very difficult and mixed-up national pattern if you didn't follow the theory represented by this traditional attitude that came from British law.

Remembering that my State of Utah came into the Union with all the rights under its Enabling Act that any other State had, it seems to me obvious among those rights was this pattern of the relationship of wildlife to land ownership and that it should have just as much a right to manage its game as a State in the east where there is no very large volume of federally held land.

Senator Moss. Senator Pearson, do you have any questions?

Senator PEARSON. Tell me about this ruling of the Solicitor General. I am sort of curious as to how this issue was joined and why the bills came in. Both the chairman and Senator Bennett indicated that this was pretty well established law and custom for a long time. Not with any great particularity, but what brought this about?

Senator BENNETT. There were a number of cases that were tried which set forth a series of precedents leaving the power to manage wildlife in the hands of the States, but these cases were essentially limited in their application because there was a specific problem involved. So, the Solicitor of the Bureau of the Interior Department, I think it was in 1963 or 1964, issued an opinion to the Secretary that on all land which was controlled by the Department of Interior the Secretary had the authority to regulate the fish and wildlife. On that basis he has proceeded.

It was very interesting to me, Mr. Chairman, that recently I had a call from the head of the Forest Service who told me that in its early days the Forest Service had tried to establish this same point of view, and they had discovered that it could not be handled practically, that they couldn't have one set of rules in a national forest which differed from the state regulation outside, that they were very happy to accept the responsibility and authority of the State in regulating wildlife in the forests.

So apparently we have had experience with this other proposal, and practice has indicated that it will not work.

Senator PEARSON. That is all I have.

Is there a bill over on the House side?

Senator Moss. Yes.

Senator PEARSON. Thank you, Senator Bennett.

Senator Moss. Thank you, Senator. I appreciate your testimony.

Senator Hansen, we will be glad to hear from you.

STATEMENT OF HON. CLIFFORD P. HANSEN, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator HANSEN. Mr. Chairman, I welcome this opportunity to testify before the Senate Commerce Committee on S. 2951 and S. 3212 relating to the authority of the States to control, regulate, and manage fish and wildlife within their territorial boundaries.

The subject matter of this legislation is of great concern to my State

of Wyoming and I am privileged to be a cosponsor of both of the bills which are before the committee today. These bills represent an effort to reaffirm the role of the States in managing fish and resident wildlife. This is by no means a "strawman" issue. It is an issue which has been made very real by the serious threat posed to the traditional powers of the States to regulate their fish and wildlife by the memorandum issued by the Solicitor for the Department of the Interior No. 36672 on December 1, 1964. As I am sure that the memorandum is familiar to the committee and to those persons who have testified on the legislation before the committee, I will not dwell further on it. In like manner, I am sure that the committee and interested citizens and Senators are aware of the lawsuit which has developed between the State of New Mexico and the National Park Service on this same issue.

Nevertheless, this lawsuit and the policies pursued within the Department of the Interior prior to the lawsuit now require that the Congress give its specific attention to the question of jurisdiction over fish and wildlife. I believe that it is incumbent upon the Congress to make a specific declaration of Federal law such as is proposed in the two bills before the committee and I am very hopeful that these bills can be moved rapidly through the legislative process.

Last week, a press release was sent to my office from the Department of the Interior which described Secretary Udall's enunciation of hunting and fishing policy on Interior-administered Federal lands. I have reviewed this release, and while I believe the Secretary and his Department are to be commended for their efforts to resolve some of the policy problems in this area, I do not believe that the general policy statement goes far enough. Accordingly, despite the Secretary's movement on this issue at this time, I am hopeful that the Congress will press for enactment of Federal law on the subject. As I read the Secretary's general policy statement, it does not come fully to grips with the real problem facing the committee and the Congress over who has the power to regulate resident species of game and fish on Federal lands.

Further, the general policy statement contains serious deficiencies from the point of view of State administrators and State governments in part B which deals with the national parks, national monuments, and historic areas of the national park system. It is in precisely this area where the Department of the Interior has run afoul of the law and finds itself in court in opposition to the State of New Mexico.

Lastly, the general policy statement is just that and it would have no power to bind future Secretaries or future administrations if and when these jurisdictional problems arise again.

The urgent need for general legislation to resolve future jurisdictional disputes has been amply demonstrated in several recent events involving my own State of Wyoming and Federal administrators of public lands.

The slaughtering of elk in Yellowstone National Park by Park Service officials escalated into a highly charged emotional issue which served to give the National Park Service a public black eye. It has been the contention of the State of Wyoming that greater cooperation between the Federal and State authorities could have resulted in a more humane and efficient population management program. I don't raise the Yellowstone National Park elk slaughter in an effort to wave any red flags

before the committee, but I do raise it to indicate one instance where jurisdictional responsibilities have been imperfectly defined and where this has led to a very unfortunate public dispute.

Last week, certain people testifying before your committee indicated that the legislation before the committee would open the door to public hunting in national parks and within the national park system. Speaking for myself, who as I have said cosponsors both of the bills before the committee, I do not believe that that is the intent of the legislation we are considering here today. To the contrary, I believe that all we are trying to do in this legislation is to establish a primacy of jurisdiction by the States except in carefully excepted areas. In other words, we are saying that if public hunting is to be conducted within Federal areas, it should then be conducted in accordance with State law and regulation.

A second area of controversy between our State of Wyoming and Federal officials has arisen in the Yellowtail Reservoir area of the Big Horn Canyon National Recreation Area. There, lands and water surrounding the reservoir have been set aside for management areas to be administered by various agencies for the proper preservation and propagation of migratory birds and other wildlife. The Wyoming Game and Fish Commission has been managing several of these areas for a good many years but has been recently told by the National Park Service to remove itself from one of the areas because of a lack of clear understanding over the jurisdictional responsibilities of the Wyoming Game and Fish Commission vis-a-vis the National Park Service.

This precipitous action by the National Park Service is most unfortunate and I have written to Secretary Udall on this matter but have not yet received any reply from him. The real crux of the problem here is that in the absence of clear jurisdictional guidelines, disputing parties find themselves at odds and an area suffers a potential change of hands with a potential increase to the public in the cost of management as well as a potential decreased assurance that the area will be managed in accordance with long-range management policies that have been practiced in the past by the Wyoming Game and Fish Commission. This I believe is unfair to the lands in question, to the game and fish living on those lands, and to the general taxpaying public as well.

The last area I would call to the attention of the committee has to do with a controversy which is now blowing up a storm regarding the management of wild horses in this same general vicinity of the Big Horn Canyon National Recreational Area. The States of Wyoming and Montana have differing State laws with respect to wild or feral horses and this complicates the problem. Nevertheless, the basic point at issue is whether some group can be found to come forward to claim these horses as a principal sponsor and managing agent. I find it somewhat anomalous that the Federal Government, which has made such aggressive overtures in the past with regard to resident fish and wildlife, would now choose to wash its hands entirely of responsibility for wild horses or mustangs which are roaming on their lands. While this last problem has less direct bearing on the legislation before us, I raise it only in my hope that the Department of the Interior could somehow be persuaded to guard as zealously the wild horses on their lands as they have other species of wildlife.

In conclusion, let me thank the committee for giving its attention to

this legislation at this time. I believe the legislation is urgently needed and I hope that it can be moved on to enactment.

Thank you very much.

Senator Moss. Thank you, Senator Hansen, for a very fine statement. Do I understand it that you think that the Department of the Interior ought to manage the wild horses that are running on their lands?

Senator HANSEN. I'm not sure that they should. I do think that on the basis of the mail I have received, and I suspect you, too, may have received some, it has certainly been a very emotional issue to say the least, in the West.

I got letters when I was Governor of Wyoming from children of every State in this Union who hoped that something could be done to preserve a small nucleus of that wild horse herd out there.

I was just saying that while the Department of the Interior has exercised considerable initiative, it seems to me in trying on different occasions to assume almost exclusive jurisdiction and control of the wildlife, it has, so far as I can tell, had nothing at all to do in a complimentary fashion in trying to assert some authority to recognizing the existence of wild herds and to take steps that might result in the establishment of a wild horse herd. That is about all I meant by that statement, Mr. Chairman.

Senator Moss. It is a puzzling problem that we have been wrestling with for some time, as to where the jurisdiction lies to preserve the mustangs, and, if so, how that will be exercised and who would enforce it, and I was interested to find out if you felt that the Federal Government ought to assume this jurisdiction to protect those bands of herds.

Senator HANSEN. No, I did not mean to imply that. I was trying to draw a comparison on the one hand with the eagerness of the Department to assume control of other species of wildlife and yet, so far as I know, to exhibit no interest at all in these wild horse herds, on this wild horse herd, I should say.

Senator Moss. On this problem of Yellowstone and the elk herd there, the declaration that the Secretary has now issued said in subparagraph 3 of section (b), and this has to do with game in national parks, monuments, and historic areas, "Provide for consultations with the appropriate State fish and game departments in carrying out programs of control of overabundant or otherwise harmful populations of fish and resident wildlife, or research programs involving the taking of such fish and resident wildlife, including the disposition of carcasses therefrom."

How do you interpret this? That the consultation there be mandatory to reach agreement with the State or is it simply to consult and having consulted, to go ahead with whatever program the Secretary decides upon?

Senator HANSEN. I would be presumptious to attempt to clarify what the Secretary may have had in mind. All I can say is, as I read this point 3 to which you just referred, Mr. Chairman, I assume that the Secretary has in mind that the Park Service will consult with the appropriate State fish and game departments, but I find nothing in the language to indicate the requirement or the necessity being imposed upon the Secretary to reach concurrence with the respective State agencies.

I gather, in other words, that what this says is the responsibility and duty of the Secretary or the appropriate administrative Federal officials will be to consult with the State agencies, and I think this is good. I commend the Secretary for it.

I find nothing here to suggest that the concurrence of the State agencies is a necessary requisite prior to action, nor is there any veto implied on the part of the State authority. That is as I would interpret it.

Senator Moss. Assume we had the situation again in Yellowstone where it was determined by the Park Service that they had, say, 5,000 superfluous elk and that the herd must be reduced by 5,000 to preserve the habitat and to preserve the elk of the herd, and the matter then came to consultation with the State.

If you had the prerogative of speaking for the State, what would be your recommendation as to how that reduction of the herd should be carried out?

Senator HANSEN. I can make a specific recommendation based upon an historical precedent. When I was Governor of Wyoming, we recommended to the National Park Service that these elk be live-trapped and be transplanted in other areas of the West, particularly. Of course, we could speak only for the State of Wyoming. It was our recommendation that they should be live-trapped and transplanted.

If I could just suggest one further step that I think is indicated, it has been my contention, and I think also the contention of the Wyoming Game and Fish Commission, that with the proper working management program being undertaken, wherein the National Park Service and the Game and Fish Commission would meet annually and would discuss problems of game management with national park areas—and let me interrupt myself to say parenthetically that we do not contend at all, the State of Wyoming does not contend at all, any jurisdiction over Yellowstone National Park, as the chairman and the members of the committee very well know, the Yellowstone National Park was established in 1872, some 18 years before Wyoming became a State, so there is no question at all in that particular instance of State versus Federal jurisdiction—but our contention was that with a proper working relationship there would be no reason for a game herd to build up to the point where 5,000 animals became surplus. I should think, with the proper kind of cooperation, and I believe we are working in that direction now, I would hope that it would never be necessary to live-trap more than a few hundred head of elk in order to effect what necessary reductions in the population of the various game herds in Yellowstone might be indicated.

Senator Moss. Is it your opinion that the herd could be thus kept in balance for a long period of time on the basis that there is continuing need for transplanting of elk into various other areas where they have been killed off or died off or for some other reason in various parts of the country?

Senator HANSEN. Of course, that is one answer to the problem. I think another answer is this is a two-way street. I have a feeling that it may be necessary at times for the States surrounding Yellowstone Park to have a later season than might otherwise be indicated. What I'm trying to say is I think the best way of all to keep the animals within due bounds is by hunting, and it would occur to me, Mr. Chair-

man, that the Park Service might very well say the Yellowstone herd is building up so as to suggest that we are going to have to bring about a reduction there and, therefore, we suggest to the States of Montana and Wyoming that you have a late season in order that more of these elk might be taken by hunters in the field outside the park before they move in later on and become a problem to the habitat there.

Senator Moss. When the elk largely migrate out of the park to winter, do they go to lower ranges like Jackson Hole and places like that?

Senator HANSEN. This is true. I'm not an authority on elk. I will try to be as responsive and as accurate as I can, but I must say I have not studied in detail the migratory patterns of the elk herd.

As I understand it, generally, let me say for management purposes I think two herds are identified. The southern Yellowstone-Jackson Hole herd and the northern Yellowstone herd. The southern Yellowstone herd migrates in the fall, in the late fall, down into Jackson Hole where a number of elk winter on the National Elk Refuge, just right next to the town of Jackson and into the hills of the Gros Ventre Mountains, generally east and north of Jackson Hole, and this same group of elk reverse their migratory pattern, of course, in the spring, and they move from the refuge and from the Gros Ventre Mountains up into the thorofare country southeast of Yellowstone and into Yellowstone.

In the northern herd, I think there is a substantial number of elk in the northern herd that winter in Yellowstone Point. I believe Hayden Valley is one of the areas where they have been a problem insofar as excess population is concerned.

I'm not so familiar with the migratory pattern of that so-called northern herd, but I do think that it makes sense that the States of Montana and Wyoming and Idaho, in cooperation with the wildlife management experts of Yellowstone Park, could certainly study the pattern of all of the migrating big game animals in Yellowstone Park and work out a management program in cooperation with the States which would permit nearly all of the essential reduction or management programs being accomplished through hunting in the field.

Then, whatever excess numbers as there may be from time to time I would hope, and I believe, could be taken and could be relieved through a live bait and transplant program.

Senator Moss. I take it you propose this because of the blanket rule of no hunting within the park, and you would seek to preserve that. Would it seem reasonable to you, however, that if this did not accomplish it and there still was some surplus that there be some kind of a permit system to allow the taking of a given number of animals by duly licensed hunters drawing out of a pot someway to get that opportunity to do that?

Senator HANSEN. Let me say that this, of course, is the management program in Grand Teton National Park, a park that was created back in 1929 and enlarged as you know—I expect you had—maybe you didn't—have a hand in doing it—I think the park was enlarged in 1949–50. There is a management program set up in that public law which enlarged the park, which details this management program. The elk that are surplus in the Grand Teton National Park area are taken by hunters who are deputized as park rangers. They do not speak of

hunting within the park which is contrary to Federal law, but it is a management control program.

In the case of Yellowstone Park, I would not endorse a comparable program to that that we have in Grand Teton. I think the conditions are quite dissimilar. It is high country, it is a very wintry country. I think that, insofar as hunting is concerned, the taking of game outside the park could be accomplished or could be quite efficacious by hunters.

If that has been done, and if live trapping insofar as it can be practiced is done; if there are still some isolated pockets of surplus animals, I would say at that point I think the direct reduction program of the Park Service, as practiced within Yellowstone Park, is defensible, but I say this would be the final alternative. These other steps should first be taken.

Senator Moss. Are you aware of any problems that exist between your fish and game commission in Wyoming and the Forest Service people on the management of the national forests?

Senator HANSEN. From time to time we have had proposals by the Forest Service in different portions of Wyoming calling for reduction of game animals. Sometimes the fish and game commission has not agreed with the Forest Service. I know of one particular instance on the Teton National Forest where the recommendation of the forest officials has been that game numbers were excessive and that the range was deteriorating. The game and fish commission and some of the domestic livestock permittees undertook the sponsorship of a range study by range management experts, and that study disclosed that the condition of the range was not deteriorating; that, as a matter of fact, it was stabilized and in some instances was improving, despite the presence of game animals and of domestic livestock grazing these areas.

The Forest Service, following the conclusions, or the progress of that study, I should say, retreated from its position that game animals were excess. I think there continue to be, though, arguments and controversies as to what is proper stocking on forest lands by game animals.

I should think that here these controversies could very well be resolved by a management team of specialists who are objectivists, who are trained to go in and look at the facts, and to make a study, and I don't think you can go in, in any one year, and make a quick study and come up with the facts. It seems to me that range conditions respond rather slowly to the impact of ecological factors, and, as a consequence, studies that are of most value are those that have continued over a longer period of time.

Senator Moss. In no instance, I assume, has the Forest Service ever removed to the point of moving animals contrary to the recommendation of the State on game management, did it? Even though there is a difference of opinion, the Forest Service didn't claim the right to go on and shoot animals or permit the shooting of anmals in order to reduce their numbers?

Senator HANSEN. Not to my knowledge, Senator. I certainly am not certain that I have looked back in the records far enough to be positive that I'm right about that. But I know of no such instance.

I think ordinarily the various points of view have been resolved with a management program before that has taken place. At least, that is my opinion.

Senator Moss. Thank you. Senator Pearson?

Senator PEARSON. Do the controversies in the Yellowtail Reservoir between the Wyoming Fish and Game Commission and the National Park Service relate to the subject matter of these bills? Was it control and jurisdiction and regulation of fish and wildlife?

Senator HANSEN. As I understand, trying to summarize, I think a management plan had been worked out between the Game and Fish Commission and the Federal Government involving the use for management purposes of certain lands in proximity to the Yellowtail Reservoir.

Senator PEARSON. Was the dispute over the control of the land or the wildlife involved there?

Senator HANSEN. I think actually it resulted over the term of a lease agreement, as I recall, that was not sufficiently long in the opinion of the Federal officials, to permit its further continuation by the State Game and Fish Commission.

If I may, let me refer to Mr. Dominick here, just to be sure I'm right about that.

If I may, Mr. Chairman, in responding more specifically to your question, Senator Pearson, let me say I think there has been a growing concern among a number of Western States, as expressed by the association representing the various State game and fish departments and apparently the controversies over the use of these lands or concerning an extension of the memorandum of understanding or agreement came into focus, and apparently the Game and Fish Commission of the State of Wyoming, in response to expressed concern by several of the other Western States, and, as a matter of fact, by the Western Association of Game and Fish Commissioners or the international association, felt that this controversy should be brought to a head, and they chose this.

I may have been somewhat in error over the little technical points of disagreement, but as nearly as I can tell you, that was part of it.

Senator PEARSON. I understood this legislation was necessary because of an opinion rendered by the Solicitor of the Interior Department, and I thought your testimony pointed up a specific instance of where conflict of jurisdiction had come about. But I thank the Senator very much. I don't know much about this problem. We don't have any Federal lands in Kansas. I tried to get a national park created down there called the Prairie Lands Park. This is an area of the great grass country in the flat hills.

Some of my fellow Senators went down and took a look at it, and I have never heard of it since.

I thank you very much.

Senator HANSEN. I thank the distinguished chairman and the distinguished Senator very much.

(The prepared statement of Senator Hansen follows:)

STATEMENT OF SENATOR CLIFFORD P. HANSEN

Mr. Chairman, I welcome this opportunity to testify before the Senate Commerce Committee on S. 2951 and S. 3212 relating to the authority of the states to control, regulate, and manage fish and wildlife within their territorial boundaries.

The subject matter of this legislation is of great concern to my State of Wyoming and I am privileged to be a cosponsor of both of the bills which are

before the Committee today. These bills represent and effort to reaffirm the role of the states in managing fish and resident wildlife. This is by no means a "straw-man" issue. It is an issue which has been made very real by the serious threat posed to the traditional powers of the states to regulate their fish and wildlife by the memorandum issued by the Solicitor for the Department of the Interior No. 36672 on December 1, 1964. As I am sure that the memorandum is familiar to the Committee and to those persons who have testified on the legislation before the Committee, I will not dwell further on it. In like manner, I am sure that the Committee and interested citizens and Senators are aware of the law suit which has developed between the State of New Mexico and the National Park Service on this same issue.

Nevertheless, this law suit and the policies pursued within the Department of the Interior prior to the law suit now require that the Congress give its specific attention to the question of jurisdiction over fish and wildlife. I believe that it is incumbent upon the Congress to make a specific declaration of federal law such as is proposed in the two bills before the Committee and I am very hopeful that these bills can be moved rapidly through the legislative process.

Last week, a press release was sent to my office from the Department of the Interior which described Secretary Udall's enunciation of hunting and fishing policy on Interior administered federal lands. I have reviewed this release, and while I believe the Secretary and his Department are to be commended for their efforts to resolve some of the policy in this area, I do not believe that the general policy statement goes far enough. Accordingly, despite the Secretary's movement on this issue at this time, I am hopeful that the Congress will press for enactment of federal law on the subject. As I read the Secretary's general policy statement, it does not come fully to grips with the real problem facing the Committee and the Congress over who has the power to regulate resident species of game and fish on federal lands. Further, the general policy statement contains serious deficiencies from the point of view of state administrators and state governments in part B which deals with the National Parks, National Monuments and historic areas of the National Park system. It is in precisely this area where the Department of the Interior has run afoul of the law and finds itself in court in opposition to the State of New Mexico.

Lastly, the general policy statement is just that and it would have no power to bind future Secretaries or future administrations if and when these jurisdictional problems arise again.

The urgent need for general legislation to resolve future jurisdictional disputes has been amply demonstrated in several recent events involving my own State of Wyoming and federal administrators of public lands.

The slaughtering of elk in Yellowstone National Park by Park Service officials escalated into a highly charged emotional issue which served to give the National Park Service a public black eye. It has been the contention of the State of Wyoming that greater cooperation between the federal and state authorities could have resulted in a more humane and efficient population management program. I don't raise the Yellowstone National Park elk slaughter in an effort to wave any red flags before the Committee, but I do raise it to indicate one instance where jurisdictional responsibilities have been imperfectly defined and where this has led to a very unfortunate public dispute.

Last week, certain people testifying before your Committee indicated that the legislation before the Committee would open the door to public hunting in National Parks and within the National Park system. Speaking for myself, who as I have said cosponsors both of the bills before the Committee, I do not believe that that is the intent of the legislation we are considering here today. To the contrary, I believe that all we are trying to do in this legislation is to establish a primacy of jurisdiction by the states except in carefully excepted areas. In other words, we are saying that if public hunting is to be conducted within federal areas, it should then be conducted in accordance with state law and regulation.

A second area of controversy between our State of Wyoming and federal officials has arisen in the Yellowtail Reservoir area of the Big Horn Canyon National Recreation Area. There, lands and water surrounding the Reservoir have been set aside for management areas to be administered by various agencies for the proper preservation and propagation of migratory birds and other wildlife. The Wyoming Game and Fish Commission has been managing several of these areas for a good many years but has been recently told by the National Park Service to remove itself from one of the areas because of a lack of clear under-

standing over the jurisdictional responsibilities of the Wyoming Game and Fish Commission *vis a vis* the National Park Service. This precipitous action by the National Park Service is most unfortunate and I have written to Secretary Udall on this matter but have not yet received any reply from him. The real crux of the problem here is that in the absence of clear jurisdictional guidelines, disputing parties find themselves at odds and an area suffers a potential change of hands with a potential increase to the public in the cost of management as well as a potential decreased assurance that the area will be managed in accordance with long-range management policies that have been practiced in the past by the Wyoming Game and Fish Commission. This I believe is unfair to the lands in question, to the game and fish living on those lands and to the general tax paying public as well.

The last area I would call to the attention of the Committee has to do with a controversy which is now blowing up a storm regarding the management of wild horses in this same general vicinity of the Big Horn Canyon National Recreation Area. The States of Wyoming and Montana have differing state laws with respect to wild or feral horses and this complicates the problem. Nevertheless, the basic point at issue is whether some group can be found to come forward to claim these horses as a principal sponsor and managing agent. I find it somewhat anomalous that the federal government, which has made such aggressive overtures in the past with regard to resident fish and wildlife, would now choose to wash its hands entirely of responsibility for wild horses or mustangs which are roaming on their lands. While this last problem has less direct bearing on the legislation before us, I raise it only in my hope that the Department of the Interior could somehow be persuaded to guard as zealously the wild horses on their lands as they have other species of wildlife.

In conclusion, let me thank the Committee for giving its attention to this legislation at this time. I believe the legislation is urgently needed and I hope that it can be moved on to enactment. Thank you very much.

Senator Moss. Thank you very much, Senator Hansen.

Senator PEARSON. Just for the record, Senator Hansen, Senator Moss was one of the Senators who went down to take a look at that proposed park. And I still haven't heard from him.

Senator Moss. Senator Fannin of the State of Arizona will be our next witness.

Senator Fannin is the principal sponsor of one of the bills that we are considering, and we are glad to have you, Senator Fannin.

STATEMENT OF HON. PAUL J. FANNIN, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator FANNIN. Thank you, Mr. Chairman. It is very nice to be with you today to testify.

Mr. Chairman and members of the committee, I welcome the opportunity to present my views on the bills S. 2951 and S. 3212 to confirm the authority of the States to control, regulate, and manage fish and wildlife within their territorial boundaries.

This proposed legislation would end the Federal-State dispute over the ownership of fish and wildlife on Federal lands and, with certain exceptions, reaffirm the States ownership of these resident species. These bills in effect restate the long-established law that Federal ownership does not carry with it Federal ownership of resident species of fish and wildlife on that land.

It is not the intention of these bills to affect (a) hunting and fishing rights of Indians and Alaskan natives protected under treaty or Federal statute, (b) the authority of the Federal Government to control and regulate fish and wildlife under treaty or on lands to which a State has ceded exclusive jurisdiction, or (c) the right of the Federal

Government under article IV, section 3, clause 2 of the U.S. Constitution to protect its lands from damage by wildlife. Nor will these bills infringe upon existing Federal laws such as the Rare and Endangered Species Act and the Bald Eagle Act enacted for the protection of certain species of wildlife. They are not intended in any way to dilute the authority of the Federal Government to restrict or prohibit hunting and fishing on its lands in the interest of public safety or protection of its property.

They do, however, meet a very specific issue. The Federal Government, through the Department of the Interior, is claiming ownership of all resident species of fish and wildlife found on Federal lands. This assertion is without constitutional authority and defies the long precedent of U.S. Supreme Court decisions and other Federal and State court decisions which clearly establish that resident species of fish and wildlife located within the boundaries of a State, whether on Federal State or private land are owned by that respective State in trust for its citizens. The legal arguments are presented in two briefs submitted by the International Association of Game, Fish & Conservation Commissioners and the Solicitor of the Department of the Interior, copies of which are in the record of these hearings.

Senator Moss. That will be included.

Senator FANNIN. Essentially, the Solicitor argues that the Federal Government possesses unquestioned jurisdiction over resident fish and wildlife by virtue of the property and supremacy clauses of the U.S. Constitution and that any Federal rules and regulations promulgated in exercise of this alleged jurisdiction are subject only to the test of reasonableness and appropriateness. The flaw in this analysis is the lack of constitutional authority to claim ownership of resident species of fish and game just because they happen to be located on Federal lands. It is elemental constitutional law that Federal authority over anything arises only from enumerated powers in the Constitution. And although from time to time the extent of those powers has been given elastic proportions by the U.S. Supreme Court, the property clause in the Constitution has never and cannot now be so stretched by a department of the Federal Government.

It is true that the property clause does empower the Federal Government to control, and in fact eradicate, wildlife when these species are damaging or destroying Federal land. The U.S. Supreme Court so held in *U.S.* v. *Hunt*, 278 U.S. 96, (1928). To that extent but, I emphasize, to that extent only, the Federal Government can exercise control over resident species of fish and wildlife. Protection of Federal property is one thing—but the claim of Federal ownership and control over all game just because they happen to be found on Federal lands is an entirely different question.

The authority of the States in this field has been clearly defined throughout the years since initially spelled out by the U.S. Supreme Court in 1896. *Geer* v. *Conn*, 161 U.S. 519.

Congress did attempt to assume control over migratory waterfowl early in this century but the statute was struck down by the Federal courts as an unconstitutional exercise of Federal power. *U.S.* v. *Shauver*, 214 Federal Rep. 154; and *U.S.* v. *McCullagh*, 2211 Fed. Rep. 288. Only after consummation of a treaty, between the United States and Great Britain, was Congress empowered to so legislate,

and a careful reading of Justice Holmes, decision in the case of *Missouri* v. *Holland*, 252 U.S. 416, which upheld this later Migratory Bird Treaty Act, evidences that absent the treaty the statute would have lacked constitutional life.

I do not wish, however, to leave the impression that this is merely a legal dispute. It is much more. For unless Congress acts to pass this legislation, we will see the demise of many State wildlife conservation programs, the possible establishment of a Federal hunting and fishing license, and the senseless fracturing of uniform fish and game management within the borders of each State. If the Interior's position is permitted to stand, it is not hard to imagine what would happen, for example, in the State of Arizona, where over 70 percent of our land is in some form of Federal ownership. The sound conservation practices of Arizona's Game and Fish Department could well be eviscerated and replaced by a myriad of different hunting and fishing regulations issued by the Department of Agriculture, the National Park Service, the Bureau of Land Management, the Bureau of Sport Fisheries, or other Federal departments, agencies, or bureaus encouraged by Interior's position to assume like powers.

Mr. Chairman, the wise management of fish and game, particularly within those States with large Federal land holdings, depends on cooperation, not competition, between the State and Federal Governments. Over the years, the States, through their fine International Association of Game, Fish and Conservation Commissioners, have tried unsuccessfully to reach accord with the Department of the Interior. The obstacle has been the Solicitor's opinion of 1964 and the rigid insistence of the Department of the Interior on the validity of that wide-ranging opinion.

Relying on that opinion, the Department of the Interior has now acted to enforce it. In December of last year, the Superintendent of Carlsbad National Park, N. Mex., initiated a program in the park to kill some 50 deer over a 2-year period in order to study the contents of their stomachs. The Park Service admitted the deer were not posing a present threat to the park lands, and that the purpose of the killings was to gather information for future studies. The State of New Mexico requested that in accordance with New Mexico law all personnel involved in the killing of these deer acquire the necessary State collecting permit. The Park Service refused, claiming that this was a Federal project on Federal lands and therefore not subject to State law. The State of New Mexico filed suit in Federal district court to enjoin the Park Service, who by then had killed 15 deer in violation of State law. On March 12, 1968, the court enjoined the defendants from further killing of deer for the purpose of conducting the research study.

This decision, even if affirmed on appeal, however, cannot settle the overall dispute between the State and Federal Governments, for the trial judge decided the case on the narrow ground of statutory construction, thereby avoiding the substantive question of constitutional authority. The text of the court's opinion appears on p. 31.

The proposed legislation I have introduced, S. 3212, is in no way a criticism of those conservationists and wildlife biologists working for the Bureau of Sport Fisheries and Wildlife. Their efforts within the proper limits of Federal responsibility, particularly the preservation and propagation of endangered species and migratory waterfowl mirror the dedication of our contemporary wildlife conservationists.

But the actions of the National Park Service in New Mexico should leave little doubt about the consequences of permitting this dispute to continue. At stake here is an irreplaceable resource, threatened by administrative flexing of the Federal muscle. The bill I introduced will put an end to this controversy and permit the States to continue their fine efforts toward uniform fish and game conservation.

I urge the support of my colleagues for this much needed legislation.

I submit to the committee supporting material for my statement. It may be too voluminous to have it written in the record.

Senator Moss. That part of it that has not been included in the record heretofore and is pertinent will be printed.

I know the Solicitor's opinion is already in here, and there may be parts of it that already appear in the record. So, the staff will determine what parts are new and the other part will be referred to in its proper place.

Senator FANNIN. Thank you, Mr. Chairman, that is what I desire.

(The statement of Senator Fannin follows:)

STATEMENT OF SENATOR PAUL J. FANNIN

Mr. Chairman, I welcome the opportunity to present my views on the bills S. 2951, S. 3212, to confirm the authority of the States to control, regulate and manage fish and wildlife within their territorial boundaries.

This proposed legislation would end the Federal-State dispute over the ownership of fish and wildlife on Federal lands and, with certain exceptions, reaffirm the States' ownership of these resident species. These bills in effect restate the long-established law that Federal ownership does not carry with it Federal ownership of resident species of fish and wildlife on that land.

It is not the intention of these bills to affect: (a) hunting and fishing rights of Indians and Alaskan natives protected under treaty or Federal statute, (b) the authority of the Federal government to control and regulate fish and wildlife under treaty or on lands to which a State has ceded exclusive jurisdiction, or (c) the right of the Federal government under Article IV, Section 3, Clause 2 of the United States Constitution to protect its lands from damage by wildlife. Nor will these bills infringe upon existing Federal laws such as the Rare and Endangered Species Act and the Bald Eagle Act enacted for the protection of certain species of wildlife. They are not intended in any way to dilute the authority of the Federal government to restrict or prohibit hunting and fishing on its lands in the interest of public safety or protection of its property.

They do, however, meet a very specific issue. The Federal government, through the Department of the Interior, is claiming ownership of all resident species of fish and wildlife found on Federal lands. This assertion is without constitutional authority and defies the long precedent of U.S. Supreme Court decisions and other Federal and State court decisions which clearly establish that resident species of fish and wildlife located within the boundaries of a State, whether on Federal, State or private land, are owned by that respective State in trust for its citizens. The legal arguments are presented in two briefs submitted by the Int. Assn. of Game, Fish and Conservation Commissioners and the Solicitor of the Department of the Interior, copies of which I will include in the record following my remarks.

Essentially, the Solicitor argues that the Federal government possesses unquestioned jurisdiction over resident fish and wildlife by virtue of the property and supremacy clauses of the United States Constitution and that any Federal rules and regulations promulgated in exercise of this alleged jurisdiction are subject only to the test of reasonableness and appropriateness. The flaw in this analysis is the lack of constitutional authority to claim ownership of resident species of fish and game just because they happen to be located on Federal lands. It is elemental constitutional law that Federal authority over anything arises only from enumerated powers in the Constitution. And although from time to time the extent of those powers has been given elastic proportions by the U.S. Supreme Court, the property clause in the Constitution has never and cannot now be so stretched by a Department of the Federal government.

It is true that the property clause does empower the Federal government to control, and in fact eradicate, wildlife when these species are damaging or destroying Federal land. The U.S. Supreme Court so held in *U.S.* v. *Hunt*, 278 U.S. 96, (1928). To that extent, but, I emphasize, to that extent only, the Federal government can exercise control over resident species of fish and wildlife. Protection of Federal property is one thing—but the claim of Federal ownership and control over all game just because they happen to be found on Federal lands is an entirely different question.

The authority of the States in this field has been clearly defined throughout the years since initially spelled out by the U.S. Supreme Court in 1896. *Geer* v. *Conn*, 161 U.S. 519.

Congress did attempt to assume control over migratory waterfowl early in this century but the statute was struck down by the Federal courts as an unconstitutional exercise of Federal power. *U.S.* v. *Shauver*, 214 Federal Rep. 154; and *U.S.* v. *McCullagh*, 2211 Fed. Rep. 288. Only after consummation of a treaty, between the U.S. and Great Britain, was Congress empowered to so legislate, and a careful reading of Justice Holmes decision in the case of *Missouri* v. *Holland*, 252 U.S. 416, which upheld this later Migratory Bird Treaty Act, evidences that *absent the treaty* the statute would have lacked constitutional life.

I do not wish, however, to leave the impression that this is merely a legal dispute. It is much more. For unless Congress acts to pass this legislation, we will see the demise of many State wildlife conservation programs, the possible establishment of a Federal hunting and fishing license, and the senseless fracturing of uniform fish and game management within the borders of each State. If the Interior's position is permitted to stand, it is not hard to imagine what would happen, for example, in the State of Arizona, where over 70% of our land is in some form of Federal ownership. The sound conservation practices of Arizona's Game and Fish Department could well be eviscerated and replaced by a myriad of different hunting and fishing regulations issued by the Department of Agriculture, the National Park Service, the Bureau of Land Management, the Bureau of Sport Fisheries, or other Federal, departments, agencies or bureaus encouraged by Interior's position to assume like powers.

Mr. Chairman, the wise management of fish and game, particularly within those States with large Federal land holdings, depends on cooperation, not competition, between the State and Federal governments. Over the years, the States, through their fine International Association of Game, Fish and Conservation Commissioners, have tried unsuccessfully to reach accord with the Department of the Interior. The obstacle has been the Solicitor's Opinion of 1964 and the rigid insistence of the Department of the Interior on the validity of that wide-ranging opinion.

Relying on that Opinion, the Department of the Interior has now acted to enforce it. In December of last year, the Superintendent of Carlsbad National Park, New Mexico, initiated a program in the Park to kill some 50 deer over a two-year period in order to study the contents of their stomachs. The Park Service admitted the deer were not posing a present threat to the Park lands, and that the purpose of the killing was to gather information for future studies. The State of New Mexico requested that in accordance with New Mexico law all personnel involved in the killing of these deer acquire the necessary State collecting permit. The Park Service refused, claiming that this was a Federal project on Federal lands and therefore not subject to State law. The State of New Mexico filed suit in Federal District Court to enjoin the Park Service, who by then had killed fifteen deer in violation of State law. On March 12, 1968, the Court enjoined the defendants from further killing of deer for the purpose of conducting the research study.

This decision, even if affirmed on appeal, however, cannot settle the overall dispute between the State and Federal governments, for the trial judge decided the case on the narrow ground of statutory construction, thereby avoiding the substantive question of constitutional authority. The text of the Court's opinion will follow my remarks.

The proposed legislation I have introduced, S. 3212, is in no way a criticism of those conservationists and wildlife biologists working for the Bureau of Sport Fisheries and Wildlife. Their efforts within the proper limits of Federal responsibility, particularly the preservation and propogation of endangered species and migratory waterfowl mirror the dedication of our contemporary wildlife conservationists.

But the actions of the National Park Service in New Mexico should leave little doubt about the consequencies of permitting this disput to continue. At stake here is an irreplaceable resource, threatened by administrative flexing of the Federal muscle. The bill I introduced will put an end to this controversy and permit the States to continue their fine efforts toward uniform fish and game conservation. I urge the support of my colleagues for this much needed legislation.

Senator FANNIN. I appreciate very much this opportunity to appear before you this morning to assert my interest in this legislation. I feel that this will bring in better balance and will eliminate some of the controversies that are now existing.

Senator Moss. Thank you, Senator Fannin. We appreciate your appearance here and we appreciate your leadership in trying to bring to solution this problem that is a real problem and causes a good bit of conflict in our States in the West and perhaps it spreads farther than the West.

We notice it more perhaps because we have such vast amounts of Federal lands within the boundaries of the States.

As I understand your statement, you recognize that the U.S. Government as a landowner has the right to manage its land by either prohibiting trespass or by putting safety regulation, or whatever else it needs to do properly to manage its land.

What you do say if it attempts to manage the fish and wildlife therein, the resident fish and wildlife, that that must be done in accordance with the State law that governs all resident fish and wildlife?

Senator FANNIN. That is right, Mr. Chairman. I certainly do recognize not only the Government's right but the Government's obligation in the instance which you have mentioned; but I do feel by clarifying the position of the Federal Government and the State in this particular instance it will be very helpful to eliminate some of the controversies that now exist.

Senator Moss. I think I understand your position, and I think I am in agreement with it. I would hope that out of this set of hearings we can build an adequate record and then address ourselves to stating the legal position of the Federal Government vis-a-vis the States regarding the resident fish and wildlife so there won't be any further conflict of the kind that has arisen in New Mexico.

I believe a short time ago there was some problem of hunting mountain sheep on Lake Meade. Were you aware of that problem?

Senator FANNIN. I recall that we did have some controversy; but I will say that we have had excellent cooperation in most instances where we have run up against a particular issue of that nature. Most of the departments of the Federal Government have cooperated with our fish and game commission. They have had a very fine relationship. But at times there is this element of dispute, and I feel that this legislation is needed in order that it can be clearly determined the position of the Federal Government as against the State government's position.

Senator Moss. The Chief of the Forest Service when he testified said that the U.S. Forest Service had worked out a memorandum agreement with everyone of the States in which there were national forests on this problem of management of resident fish and wildlife, that this had work very well.

Are you aware of any problems with the Forest Service management in your State of Arizona?

Senator FANNIN. I know that the department people have reported controversies but they have been able to settle them, although in many instances they have had to back down from their position that they thought should have been taken because it was not clear as to just what could be done.

I feel that perhaps we have had some damaging incidents take place just because there is not this clarification.

Senator Moss. Senator Pearson, do you have any questions?

Senator PEARSON. I don't think I have any.

I note your bill, Senator Fannin, has certain exceptions. A quick reading of S. 2951 would appear to have those same exceptions, but not spelled out so specifically.

Senator FANNIN. That is practically the only difference in the two bills; that my bill does cover it more comprehensively, the exceptions involved.

Senator Moss. Thank you very much, Senator Fannin.

Mr. Charles Hobbs, who represents certain Indian tribes.

Mr. Hobbs, we are very glad to have you come and present the point of view of the Indian tribes that you represent.

STATEMENT OF CHARLES A. HOBBS, REPRESENTING SEVERAL INDIAN TRIBES

Mr. HOBBS. Thank you very much, Mr. Chairman and Senator Pearson.

I am Charles A. Hobbs of the law firm of Wilkinson, Cragun & Barker, of Washington, D.C.

We represent four Indian tribes, the Arapaho Tribes of Wyoming, the confederated Salish Kootenai Tribes of the Flathead Reservation in Montana, the three affiliated tribes of Fort Berthold Reservation in North Dakota, and the Quinault Tribe of the State of Washington. We also represent the National Congress of American Indians.

I have prepared a statement, but due to administrative difficulties it has not arrived. With your permission, I would make a short statement and ask that the written statement be inserted when it arrives which should be any minute.

Senator Moss. That may be done and you may proceed, Mr. Hobbs.

STATEMENT OF CHARLES A. HOBBS

I am Charles A. Hobbs, a member of the law firm of Wilkinson, Cragun & Barker, 1616 H Street, N.W., Washington, D.C. We are general counsel to the Arapaho Tribe of Indians of Wyoming, the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, and the Quinault Tribe of Indians of Washington.

A number of bills have been introduced in the present Congress, which would give the several States authority to regulate all hunting and fishing on federally owned or controlled lands within the State. In the Senate the bill are S. 2951 and S. 3212, which are the object of today's hearings.

Our clients have no objection to S. 3212, because it expressly preserves any treaty or statutory hunting and fishing rights they may have. See Sec. 3(2), which preserves:

"(2) hunting and fishing rights of Indians and natives of Alaska granted or reserved by Federal treaty or statute."

Our clients strongly oppose S. 2951, however, which fails to preserve Indian rights. Sec. 4(a) excepts from the operation of the bill:

> All rights and powers of the Congress of the United States to control and regulate the taking of fish and wildlife under any international or Indian treaty or convention to which the United States is a party but only with respect to those species of fish or wildlife expressly named in said treaties.

This might at first glance seem to be concerned with preserving Indian treaty rights, but on analysis it does not.

In the first place, the thrust of the language is to preserve Congress' interests not the Indians' interests. Second, Congress normally has no regulatory powers "under" any Indian treaty; its powers are as sovereign, and apply to the Indians aside from any treaty. Third, Indian treaties rarely, if ever, mention species, and in the absence of such mention there is apparently no intent to exclude State regulation. Fourth, many tribes have rights arising from agreements or statutes, rather than treaties.

Perhaps this wholly inappropriate language came about because the clause was originally drafted to apply to such international conventions as the Migratory Bird Treaty, which should no doubt continue to be under Federal administration, and someone added as an afterthought "or Indian treaty." In any case, the language fails to preserve Indian rights in a way likely to be accepted without litigation.

The Committee too should be aware that if a court were to hold that Congress had abrogated treaty Indian hunting and fishing rights, advertently or otherwise, the Indians would probably be entitled to just compensation. See *Menominee Tribe* v. *United States*, decision of the U.S. Supreme Court, note 14, and dissent, May 27, 1968. See also the same case before the Court of Claims, 179 Ct.Cl. 496, 388 F.2d 988 (1967), and dissent. When The Dalles Dam inundated a number of Indian treaty fishing stations, the Indians eventually received compensation in the amount of $27,000,000. But at the same time it should be clear that none of the tribes we represent is interested in compensation—they merely want Congress to make clear that this bill is not intended to diminsh whatever rights they have.

Mr. HOBBS. Mr. Chairman, the Indians are not concerned with the primary purpose of these bills which is substantially to resolve a Federal-State jurisdictional dispute over fish and game. But the Indians are extremely concerned that whatever bill should pass, if any, should clearly except from its operation Indian treaty and statutory hunting and fishing rights. This is most important to the Indians of this country.

The rule throughout the country is that State regulation of fish and game do not apply on Indian reservations. In many, if not most, cases, this exclusion is due to Federal jurisdiction over the reservation. However, in a number of cases the Indians have a treaty right within their reservation to hunt and fish which the State could not take over even if the Federal Government were to give it permission to do so. These rights, the Indian hunting and fishing rights, should be excepted from this bill and should be excepted in clear words.

Now, S. 3212, Senator Fannin's bill, does exclude Indian hunting and fishing rights in clear terms, and the Indians are satisfied that this language would protect their rights. But S. 2951 is inadequate, and for that reason the Indians that we represent object to the language of that bill, even though the purpose is probably the same as in the Fannin bill. It is not clearly set forth in the bill.

What apparently happened was in S. 2951 the original drafter drafted a clause preserving for the Federal Government jurisdiction over certain matters which were the subject of international convention or treaty, such as migratory birds.

Now, it would make sense to continue to leave the Federal Government with some sort of administrative power over migratory birds. That sounds like a sensible thing to me, and the Indians would have

no position on that. But then it apparently was that someone came along and said the Indians want their rights protected, let's add "and/or Indian treaties" to this clause. That was totally inappropriate. If you analyze the language, you will find it really does not protect Indian rights at all. It is entirely beamed to protecting congressional interests or Federal interests.

So, simply stated, we object to the language in S. 2951 and have no objection to the language of S. 3212.

Senator Moss. Thank you, Mr. Hobbs. The point that you make is that the Indians are in a special situation by reason, one, of treaties that have been entered into between the Indians and the Federal Government, or, secondly, instances whereby statute hunting and fishing rights have been preserved to the Indians and these are not subject to cancellation or at least you don't want them subject to cancellation in this legislation?

Mr. HOBBS. Exactly, Senator.

Senator Moss. I think the intent is to protect fully the rights of the Indians in fish and game that are on the Indian lands and their right to take fish and game under conditions that are different from those applied to other citizens of the country; so, we are glad to have your counsel and your suggestion that the Fannin language does seem to preserve the rights and in the other bill that perhaps they are not appropriately preserved.

Do you have any questions, Mr. Pearson?

Senator PEARSON. No questions.

Senator Moss. Thank you.

When your statement comes, it will be put in the record in full as though delivered.

Was there any other witness that came this morning expecting to testify?

This completes the list that I have before me. I do have a letter received from the Washington Sportsmen's Council that I will insert in the appendix.

I wish to place in the record at this point statements from Senator Frank Church, of Idaho; Senator Wallace Bennett, of Utah; Senator Gordon Allott, of Colorado; Representative Al Ullman, of Oregon; and Representative E. S. Johnny Walker, of New Mexico.

(The statements referred to follow:)

Senator Moss. The hearings then subject to this order to include the statement of Mr. Hobbs will be in recess now subject to the call of the Chair, and I would announce again that it is expected that we will hold some hearings in the States either when Congress is in recess or perhaps some later time in order to give the opportunity to all of our citizens in the areas where this issue is critical to express their point of view before we make any attempt to mark up the bill.

Senator Moss. The hearing is in recess.

(Whereupon, at 10:45 a.m., the subcommittee was in recess, subject to the call of the Chair.)

STATEMENT OF HON. FRANK CHURCH, A U.S. SENATOR FROM IDAHO

Mr. Chairman, thank you for the opportunity to express my views on the bill, S. 2951, which would affirm the authority of the States to manage resident fish and wildlife. As you know, I am a cosponsor of this bill, which was prepared by the International Association of Game, Fish and Conservation Commis-

sioners. I joined in cosponsorship at the request of the Idaho Fish and Game Department, because the question of Federal versus State control has become involved in considerable controversy. It was my hope that hearings such as this would serve to clarify the issues and help to direct a satisfactory solution. That is still my hope.

Several of my Indian constituents have recently expressed apprehension over part of the bill's provisions, maintaining that Section 4(a) would abrogate Indian fishing and hunting rights. If this is correct, and if further action is intended with regard to S. 2951, I urge the Committee to amend this section to avoid such an abrogation. I do not believe this particular legislation, dealing as it does with State versus Federal control and management of fish and wildlife, should become the vehicle for abrogating United States treaties.

At the same time, Mr. Chairman, this legislation is of major concern to the sportsmen of my State of Idaho. They believe, as I do, that any new assertion of Federal controls over the management and protection of fish and game would lead to serious complications in existing patterns of successful game management.

If the Committee decides to report a bill, I am sure it will give every consideration to a measure which will avoid nullification of treaty rights, assure the individual States the authority to continue to manage and protect resident fish and wildlife within their boundaries and, at the same time, not deprive the Federal government of its own valid jurisdiction.

Thank you for the opportunity of presenting this statement.

U.S. SENATE,
Washington, D.C., June 18, 1968.

Hon. WARREN G. MAGNUSON,
U.S. Senate,
Washington, D.C.

DEAR MAGGIE: I was very pleased to learn that your Committee is holding hearings on S. 2951 and S. 3212, which I have had the honor to co-sponsor. As you know, this legislation would clarify questions of jurisdiction over resident species of fish and wildlife which is one of our most vexing natural resource problems.

It is my understanding that you will hear representatives of the Department of Interior and interested national conservation groups at the hearings scheduled in Washington for June 18 and 19. Because of the widespread interest in this legislation in the West and particularly in my state of Utah, may I respectfully request that field hearings be held in Utah this summer.

You will recall that the Senate recently passed the Flaming Gorge Recreation Area Bill which included my amendment to protect the people of Utah and Wyoming by spelling out very clearly the role of the States in the management of fish and game in the recreation area. The amendment was designed to protect the States' long time and court-supported rights in this field.

I feel so strongly about this principle that I have joined in sponsoring the legislation now before your Committee which restates the established law that Federal ownership of land does not carry with it Federal ownership of the resident species of fish and game on that land. This legislation should resolve the current controversy about jurisdiction over resident species of wildlife on Federal properties. It is clear the Federal Government has no more or no less jurisdiction over resident wildlife than any other landowner. While the Federal Government, like any other landowner, could restrict to the point of prohibiting hunting and fishing on Federal lands, it should not be authorized to enlarge upon State statutes and regulations, in effect, to set its own rules on species which are not migratory. To do so will erode the hunting and fishing license structure which supports wildlife conservation programs in all States and lead to the adoption of the European concept of wildlife ownership that the title of fish and game rest with Royalty or the landed gentry rather than the people.

It had been hoped that the Department of Interior would reach an accord with the States on this sensitive issue, but unfortunately it has not. Rather, the Federal Government, through the Department of the Interior, is claiming ownership of all resident species of fish and wildlife found on Federal land in defiance of the long precedent of the U.S. Supreme Court and other Federal and State wildlife conservation programs, the possible establishment of a Federal wildlife located within the boundaries of a State, whether on Federal, State or private land, are owned by that respective State in trust for its citizens.

Unless Congress acts favorably on this legislation, we will see the end of many State wildlife conservation programs, the possible establishment of a Federal hunting and fishing license, and the senseless fracturing of uniform fish and game management within the borders of each State.

In Utah, where more than 70 per cent of our land is owned by the Federal Government, the sound conservation practices of the Utah State Department of Fish and Game could well be eviscerated and replaced by a conglomeration of different hunting and fishing regulations issued by the Department of Agriculture, the National Park Service, the Bureau of Land Management, the Bureau of Sport Fisheries, the U.S. Air Force, the U.S. Army, or any other Federal department, agency, or bureau encouraged by Interior's position to assume like powers.

I am sure the interested citizens of my State and neighboring States would welcome an opportunity to present their views to your Committee in a field hearing on this proposed legislation.

With kindest personal regards.

Sincerely,

WALLACE F. BENNETT.

STATEMENT BY HON. GORDON ALLOTT, A U.S. SENATOR FROM THE STATE OF COLORADO

Mr. Chairman, I appreciate the opportunity to appear before the members of this committee today to express my views on a bill, S. 2951, which has as its purpose to declare and determine the policy of the Congress with respect to the primary authority of the several states to control, regulate, and manage fish and wildlife within their territorial boundaries.

As members of the committee are aware, this question over jurisdiction between the State and the Federal government has been in need of a solution for a considerable amount of time. It is my hope that this bill, and others like it, will provide the answer to a very perplexing problem.

The main problem seems to arise from areas where the State and the Federal government have more or less over-lapping jurisdiction because of various factors.

There has been no question of state control over private and State owned lands, and most everyone recognizes the Federal government's authority in the National parks. The dispute between the States and the Federal government has been waged over who controls fish and wildlife on other lands controlled by agencies of the Federal government, such as the Bureau of Land Management, the National Forest Service, and others along this line. This bill would clear up this problem once and for all. S. 251 would leave no questions about the rights of the several States to manage and control resident wildlife and fish for the benefit of their citizens.

The several States have traditionally had control over the wildlife and fish within their territories. The reasons for this are many-fold, among them the idea that the State is closest to the problem and is therefore more able to develop a worth-while, comprehensive program. S. 2951 gives back to the States, in no uncertain terms, this traditional function while also excepting certain areas. Excepted from the provisions of S. 2951 are certain treaties with Indians, areas where the States have ceded exclusive jurisdiction, and rights over certain species of fish and wildlife.

This dispute is of particular importance to my own state, Colorado, if for no other reason than that the Federal government already owns 34.4% of the land in Colorado. This problem's importance to public land states also makes a solution mandatory. By delineating the lines of responsibility and clarifying the jurisdictional disputes the efficiency of the over-all system is enhanced and the program is more responsive to the job that needs to be done in this particular area.

Because of the reasons I have stated above I strongly urge the enactment of S. 2951, a bill to determine the policy of Congress with respect to the primary authority of the several states to control, regulate, and manage fish and wildlife within their territorial boundaries.

STATEMENT BY HON. AL ULLMAN, A U.S. REPRESENTATIVE FROM THE STATE OF OREGON

Mr. Chairman, I appreciate the opportunity to present a statement today on behalf of legislation to declare and confirm the primary authority and responsibility of the several States with respect to the ownership and management of fish and wildlife within their territorial boundaries. The bills you are considering in

these hearings are similar to a bill I have introduced in the House. I express my gratitude to the Chairman for scheduling this hearing today, and I am sure the Committee will give this proposal fair and just consideration.

I am concerned that a potentially chaotic and harmful situation could arise in the management of the nation's fish and wildlife unless Congress acts to recognize the State's ownership of the fish and game on lands within the States. As you know, Mr. Chairman, the federal government owns a great deal of land in many states—over 50 percent of my State of Oregon—and the respective Cabinet Secretaries are charged with the responsibility to manage these lands. However, by every standard, to assure a continuous, consistent program of game management and conservation, the State must have unquestioned ownership of the fish and game on all land in the State.

This continuity and consistency have been threatened by recent court decisions and by a series of administrative decisions by the Department of the Interior. The legal precedent implied in the actions of some agencies, if carried to a logical extreme, could disrupt the traditional fish and game management programs of the States.

I urge you to carefully examine the implications of a federal policy which claims the right to own, control, and manage the fish and game on federal land in the States. If the federal government has this right, does not every landowner?

Mr. Chairman, there is an aspect of this legislation that should be clarified in any bill dealing with the ownership of fish and game. I refer to the rights granted by treaty to Indians and natives of Alaska. To eliminate any suggestion that such rights might be abrogated by this kind of legislation, I would suggest the following language be included to protect these rights:

"Nothing in this Act shall authorize regulation, control, or licensing of hunting, trapping, or fishing on or the use of any property or lands within the boundaries of an Indian Reservation or on any lands or property held in trust by the United States for any Indian Tribe, Band, or Group or any individual Indian, or on any property owned by an Indian subject to restrictions upon alienation; or shall deprive any Indian or any Indian Tribe, Band, or Group of any right, privilege, or immunity afforded under federal treaty, agreement, or statute or any regulation made pursuant thereto, with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof."

In conclusion, I urge your close consideration of this proposal, Mr. Chairman, and members of the Committee, and hope that you will give early approval to one of the bills now before you.

Thank you.

STATEMENT BY HON. E. S. JOHNNY WALKER, A U.S. REPRESENTATIVE FROM NEW MEXICO

Mr. Chairman, distinguished members, thank you for affording me this opportunity to express my views on S. 2951. The bill puts into legislative action what many of us thought already was the law of the land, or at least the common law.

However, over the years we have found out that the jurisdiction of the several states has been eroded considerably, until last year when the New Mexico Game and Fish Department attempted to enforce the State laws on Federally-controlled land near Carlsbad, New Mexico.

A very expensive court battle ensued, and the current status of that fight already is part of the record, so I will not burden the subcommittee with repetition.

Suffice it to say that in my opinion, and in the opinion of the court, the New Mexico State Game and Fish Department was simply trying to enforce the State law.

You may be aware that the original bill dealing with this subject was introduced by me April 11, 1967. The incident at Carlsbad occurred in the Fall of 1967. There may or may not be any connection.

Last week, June 18th to be exact, the Secretary of Interior spelled out a hunting and fishing policy on Interior-administered land. I am sure the Department will bring it to your attention if it has not already been done.

Prior to the time I introduced a bill similar to this one, the matter of Federal-State relations had been the subject of annual resolutions by the International Association of Game, Fish and Conservation Commissioners and other organizations for many years.

I think that the fact that Congress has indicated such a great interest in the subject has brought the problem out into the open. At least, the indications are that Federal agencies are willing to recognize that State Game and Fish Departments do have a primary interest in proper game management, and in fact, that is where many experts and dedicated people in this important endeavor are employed.

I would like to touch upon some of the fears aroused because of the introduction of this and similar bills. Under no circumstances was the bill meant to undercut the effectiveness of the Federal government in connection with the various international treaties which protect migratory wildlife. Nor was there any intent to deprive our Indians of the right to manage fish and game on the reservations. And finally it was not my intent to arouse the fears of the Audubon Society. Strangely enough, I have been accused of being in favor of the extinction of golden and bald eagles, although the National Audubon Society has indicated that it supports the concept of state authority over certain species of wildlife.

No official of any state game and fish department with whom I have discussed the matter has ever indicated an interest in allowing hunting in any refuge area, yet the accusation has been made that this bill would threaten Federal conservation programs.

The fact of the matter is that state game and fish officials are the stauchest protectors of such Federal areas. and that is one reason why they do not wish to see the Federal government treating the game as if they were owners, not caretakers. Since I do not want to take up too much of the time of this busy committee, I shall cut my statement short and will enlarge upon the points during House Committee hearings.

I shall close now by urging this subcommittee to give a favorable report on this bill while safeguarding those values mentioned.

I would only add that while the regulations of the Interior Department are a very fine gesture by Secretary Udall, these rights of the states should be assured by a Federal law which will preclude the repetition of the incident which took place at Carlsbad Caverns National Park.

APPENDIX

Telegrams addressed to Congresswoman Julia Butler Hansen from James Jackson, chairman of the Quinalt Tribe, Taholah, Wash., and from Helen Mitchell, recording secretary, National Congress of American Indians, Taholah, Wash.:

TAHOLAH, WASH., *June 26, 1968.*

JULIA BUTLER HANSEN,
House Office Building,
Washington, D.C.

The Quinalt Tribe has no objections to S. 3212 which expressly preserves Indian right but bitterly objects to S. 2951 which fails to preserve Indian rights.

JAMES JACKSON,
Chairman, Quinalt Tribe.

JULIA BUTLER HANSEN,
House Office Building,
Washington, D.C.

The Quinalt Tribe has no objections to S. 3212 which expressly reserves Indian rights but bitterly objects to S. 2951 which fails to preserve Indian rights.

HELEN MITCHELL,
Recording Secretary,
National Congress of American Indians.

PACIFIC MARINE FISHERIES COMMISSION,
1400 S. W. Fifth Avenue, Portland, Oreg., June 24, 1968.

Hon. FRANK E. MOSS,
U.S. Senate,
Old Senate Office Building,
Washington, D.C.

MY DEAR SENATOR: Attached is a copy of the night letter I sent you yesterday when I learned that you had held hearings on S. 2591 and S. 3212 in Washington, D.C. on June 18 and 19, 1968.

Also attached is a copy of a letter which I had previously dictated for mailing on June 24 to the Honorable Warren G. Magnuson and the Honorable Edward A. Garmatz and to the Congressional Delegates from the States of Alaska, California, Idaho, Oregon and Washington. This letter is being mailed today and is the one referred to in my night letter to you.

Respectfully,

LEON A. VERHOEVEN,
Executive Director.

Attachments: 2.

NIGHTLETTER

PORTLAND, OREG., *June 23, 1968.*

Hon. FRANK E. MOSS,
U.S. Senate,
Old Senate Office Building,
Washington, D.C.:

Regarding hearing held June 18 and 19, 1968, in Washington on S. 2951 and S. 3212 which reaffirm the rights of States to manage, regulate, and control fish and wildlife on Federal lands (with certain exceptions) Pacific Marine Fisheries

Commission strongly supports basic tenet of these bills and wishes this included in record. Letter follows.

PACIFIC MARINE FISHERIES COMMISSION,
LEON A. VERHOEVEN,
Executive Director.

JUNE 24, 1968.

Hon. EDWARD A. GARMATZ,
Chairman, Committee on Merchant Marine and Fisheries, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.
Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce, U.S. Senate, Old Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMEN: This is in regard to the subject of State versus Federal right to manage fish and resident wildlife within State boundaries regardless of whether the ownership of the land or water involved is Federal, State or private. This subject is a frequent item of discussion as witnessed by articles such as "FISH AND WILDLIFE, A Property of All the People," by P. W. Schneider in the Oregon State Game Commission's BULLETIN of May 1968, and "VITAL STATES RIGHTS ISSUE," by the Sport Fishing Institute in SPI Bulletin No. 194, May, 1968. Further evidence of great national concern is the large number of bills now before Congress, such as H.R. 8377 and S. 3212. These bills would reaffirm the States' rights to manage, regulate and control fish and resident wildlife on all lands, including those owned by the Federal Government, with certain exceptions. The Executive Committee of the Pacific Marine Fisheries Commission at its meeting of May 21, 1968 instructed me to inform all the Congressional Delegates from the States of Alaska, California, Idaho, Oregon and Washington that the Commission supports and desires speedy enactment of such legislation.

PMFC agrees with the words of Mr. Schneider (OGC Bull. May 1968), "It is ironic that at a time when all the energies and resources of both the State and Federal fish and wildlife agencies are sorely needed for execution of the many important programs, some of it must be addressed to a problem of this nature. Unfortunately, the record made thus far leaves no alternative but to secure the earliest possible clarification of the issue."

Senator Fannin, on May 2, 1968 (Congressional Record, p. S4860–S4870), reviewed most thoroughly the controversy and legal opinions regarding state versus federal right to manage fish and resident wildlife within state boundaries. I shall not attempt to add to Senator Fannin's review but I would like to share his implied consternation that the Department of Interior continues to accept its Solicitor's opinion that the Federal Government has authority superior to that of the States in managing and regulating all fish and wildlife on federal lands, in spite of a U.S. Supreme Court opinion which held that, "Wild game of a State belongs to the people, in their collective sovereign capacity; and it is not the subject of private ownership, except insofar as the people may elect to make it so" and a recent U.S. District Court decision that held that the Secretary of the Interior, et al. must first secure authority for their acts regarding deer on National Park lands in New Mexico by compliance with State law.

To allow this controversy to continue will only do harm. Great portions of the western States are federal lands. Federal licensing of fishing and hunting on federal lands would decrease the revenue to the States from state fishing and hunting licenses and would increase the cost to the angler or hunter for two licenses unless he wished to restrict his activities to only federal lands or to only lands under state jurisdiction. The total administrative costs for both state and federal management would also be increased. The possible existence of differing state and federal fishing and hunting laws in the same locality might be a source of confusion and injustice. Confusion and conflict could arise between various federal agencies (Department of Agriculture, National Park Service, Bureau of Land Management, Bureau of Sport Fisheries and Wildlife, Army Corps of Engineers, etc.) because of differences in management philosophies and regulations. Dual management would be likely to encourage harmful competition and duplication when maximum cooperation is actually required.

The Pacific Marine Fisheries Commission sincerely hopes that the Ninetieth Congress will reaffirm the right of the States to manage, regulate and control fish and resident wildlife on all lands within state boundaries, except in certain instances.

Respectfully,

LEON A. VERHOEVEN,
Executive Director.

SPORT FISHING INSTITUTE,
719 Thirteenth Street NW., Washington, D.C., June 14, 1968.

Senator WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate Office Building,
Washington, D.C.

DEAR SENATOR MAGNUSON: Your letter of May 29 inviting the testimony of the Sport Fishing Institute on S. 2951 and S. 3212, bills relating to the authority of the States to control, regulate, and manage fish and wildlife that are resident within their territorial boundaries, is herewith acknowledged. We would appreciate a copy of our statement, which follows, being made a part of the testimony presented at the Public Hearings June 18–19, 1968.

Sport Fishing Institute concurs in the action of the International Association of Game, Fish, and Conservation Commissioners in its endorsement of S. 2951 by Senators Alan Bible, Howard Cannon, and Frank Church. We shall address ourselves to this bill. It is hoped that through its adoption, the continuing argument and controversy between the respective fish and game commissions of the various states and federal agencies, as to who has jurisdiction on federal lands over resident wildlife species, will be resolved.

A clarification of the state conservation agencies' position with respect to primary jurisdiction over resident species of fish and wildlife is paramount. The history of state and federal relations involving resident species of fish and wildlife has involved several controversies in the past, and while there are some two-score bills now pending in Congress to reaffirm jurisdiction we feel that S. 2951 will best accomplish this task. The state conservation agencies must have full responsibility of administering resident species of fish and wildlife inhabiting the lands, even though it means these lands themselves may be administered by federal agencies. The terms *resident* or *non-migatory* in our opinion is the prime consideration in point. The Department of Interior Solicitor held in 1964 that the Federal Government had exclusive authority to manage and regulate *all* fish and wildlife on federal lands, regardless of whether or not such fish or wildlife cross state boundaries. A traditional division of management responsibility since colonial times, concerning resident species has always been that of major concern to the state agencies—not the federal government. Mutually satisfactory working agreements between representatives of the IAGFCC and the U.S. Department of Interior have not yet been evidenced.

Congressional legislation, therefore, seems imperative to affirm the state and federal positions. We are convinced that the states are *not* seeking greater powers than they have always exercised and been widely believed to possess, and I quote:

"The International Association of Game, Fish and Conservation Commissioners has for sometime been greatly concerned over the continuing trend toward federal intrusion into the historic and traditional areas of responsibility and jurisdiction of the states in the management of fish and resident wildlife. This gradual usurpation of authority has been greatly accelerated by the opinion of the Solicitor of the Department of the Interior, dated December 1, 1964, which stated in effect, that the Federal Government has authority superior to that of the states in managing and regulating all fish and wildlife on Federal lands.

"If the Federal Government's claim of authority over fish and wildlife prevails, then private land-owners could conceivable claim a similar right, and the time-honored principle of state ownership, regulation, and management of fish and resident wildlife would be destroyed. It is the firm and unequivocal conviction of this Association that the ownership of land does not include the ownership of fish and wildlife as claimed by the Solicitor's opinion. Such a doctrine would have an extremely adverse and chaotic effect on the management of fish and wildlife resources in all parts of the nation.

"Since the Solicitor's opinion was issued, all efforts to resolve this controversy through negotiation with the Department of Interior has been introduced in the Congress of the United States to reaffirm the traditional rights of the States to the ownership, management, and regulation of fish and resident wildlife. "In attempting to resolve this dispute, it should be emphasized and made abundantly clear that the International Association does not desire to change the present status of certain laws and concepts which have to do with the following:

"(1) Any international treaty involving the regulation of migratory birds,
"(2) The Rare and Endangered Species Act,
"(3) The Bald Eagle Act,

"(4) Rights of Indians and natives of Alaska to hunt and fish as established by treaties or Acts of the Congress,

"(5) Management of lands or control over wildlife species which have been ceded by any state to the United States,

"(6) The Federal responsibility for conserving and developing fish and wildlife habitat on Federal lands.

"The International Association fully subscribes to the traditional right of the landowner to manage his lands. We agree that the Federal Government has the same rights that any other landowner has under the laws of the respective states.

"In summary, the International Association believes that it is imperative that the Congress take prompt action to resolve this jurisdictional controversy by reaffirming the states' rights to manage, regulate and control fish and resident wildlife, on all lands, including those owned by the Federal Government, with certain exceptions. Such a declaration of national policy by the Congress will enable state and federal conservationists to once again unite and present the common front so vitally needed in the management of the nation's fish and wildlife resources."

The state conservation agencies are strongly supported in this position by most of the national conservation organizations which have been close to the history in practice of fish and wildlife resource management. We have long supported a traditionally-accepted and traditionally-practiced division of fundamental resource management responsibility for resident and migratory fish and game resources between state and federal governments, respectively, as avowed by the IAGFCC. Sport Fishing Institute's Board of Directors resolved at its Annual meeting in Chicago, Illinois, on May 9, 1968 the following: Now, therefore, be it

Resolved, That the Directors of the Sport Fishing Institute, assembled in regular Annual Meeting this 9th day of May, 1968, in Chicago, Illinois, do herewith urge the United States Government, particularly the Department of the Interior, to promptly set aside the Solicitor's Opinion of reference or otherwise, do herewith urge the Congress of the United States to take prompt and positive action to resolve this unfortunate and damaging jurisdictional controversy by forthrightly reaffirming the States' rights and authorities to manage, regulate, and otherwise control fish and resident wildlife (with certain exceptions) on all lands, including those owned by the Federal government; and be it further

Resolved, That the Directors of the Sport Fishing Institute do herewith advise the United States Government and the Congress of the United States, in recommending such method of resolving this dispute, that they do not desire or intend that there be any overriding legislative change or modification of policy with respect to any international migratory bird treaty or treaties or acts affecting aboriginal peoples, as well as the recent acts pertaining to rare and endangered species, and eagles; nor do they wish to change the controls over lands and wildlife species that have been specifically ceded by the States to the United States, or to affect existing Federal responsibility for conserving and developing fish and wildlife habitat on Federal lands; and that it is their expectation that such a declaration of national policy by the Congress will enable State and Federal conservationists to unite once again in the common purpose that is vitally necessary for carrying out effective and beneficial husbandry of America's precious fish and wildlife resources for the broad public benefit of all Americans, particularly including those urban residents about whose interests there is increasing concern.

Mr. Chairman, we thank you for the opportunity to present the views of the Sports Fishing Institute on this most important issue.

Sincerely yours,

PHILIP A. DOUGLAS,
Executive Secretary.

2822 EAST SHANGRI LA, PHOENIX, ARIZ.,
June 26, 1968.

Hon. WARREN G. MAGNUSON,
U.S. Senate, Senate Office Building,
Washington, D.C.

DEAR SENATOR MAGNUSON: Passage of S3212 will reaffirm the states jurisdiction over wildlife. The states authority over resident species of wildlife must be identified by Congress to prevent continued erosion of the states authority.

Federal authority over wildlife on federal lands as expressed in the Weinberg opinion would be detrimental to the welfare of wildlife. This opinion suggests

that ownership of wildlife rests with the land owner. Private land owners could support the position of federal ownership and claim title to wildlife on their lands.

State game and fish departments have long exhibited the ability to manage, protect, and preserve resident species of wildlife. This authority must continue. Failure to pass S3212 or similar legislation jeopardizes the future of all state wildlife agencies.

Sincerely,

LAWRENCE E. POWELL

THE WILDERNESS SOCIETY,
15th Street NW., Washington, D.C., June 23, 1968.

Senator WARREN G. MAGNUSON,
Chairman, Senate Committee on Commerce,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR MAGNUSON: The Wilderness Society was unable to provide a witness to testify before your Committee on June 18, 1968 on S. 2951 and S. 3212, but would like to offer this expression of its position on these measures for the hearing record:

The Wildness Society shares the view held by the majority of the country's national conservation organizations that these bills should be put aside and that the Secretary of the Interior's newly announced policy statement on this matter should be given a chance to work.

As we read the Secretary's new policy—offered as part of Commissioner Pautzke's statement to your Committee on June 18th—the Department of the Interior has adopted a posture not dissimilar from the cooperative agreement approach of the U.S. Forest Service, which has served satisfactorily for years to clarify fish and wildlife responsibilities in the National Forests.

Contained within the Interior Department's policy are the unique protective aspects of traditional National Park and Monument wildlife management practice, which we agree must be maintained.

We share the concern of the administrators of the state wildlife conservation agencies that the State's prerogative to administer the wildlife resource must not be whittled away, lest the financial base of their agencies—which overall have done an excellent job in wildlife law enforcement and habitat restoration—be eroded away as well.

Yet we view the new Interior Department policy statement as a sound approach, and urge that such administrative steps be given a thorough trial before special legislation to cope with the situation is given serious consideration.

Sincerely,

STEWART M. BRANDBORG,
Executive Director.

NATIONAL RIFLE ASSOCIATION OF AMERICA,
1600 Rhode Island Avenue, Washington, D.C.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Committee on Commerce,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MAGNUSON: The National Rifle Association of America, representing one-million sportsmen-members, would like to express its support for S. 2951, a bill which confirms the State's rights to manage, regulate and control fish and wildlife within their territories, including lands owned by the United States.

Mr. Chairman, ownership of land does not include the ownership of the fish and wildlife species upon that land. Usurpation by the Federal government of the State's right to manage their wildlife species would result in chaotic and checkerboard patterns of management and harvest practices along land ownership boundaries. This would render wildlife vulnerable to the whims of private landowners and Federal agencies. The future of many species would fall into jeopardy.

Traditionally the States have provided the overwhelming majority of the funds, manpower and knowledge for management of our wildlife species. This arrangements is eminently successful. Any change which would erode the State's

rights in this matter could only lead to the detriment of sound wildlife management practices through removing the authority of that management farther from is actual application.

This jurisdictional controversy which has arisen several times during our country's history must be logically resolved, keeping in mind the welfare of our wildlife and the best interests of America's sportsmen.

Again Mr. Chairman, we offer our support for S. 2951 and urge that it be reported to the Senate floor as originally proposed.

Sincerely,

FRANK C. DANIEL,
Secretary.

NATIONAL RECREATION AND PARK ASSOCIATION,
1700 Pennsylvania Avenue NW.,
Washington, D.C., June 18, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Committee on Commerce,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR MAGNUSON: Our brief comments relate to proposed legislation to vest, in the states, management authority over wildlife in parks and other federal areas.

The National Recreation and Park Association is a private nonprofit organization dedicated to advancing the leisure concept and enhancing park and recreation opportunities for all people. Our membership of over 15,000 includes individuals serving the profession, their agencies, boards, commissions, and related disciplines.

Not withstanding the apparent misuse of the term "management," which includes far more than regulatory powers alone, the recently announced policy of the Department of the Interior would, we believe, correct the situation at hand.

In view of this policy, I believe it would be in the best interest of all concerned to forego enacting legislation on the basis of historical differences, especially when mutually acceptable solutions now appear at hand. If, after a reasonable length of time, however, major differences still exist and cooperative efforts are minimal, legislation might be the correct approach.

Thank you for the opportunity to comment on this matter.

Sincerely,

SAL J. PREZIOSO,
Executive Vice President.

U.S. SENATE,
COMMITTEE ON AGRICULTURE AND FORESTRY,
Washington, D.C., July 2, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
New Senate Office Building,
Washington, D.C

DEAR COLLEAGUE: Attached is a copy of a letter received from the Oregon State Game Commission in support of S. 3212 now before the Commerce Committee.

It will be appreciated if this letter can be made part of the record in support of this legislation.

Sincerely,

MARK O. HATFIELD,
U.S. Senator.

STATE OF OREGON,
OREGON STATE GAME COMMISSION,
1634 Southwest Alder Street, Portland, June 21, 1968.

Re S. 3212; bill giving the States the authority to control, regulate, and manage resident species of wildlife on all lands within State boundaries, except where jurisdiction has been ceded by an appropriate action of the State legislature and except for migratory birds.

Hon. MARK O. HATFIELD,
U.S. Senate,
Washington, D.C.

DEAR SIR: Historically, the several states are owners in trust for citizens of the states of all wildlife within its boundaries. This principle has withstood the test of several U.S. Supreme Court decisions. Hunt v. U.S., 278 US 96; Missouri v. Holland, 252 US 416; La Costa v. Department of Conservation, 263 US 545; and Geer v. Connecticut, 161 US 519, among others.

This concept was affirmed as recently as April of this year, in the case of the New Mexico State Game Commission v. Stewart L. Udall, Secretary of Interior, et al., the United States District Court for the District of New Mexico.

Oregon law, ORS 498.005, provides that wild animals in the State of Oregon are the property of, and belong to the people of the State.

Through the years at various times, various agencies of the Federal government have attempted, by one means or another, to assert sovereign jurisdiction over resident species of wildlife, despite the clear cut language versed in the case of Missouri v. Holland. The states, through the International Association of Game, Fish and Conservation Commissioners, have managed to maintain their sovereign power to administer their wildlife populations.

On December 1, 1964, in a Memorandum Opinion No. 36672 issued by the solicitor for the Department of Interior, it was asserted that ownership of land within the state by the Federal government carried with it the sovereign power to regulate the resident species of wildlife thereon. Since the Federal government owns 52 percent of the total area of the State of Oregon, the impact of this opinion, if implemented, would virtually put the State of Oregon out of the wildlife management business as most wildlife species are found on Federal lands.

The opinion of the U.S. Solicitor is indefensible. It has been analyzed thoroughly and it was found to be without merit. Because of this the International Association of Game, Fish and Conservation Commissioners and the several states have gone on record as being opposed to the conclusion reached in the opinion. The bill under consideration constitutes an attempt by the states to reaffirm their historical right to manage the resident species of wildlife.

The bill will not change anything, as this concept is already the law.

Very truly yours,

P. W. SCHNEIDER,
Director.
By ROY C. ATCHISON,
Assistant Attorney General.

I offer for the record a letter from Senator Philip A. Hart, of Michigan, requesting that a telegram from the Great Lakes Commission in support of S. 2951 and S. 3212, be placed in the record of this hearing.

U.S. SENATE,
Washington, D.C., June 25, 1968.

Col. LEONARD J. GOODSELL,
Executive Director, Great Lakes Commission, I.S.T. Building, 2200 North Campus Boulevard, Ann Arbor, Mich.

DEAR COLONEL GOODSELL: Thank you for your telegram of June 19 in support of S. 2951 and S. 3212.

I appreciate knowing of your interest and I will be glad to request that your telegram be inserted in the record.

Sincerely,

PHILIP A. HART.

GREAT LAKES COMMISSION,
2200 North Campus Boulevard, Ann Arbor, Mich., June 19, 1968.

Senator PHILIP HART,
Old Senate Office Building,
Washington, D.C.:

On June 14, 1968, Great Lakes Commission formerly approved resolutions in support of enactment of S. 2951 and S. 3212 which declare national policy reaffirming the rights of the States in the traditional and historic areas of responsibility and jurisdiction of the several States in the management and regulation of fish and resident wildlife.

Request your support and inclusion of this telegram in the record of hearing. Letter and and copy of resolution follow.

LEONARD J. GOODSELL,
Executive Director.

U.S. SENATE,
Washington, D.C., June 28, 1968.

Respectfully referred to Mr. Huse, Committee on Commerce, for information and retention.

HENRY M. JACKSON,
U.S. Senator.

TAHOLAH, WASH., *June 26, 1968.*

HENRY M. JACKSON,
Senate Office Building,
Washington, D.C.:

The Quinalt Tribe has no objections to S. 3212 which expressly preserves Indian right but bitterly objects to S. 2951 which fails to preserve Indian rights.

JAMES JACKSON,
Chairman, Quinalt Tribe.

TAHOLAH, WASH., *June 26, 1968.*

HENRY M. JACKSON,
Senate Office Building,
Washington, D.C.:

The Quinalt Tribe has no objections to S. 3212 which expressly preserves Indian rights but bitterly objects to S. 2951 which fails to preserve Indian rights.

HELEN MITCHELL,
Recording Secretary,
National Congress of American Indians.

FORT LAUDERDALE, FLA., *June 18, 1968.*

DEAR SENATOR MAGNUSON: I wish to express opposition to States rights wildlife bills S. 2951 and S. 3212.

Only the Federal Government should control wildlife in our wilderness areas and national parks.

Yours,

B. B. HALL,
3017 Sebastian Street.

AUBURN, WASH., *June 25, 1968.*

Senator WARREN MAGNUSON,
Washington, D.C.:

The Muckleshoot Tribe opposes Senate Bills 2915 and 3213.

BERTHA MCJOE AND THE MUCKLESHOOT TRIBE,
604 24th Street SE.

[From the Washington Post, July 3, 1968]

CONTROL OF WILDLIFE

Hearings have been held on an extremely mischievous bill by Senator Fannin to give the states control over fish and wildlife on land or in water owned by the Federal Government. There has been some misunderstanding of the bill, probably

because its sweeping cession to the states of "all right, title and interest of the United States" to fish and wildlife within its territories. The bill does have some extensive exceptions. But they tend only to minimize its unfortunate consequences.

In his statement to the Senate Commerce Committee, Mr. Fannin gave assurance that the bill would not affect hunting or fishing rights of Indians and Alaskan natives protected by treaty or Federal statute. It would not infringe the Rare and Endangered Species Act or the Bald Eagle Act, as some had feared. And it would not diminish the authority of the Government to control fish and wildlife under treaty or on lands "to which a state has ceded exclusive jurisdiction."

This latter phrase is designed to exclude the national park system from the terms of the bill, and most of the parks would remain closed to hunters. In some, however, the National Park Service does not have exclusive jurisdiction over the lands, and these might be exposed to unwanted encroachments. So far as other public lands are concerned, the Interior Department has not attempted to set up regulations of its own independent of state policy.

The basic error here is in trying to alter existing relations vital to the conservation of fish and wildlife by means of a bill couched in sweeping terms. The Interior Department has been working for years with the International Association of Game, Fish and Conservation Commissioners to devise mutually satisfactory regulations applicable to fish and wildlife on Federal lands. The joint policy statement which has now emerged may be approved by the Association in September. It would be most unfortunate for Congress to rush in with conflicting legislation before examining this administrative solution of the problem and allowing it time to prove itself in operation. The place for the Fannin bill and others like it is the dustbin.

STRASSER, SPIEGELBERG, FRIED, FRANK & KAMPELMAN,
1700 K Street NW., Washington, D.C., July 8, 1968.

STATEMENT ON S. 2951 AND S. 3212

This statement is submitted on behalf of the Hualapai Tribe of Arizona, the Pueblo of Laguna, New Mexico, the Metlakatla Indian Community of Alaska, the Nez Perce Tribe of Idaho, the Oglala Sioux Tribe of South Dakota, the San Carlos Apache Tribe of Arizona, and the Salt River Pima-Maricopa Indian Community of Arizona. Each of these Indian tribes has an interest in land "owned or controlled by the United States," in that the reservations on which their members live are lands title to which is in the United States and control over which is exercised by the Bureau of Indian Affairs. These tribes could thus be directly affected by the provisions of S. 2951 and S. 3212.

Both bills attempt to exempt Indian hunting and fishing rights from their scope. However, only one of them, S. 3212, does so successfully. The tribes on whose behalf this statement is submitted thus have no objection to S. 3212 but ask you not to report favorably on S. 2951 unless Indian hunting and fishing rights are protected in the same manner in which they are protected in S. 3212.

A reading of subsection (a) of section 4 of S. 2951 suggests that the inadequate wording of the bill with regard to Indian hunting and fishing rights may be the result of inadvertence. It would appear that the words "or Indian" were added to a section of the bill designed to except the provisions of international treaties or conventions from the scope of the legislation. The words were added probably on the assumption that this action resolves the problem of Indian rights. For the reasons indicated below it does not.

In the first instance the hunting and fishing rights of Indians are not only based on treaties but on statutes as well. By failing to except statutory rights from the scope of S. 2951, the bill could seriously infringe on these rights.

Even as to treaty rights, the language of S. 2951 is not adequate. Treaty rights are protected only as to those species of fish and wildlife expressly named in the treaties. But most Indian treaties do not mention the species covered by a hunting or fishing right. Thus S. 2951 could have the effect of depriving Indians of their treaty hunting and fishing rights as well as their statutory rights.

Because of the obviously inadvertent action of the drafters with regard Indian hunting and fishing rights, S. 2951 would open the door wide to legal disputes over these issues. If the tribes were ultimately found to have retained their rights, this result would be achieved only after extended litigation, which

might be expensive to the tribes and the states involved. If the Indians are found to have lost their rights, this will mean that S. 2951 could be construed as an act of taking, entitling each tribe affected to compensation under the Fifth Amendment. This may prove rather expensive to the United States Treasury.

For the reasons stated it is respectfully requested that, if the Committee takes favorable action on this legislative proposal, it adopt language which clearly and unmistakably exempts Indian hunting and fishing rights from the scope of the bill.

RICHARD SCHIFTER.

NEW CANAAN AUDUBON SOCIETY, INC.,
New Canaan, Conn., June 24, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Senate Office Building,
Washington, D.C.

DEAR SIR: We have an interest in S 2951 and related bills which concern the powers of the State governments relative to wildlife. In general, we endorse the principle of the states establishing suitable regulations for non-migratory wildlife within their jurisdiction.

However, we must oppose the legislation as currently written. We take this position because it appears to us that this legislation may interfere with the ability of Federal agencies to properly execute their mandate. In addition, it appears that there are inadequate safeguards for endangered species and other wildlife forms of national interest.

Sincerely,

CONSERVATION COMMITTEE, NEW CANAAN AUDUBON SOCIETY, INC.,

Mrs. WILLIAM F. MURPHY,
Chairman.

Mrs. GEORGE DELAGE.
MELVILLE C. THOMASON.

The staff counsel offers for the record the following letters, which were addressed to Senator Magnuson and Senator Moss from various States, expressing their support of S. 2951 and S. 3212.

STATE OF COLORADO,
DEPARTMENT OF GAME, FISH AND PARKS,
6060 Broadway, Denver, April 16, 1968.

Hon. WARREN MAGNUSON,
Chairman, Senate Committee on Commerce,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MAGNUSON: I would like to express my appreciation for your interest and support regarding bills pending before your Committee which would reaffirm the authority of the states to regulate, manage and control fish and resident wildlife.

I would like to suggest that hearings be scheduled on these bills as soon as possible at a time that meets with the convenience of the Committee.

Your consideration of this request will be most appreciated by all of the States and the many organizations which are anxious to see an early settlement of this matter.

Respectfully,

HARRY R. WOODWARD,
Director.

STATE OF LOUISIANA,
WILD LIFE AND FISHERIES COMMISSION,
400 Royal Street, New Orleans, June 6, 1968.

Hon. FRANK EDWARD MOSS,
U.S. Senate,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MOSS: It is my understanding that a hearing will be held on SB2951 on June 18–19.

The enclosed resolution was unanimously passed by the Louisiana Wild Life and Fisheries Commission.

Please enter this resolution as part of the hearing record representing the views of our Commission.

Sincerely yours,

LESLIE L. GLASGOW, *Director.*

Enclosure.

RESOLUTION ADOPTED BY LOUISIANA WILD LIFE AND FISHERIES COMMISSION AT ITS REGULAR MEETING HELD NOVEMBER 14, 1967

Whereas the Solicitor for the Department of the Interior has determined, with Secretary of the Interior Stewart L. Udall concurring, that the Federal Government has full and exclusive control over resident as well as migratory wildlife on all federally owned land, and

Whereas this determination is totally contrary to past traditions under which the states have exercised regulatory power over all resident fish and game species found on all lands within their individual boundaries, and

Whereas it is in the best interest of wildlife management to continue with the procedures used in the past, and

Whereas Congressman Walker has introduced H.R. 8377 in the first session of the 90th Congress which will reaffirm the states' jurisdiction over resident fish and game species on all lands in their respective boundaries: Therefore, be it

Resolved, That the Louisiana Wild Life and Fisheries Commission at its regular meeting held in New Orleans this date, November 14, 1967, fully endorses H.R. 8377 which is designed to prevent further federal encroachment on the states' individual responsibilities in the management of resident fish and wildlife resources on all lands within their respective boundaries; and be it further

Resolved, That each member of the Louisiana Congressional Delegation be requested and urged to assist in the enactment of H.R. 8377.

This is to certify that the above and foregoing is a true and correct excerpt from the minutes of the meeting of the Louisiana Wild Life and Fisheries Commission held in New Orleans, Louisiana, on Tuesday, November 14, 1967.

LESLIE L. GLASGOW, *Director.*

DEPARTMENT OF WILDLIFE CONSERVATION,
Oklahoma City, Okla., February 21, 1968.

Senator WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MAGNUSON: Senator Bible and others have introduced S. 2951 to spell out the states' rights to manage fish and resident wildlife.

We strongly urge the committee to hold hearings on this bill as soon as practicable.

Sincerely,

WENDELL BEVER, *Director.*

MICHIGAN DEPARTMENT OF CONSERVATION,
Lansing, April 15, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Committee on Commerce,
Old Senate Building,
Washington, D.C.

DEAR SENATOR MAGNUSON: On behalf of the Michigan Department of Conservation, I would like to express our appreciation for your interest in bills pending before your committee which would reaffirm the authority of the States to regulate, manage and control fish and resident wildlife. We are particularly grateful for your co-sponsorship of S. 2951.

I would respectfully urge that hearings be held on the bills as soon as possible so that this important matter can be finally resolved.

I would also request an opportunity to present testimony when hearings are held on S. 2951 or S. 3212.

Sincerely,

RALPH A. MACMULLAN, *Director.*

STATE OF WISCONSIN,
DEPARTMENT OF NATURAL RESOURCES,
Madison, Wis., May 1, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Commerce Committee,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MAGNUSON: Bill S. 2921 on states rights to manage fish and resident wildlife within their boundaries now has been introduced and co-sponsored by a number of Senators. I hope you will be able to schedule a hearing for this measure before your Committee in the reasonably near future.

Thank you for this consideration.

Sincerely yours,

L. P. VOIGT,
Secretary.

STATE OF NEVADA FISH AND GAME COMMISSION,
Reno, Nev., May 6, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Committee on Commerce,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MAGNUSON: The Nevada Fish and Game Commission is vitally interested in Senate Bill 2951 and takes this opportunity to express their most sincere appreciation for your joining with Senator Bible in co-sponsoring said bill.

We are sincerely grateful that this bill has been referred to the Senate Committee on Commerce of which you are Chairman. May we urge you to do everything possible to expedite hearings on this matter as we feel it is vital to the future of our wildlife resources.

Sincerely,

FRANK W. GROVES,
Director.

STATE OF WASHINGTON DEPARTMENT OF GAME,
Olympia, Wash., June 7, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MAGNUSON: It has been indicated to me that your Committee feels it to be desirable that the various states place themselves on record concerning S. 2951 and S. 3212 prior to the hearings scheduled June 18th in Washington to be chaired by Senator Moss. It is our further understanding that later this year federal hearings wil be held throughout the United States and, particularly, in Washington, at which time states will be invited to present individual testimony.

May I, on behalf of the Washington State Game Commission, the Washington State Department of Game and the organized sportsmen of the State of Washington advise you that we, without qualification, support the concepts of state responsibility, state administration and state regulatory authority over resident species of wildlife which are spelled out in both S. 2951 and S. 3212.

The Washington State Game Commission has, by resolution, formally stated its support, and the Washington State Sportsmen's Council has also by resolution equally formally indicated its support on behalf of the sportsmen of the State.

The Department of Game has, on many occasions in the course of many communications addressed both to yourself and other Congressional leaders, indicated its unqualified support of this legislation.

May this letter be considered a record of our position, and we will look forward to the opportunity of testifying at one of the field hearings.

Very truly yours,

JOHN A. BIGGS,
Director.

STATE OF NEW MEXICO DEPARTMENT OF GAME AND FISH,
State Capitol, Santa Fe, June 19, 1968.

Re bill 2951.

Hon. FRANK E. MOSS,
U.S. Senator, Chairman, Senate Commerce Committee, U.S. Senate Office Building, Washington, D.C.

DEAR SENATOR MOSS: We sincerely solicit the endorsement of your Committee Senate Bill 2951. We feel that the passage of this bill, or one which incorporates its essential points, will go far to resolve the many minor misunderstandings which exist between the agencies responsible for the administration of Federal lands and the respective State Departments of Game and Fish.

Our attorney, Mr. George T. Harris, Jr. has filed with your Committee a statement of his opinion of this bill and other legal aspects now being considered by the courts. We of course support his contention, and will certainly appreciate your careful consideration of his request, along with ours, that Senate Bill No. 2951 be given a favorable report.

Sincerely yours,

LADD S. GORDON,
Director.

STATE OF CALIFORNIA,
FISH AND GAME COMMISSION,
Bank of La Jolla Building, La Jolla, Calif., June 13, 1968.

Hon. FRANK E. MOSS,
Member of the Senate,
Senate Commerce Committee,
Washington, D.C.

DEAR SENATOR MOSS: The California Fish and Game Commission strongly endorses the bills being considered by the Senate Commerce Committee on June 18–19, 1968 in regard to the rights of states to control and regulate its resident fish and game resources.

Enclosed is a copy of a resolution passed by the California Fish and Game Commission on January 5, 1968 regarding this subject. It is requested that this resolution be made a part of the record of the Senate Commerce Committee hearings.

Sincerely,

WM. P. ELSER,
President.

STATES RIGHTS OVER RESIDENT FISH AND WILDLIFE

Whereas, in recent years throughout the United States there have been continuing intrusions on the part of various branches of the Federal government into the traditional and historic areas of responsibility and jurisdiction of the several states in the field of fish and wildlife management; and

Whereas, these intrusions have been backed by an opinion of the solicitor of the Interior Department and by a statement of the Secretary of the Interior to the effect that the Federal government has the right to control, regulate aid manage the wildlife resources on Federal lands acquired or reserved for Federal purposes, whether or not jurisdiction has been ceded by the states; and

Whereas, his opinion and these actions can result in the undermining of the states' authority to regulate and manage resident fish and wildlife, and can result in great differences of regulations for Federal areas as contrasted with state regulations on adjacent lands which would cause much confusion to the public and be detrimental to fish and wildlife resources; and

Whereas, continuing efforts on the part of the states through the International Association of Game, Fish and Conservation Commissioners to resolve this issue with the Department of the Interior have failed: Now, therefore, be it

Resolved, That the California Fish and Game Commission does hereby endorse the efforts of the International Association of Game, Fish and Conservation Commissioners to reaffirm the rights of the states to manage and regulate resident fish and wildlife; and be it further

Resolved, That the California Fish and Game Commission memorializes Congress to adopt legislation which would reaffirm the states' rights over resident fish and wildlife; and be it further

Resolved, That the Secretary of the Commission is directed to transmit copies of this resolution to the Governor of California, to each Senator and Representative from California in the Congress of the United States, and to the Secretary of the Interior of the United States.

Adopted by the California Fish and Game Commission in regular meeting assembled this 5th day of January, 1968, in Fresno, California.

MONICA R. GOODGAME,
Secretary of the Commission.

STATE OF MINNESOTA,
DEPARTMENT OF CONSERVATION,
St. Paul, Minn., June 14, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR MAGNUSON: S. 2951 will confirm in the States primary authority and responsibility for the management, regulation, and control of fish and wildlife on lands owned by the United States. The passage of this bill will resolve the continuing arguments and controversy between the various States and Federal agencies as to who has jurisdiction on Federal lands over resident wildlife species.

Minnesota has a special interest in this legislation because there are over four million acres (8% of the total area of the State) of Federal lands within the borders of our State. It is our firm conviction that all resident fish and wildlife species are held in trust for the people of each State by the individual States and that the management of resident fish and wildlife species on Federal lands (except in those few cases where the States have ceded all jurisdiction to a Federal agency) is the inherent right and traditional responsibility of the individual States. Also, we cannot accept the thesis that ownership of fish and wildlife runs with the land. This is inconsistent with our State laws.

We urge that S. 2951 be passed now in order to clarify and reaffirm the authority of the State to control, regulate and manage resident species of fish and wildlife within their border.

Very truly yours,

RICHARD D. WETTERSTEN,
Director, Division of Game and Fish.

NEW ORLEANS, LA.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Senate Office Building,
Washington, D.C.:

The Louisiana wild life & fisheries commission firmly supports Senate bill two nine five one. Confirmation by Congress of the States traditional jurisdiction over the regulation, management, and unchallenged control of fish and resident wildlife on all lands within our respective boundaries is needed now. Favorable action on this bill by the Senate Commerce Committee is requested.

LESLIE L. GLASGOW,
Director, Louisiana Wildlife & Fisheries Commission.

The staff counsel offers for the record communications, addressed to Senator Warren G. Magnuson, from various private individuals, gun clubs, and associations who are in support of this legislation.

WELLS, NEV.

Senator WARREN G. MAGNUSON,
Chairman, Senate Committee on Commerce,
U.S. Senate,
Washington, D.C.:

Wells Rod Gun Club went on record March 4, 1968, unanimously in favor of Senate bill 2951.

JEFF WILLIAMS,
President, Wells Rod and Gun Club.

LOVELOCK, NEV.

Senator WARREN G. MAGNUSON,
U.S. Senate,
Washington, D.C.:

We are 100 percent behind bill 2951.

PERSHING COUNTY SPORTSMEN ASSOCIATION.

DOUGLAS COUNTY GAME MANAGEMENT BOARD,
Douglas County, Nev., February 26, 1968.

Senator WARREN G. MAGNUSON,
Chairman, Senate Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MAGNUSON: The Douglas County Game Management Board, Douglas County, Nevada; would like to go on record giving full support to Senate Bill 2951—introduced by Senators Bible and Cannon, of Nevada, and Senator Church of Idaho.

We feel that the passage of this Bill, as set forth, allowing primary authority of the several States to control, regulate, and manage fish and wildlife within their territorial boundaries and on Government lands, is imperative to the best management and proper control of fish and wildlife.

We do not feel that this Bill is detrimental to the Federal government in the handling of wildlife refuges, etc., contrary to what some may say.

We urge your full consideration and support of Bill (S. 2951).

Sincerely,

JAMES A. LAWRENCE,
Chairman, Douglas County Game Managament Board,
Rock Creek Ranch, Gardnerville, Nev.

LAS VEGAS SPORTSMEN'S ASSOCIATION,
Las Vegas, Nev., March 1, 1968.

Senator WARREN G. MAGNUSON,
Chairman, Senate Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR HONORABLE MAGNUSON: The Las Vegas Sportsmen's Association would like to give our support for Senate Bill 2951, stating that the Federal government has the right to control resident species of wildlife on Federal land.

This bill will help solve a great many problems between the Fish and Game Commission and the Federal agencies.

Very truly yours,

GROVER LEAR, *President.*

HUMBOLDT COUNTY ROD & GUN CLUB,
Winnemucca, Nev., February 29, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR SENATOR MAGNUSON: I have been instructed by our Club to inform you that the Club supports Senate Bill No. 2951, which provides for state control of fish and game on most federal lands. We hope the bill will receive your support.

Sincerely,

JAMES R. BRUNNER, *Secretary.*

CHAMBERLAIN BASIN OUTFITTERS,
Wells, Nev., February 26, 1968.

Senator WARREN G. MAGNUSON,
Chairman, Senate Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR SIR: I am writing you in regard to Senate Bill 2951 introduced by Senators Bible and Cannon of Nevada and Senator Church of Idaho. I urge your

support of this bill to allow States control over their resident wildlife species.

Sincerely yours,

STANLEY POTTS,
President, Nevada Guides & Packers Association;
Member, Idaho Outfitters & Guides Association.

WHITE PINE SPORTSMEN,
NEVADA WILDLIFE FEDERATION—MEMBER,
Ely, Nev., March 7, 1968.

Senator WARREN G. MAGNUSON,
Chairman, Senate Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR SIR: This organization wishes to convey to your committee our unanimous support for passage of Senate Bill 2951.

Many instances of indecision and confusion have occurred in our area recently over the lack of just such legislation that this bill intends to clarify. Much bitter feeling by local sportsmen have been expressed concerning the lack of any definite lines to follow in the determining of who has authority on federal refuges in the setting of fishing regulations, both in setting seasons and areas. In one instance where state fishing regulations declared an area open, fishermen traveling many hundreds of miles to this area found the area closed by federal officials.

The intentions of Senate Bill 2951 are highly commendable as long standing practice has given the states jurisdiction over the fish and wildlife therein. Wherever federal intervention occurs it usually results in confusion and dissension among sportsmen.

Very sincerely yours,

GLEN E. WESTOVER, *President.*

PIOCHE ROD & GUN CLUB, INC.,
Pioche, Nev.

Re Senate bill 2951 sponsored by Senators Bible, Cannon, and Church.

Senator WARREN G. MAGNUSON,
Chairman, Senate Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MAGNUSON: We are writing to let you know that our club is very much in favor of passage of this Bill.

We feel that the states should have control over the Fish and Game in the various States even though they may be on Federally owned land. As you I am sure know the state of Nevada is nearly all owned Federally and the Federal Govt. therefore without passage of this Bill would be running the complete Fish and Game picture in this State.

We hope you will do what you can to help in the passage of this Bill. If we can be of any help whatsoever please let us know. We thank you again for any help which you might be able to give in this matter.

Sincerely,

WILLIAM T. LLOYD, *Secretary.*

WINNEMUCCA, NEV., *March 7, 1968.*

Hon. WARREN G. MAGNUSON,
Chairman, Senate Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR SIR: The Humboldt County Game Management Board of Humboldt County, Nevada, wishes to express to you our concern over the issuance of the Solicitor's Opinion, stating that the Federal government has the right to control resident species of wildlife on Federal lands. We are of the opinion that Senate Bill 2951 would be to the best interest of the *Conservation* of *Wildlife.* We would appreciate your help in urging the passage of Senate Bill 2951 for the best interest of our wildlife.

We wish to thank you for any help you might give us.

Respectfully yours,

RANDY CALLE,
Chairman, Humboldt County Game Management Board.

ORMSBY SPORTSMEN'S ASSOCIATION,
Carson City, Nev., March 22, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MAGNUSON: This organization of one hundred and three members, by a majority vote of the members present at their regular meeting held March 19, 1968, voted to support Senate Bill 2951 as submitted jointly by Senators Bible and Cannon of the State of Nevada and Senator Church of the State of Idaho, regarding the right of the states to manage, regulate and control resident species of fish and wildlife on public lands as stipulated in Senate Bill 2951.

It is our opinion, if the right to manage, regulate and control the resident fish and wildlife on public lands owned by the federal government, in the various states, were taken out of the hands of the state agencies and placed in the hands of a federal agency, it would create many problems that could not satisfactorily be handled by either agency. The various State Fish and Game Commissions and/or Departments are familiar with the problems of managing, regulating and controlling the resident fish and game on all lands within their state, because, much research and the expenditure of millions of dollars have gone into their programs. They have gained years of experience in this field. We do not believe, it would be in the best interest of all the citizens of the United States, if the management, regulation and control of the resident species of fish and wildlife on public lands within the various states, were turned over to a federal agency that does not have experience in the management, regulation and control of the fish and wildlife on these public lands.

We will appreciate your support of Senate Bill 2951.

Sincerely,

LESLIE L. BUNCH, *President.*

CEDAR RIDGE, CALIF.

Re primary authority and control of fish and wildlife.

Hon. WARREN MAGNUSON,
The Senate,
Washington, D.C.

DEAR MR. MAGNUSON: We are pleased that you are co-sponsor of S. 2951.

I have written our senators Kuchel and Murphy and representative Harold Johnson urging them to fully support S. 2951 and H.R. 15973.

Mr. Johnson informs me there is no action considered in the Senate Commerce Committee nor the House Committee on Merchant Marine and Fisheries.

May I urge you to bring pressure to bear on these committees for early positive action so that our wildlife on Federal lands and other private property is properly protected.

In writing our Congressional Representatives, I stated "I am sure you and all other Representatives of our State (and all other States) will 'fight to the death' to retain anything that is truly vital to the welfare of one's State."

Wildlife has always belonged to the State. It has been so declared by the Supreme Court. Such has been the law since 1200, the Magna Carta days.

Congress must clearly reaffirm this fact immediately and protect our birds and animals from destruction through chaos.

Very truly,

ELBRIDGE J. BEST, M.D.

P.S.—This is endorsed by the Sacramento, Sierra, Sportsmen's Council which is composed of 14 sportsmen's clubs in Northern California.

AMERICAN GAME ASSOCIATION,
1390 Seventh Avenue, Sacramento, Calif., April 23, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Committee on Commerce,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MAGNUSON: As one who has devoted the past 55 years to the conservation of our natural resources, including 27½ years at the head of State

Fish & Game Departments, permit me to express my gratitude that you have seen fit to become a co-sponsor of the Bible Bill S–2951, to clarify the responsibility of the several States to manage resident fish and wildlife.

There is absolutely no excuse for the present controversy, created by the Federal agencies, and the sooner this matter is resolved the better for all concerned.

I trust your Committee will schedule hearings on the bills before your Committee as soon as you can plan to do so.

With warm regards, I am,

Sincerely,

SETH GORDON.

[Reprinted from the 1958 California Blue Book]

CALIFORNIA DEPARTMENT OF FISH AND GAME

Seth Gordon was born in Richfield, Pennsylvania, April 2, 1890. Attended New Bloomfield Academy; Pennsylvania Business College. Married Dora Belle Silverthorn, January 29, 1910; two children: Major Seth Gordon, Jr.; and Mrs. John M. Stephenson. Wildlife administrator, conservation consultant, and writer since 1913. Began conservation career in 1913, as a game protector in Pennsylvania; and by 1919, had become administrative head of the Pennsylvania Game Commission. Resigned, 1926, to become Conservation Director, Izaak Walton League. Elected President, American Game Association, 1931. Founder, 1935, and first administrative head, American Wildlife Institute (now the American Wildlife Foundation and Wildlife Management Institute). Returned to Pennsylvania Game Commission as Executive Director, 1936; retired, 1948, to become Consultant, California Wildlife Conservation Board. Appointed Director of Fish and Game, September 22, 1951, by Governor Warren to reorganize the then newly created department; continued by Governor Goodwin Knight in 1953. Terminated April 1, 1967. Past President, International Assn. Fish, Game, and Conservation Commissioners. Member, numerous conservation and civic groups; Cosmos Club, Washington, D.C.; American Fisheries Society (Past President); Wilderness Club, Philadelphia (honorary); Wildlife Society of America (honorary). Director, National Rifle Assn. of America. Vice President, North American Wildlife Foundation. Honorary degree, Doctor of Science, October 2, 1953, from University of Michigan.

(For further information see "Who's Who" in America.)

WASHINGTON STATE SPORTSMEN'S COUNCIL, INC.,
Vancouver, Wash., January 23, 1968.

Hon. WARREN G. MAGNUSON,
Senior Senator, Washington,
Senate Office Building, Washington, D.C.

DEAR SENATOR MAGNUSON: The Washington State Sportsmen's Council will appreciate your review and comments on the attached resolution number 1267–5.

It is a belief of the Council that the threat to regulate Indian fishing off reservations is just a test means for federal management of fish and game in line with the recent opinion of the Department of Interior Solicitor. Of course, this action would take away from the states their management of fish and game resources.

Your compliance with our above request will be greatly appreciated.

Conservationally yours,

LEN H. MABBOTT, *President.*

RESOLUTION No. 1267–5

Whereas the Washington State Sportsmen's Council has consistently taken the position that all treaties with Indian tribes in the State of Washington secure to said Indians only limited off-reservation fishing rights by the simple and understandable clause in all of said treaties to wit: "The right of taking fish at usual and accustomed grounds and stations if further secured to said Indians *in common with all* citizens of the Territory", and such position has been clearly adjudicated in the U.S. Supreme Court, Tulee v. Washington, 315 U.S. 681 (1942) when the court rules: "The Treaty leaves the state with power to impose on

Indians, *equally with others*, such restrictions of a purely regulatory nature concerning the *time* and *manner* of fishing outside the reservation as are necessary for the conservation of fish . . .", a statement of ample clarity which should leave no doubt that Indians and non-Indians are subject to the same conservation regulations when fishing outside of reservation boundaries, and

Whereas had the drafters and signatories of the original treaties intended otherwise, it would have been a simple and logical procedure to have inserted in said treaties a clause to the effect "Nothing in this treaty shall abridge the rights or practices of any Indian, or tribe, to fish at any time or manner at their usual and accustomed grounds," and

Whereas the U.S. Supreme Court has ruled that the granting of statehood gives the new state the right to regulate fishing and hunting on off-reservation ceded land, and

Whereas despite the foregoing statement of existing facts which should be self-evident to any clear thinking and interested individual citizen, government employee or court without an ulterior or emotional purpose or mind, there continues an insidious and disturbing movement within the Federal Government to encourage Indians to violate state fish conservation regulations and laws, as well as the treaties themselves, which movement has been tremendously aided and abetted by the U.S. Bureau of Indian Affairs, the Bureau of Commercial Fisheries and Secretary of Interior Stewart Udall's part in the establishment of the Code of Federal Regulations, Title 25, Part 256, for the Regulation of Off-Reservation Fishing by Indians, filed in the Federal Register and made effective July 10, 1967, and

Whereas since slanted and false official publicity has been released by the Department of Interior of their intention to permit and regulate Indian treaty off-reservation fishing, violations have skyrocketed, when in September as many as 165 illegal Indian netting operations were either observed or apprehended by Washington State enforcement officers: Now, therefore, be it

Resolved, That the Washington State Sportsmen's Council in convention assembled this 3d day of December, 1967 at Everett, Washington, does hereby vigorously reject the Department of Interior's premise of its right, or that of any of its bureaus, to muscle into the regulation of the state's off-reservation fishery resource, and to particularly brand the statements contained in the Secretary of Interior's letter of Oct. 6, 1967 to Representative Catherine May in his attempt to justify this crude action, as being both double talk and bureaucratic deceit; and be it further

Resolved, That we call upon the Washington State Department of Game, the Department of Fisheries, and the Governor's Office to similarly reject this brazen attempt at Federal intervention, and demand vigorous enforcement of all fishing regulations as applicable to Indians and non-Indians alike in all off-reservation waters; and be it further

Resolved, That copies of this resolution be sent to all parties herein mentioned and to all governors and congressmen from Washington, Oregon and Idaho.

Adopted December 3, 1967, Everett, Washington.

WASHINGTON STATE SPORTSMEN'S COUNCIL.

ORMSBY SPORTSMAN'S ASSOCIATION,
Carson City, Nev., March 5, 1968.

Senator WARREN G. MAGNUSON,
Chairman, Senate Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. SENATOR: I wish to use this opportunity to express my personal desire to see Senate Bill 2951, introduced by Senators Bible and Cannon of Nevada, and Senator Church of Idaho, passed. I sincerely believe that passage of this bill would be in the best interest of *all* the people.

As you know, quite a bit of time, money, and effort has gone into the research programs which have made out Fish and Game Departments as efficient as they are today.

Having another agency either share in or take over part or all of these programs would not only mean that all this research would have to be carried out again, at great expense to the people, and that the high level of efficiency we have today would suffer for quite a number of years while new research programs were being carried out.

Therefore, I humbly ask your support of this bill and would appreciate hearing from you on its progress.

Very truly yours,

GREG BATTAGLIA,
Member, Board of Directors.

PORTLAND, OREG., *June 24, 1968.*

Hon. FRANK E. MOSS,
U.S. Senate Office Building,
Washington, D.C.

Regarding hearing held June 8 and 19, 1968, in Washington on S. 2951 and S. 3212 which reaffirm the rights of States to manage, regulate, and control fish and wildlife on Federal lands (with certain exceptions) Pacific Marine Fisheries Commission strongly supports basic tenet of these bills and wises this included in record. Letter follows.

LEON A. VERHOEVEN,
Executive Director,
Pacific Marine Fisheries Commission.

ALAMOSA, COLO., *June 13, 1968.*

Senator FRANK MOSS,
Senate Commerce Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR MOSS: I am writing you in regards to a bill before the Senate Commerce Committee dealing with control of wildlife on Federal lands. The bill No. 2951 I feel can be of considerable good if it allows the states to continue to manage all forms of wildlife on all types of land ownership.

If the federal government is allowed to have the power to manage the wildlife on its lands I feel that the future of any sound wildlife management in the United States will be impossible. My reasons for the above statement are many. First, if the federal government can manage big game in Colorado they will manage the herds only during the summer months in most cases as in the winter most of the animals are on private land and the land owner will I am sure manage these animal the way he wants. In this way the sportsman and the wildlife will suffer badly. Under the present system the animals are managed for both the summer range on federal land and the winter range on private land.

It will be only a short time if the federal government is allow to have the right to manage game on their land until the landowner will also have the right to manage all the game on his land. If this happens we will be in worse shape than Western Europe estate form of management. I hope that a great deal of consideration is given to this bill and that the states will retain their right in this matter.

Sincerely,

GORDON EAST.

ESTES PARK, COLO.

Senator FRANK MOSS,
Senate Commerce Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR: I'm writing in support of Senate Bills 2951 and 3212.

I feel that too many states rights are being usurped by the Federal Government.

I do believe, however, that the National Parks should be exempt from all hunting as they were set aside as wildlife sanctuaries and should be kept as such. Otherwise I think the states should control the game and fishing within their borders.

Yours truly,

TED R. MATTHEWS.

BOX 66, BROOMFIELD, COLO.,
June 18, 1968.

Senator FRANK MOSS,
Senate Commerce Committee,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MOSS: Colorado's excellent hunting and fishing is one of the primary reasons why I moved to this state in 1959. And in order that this situation

continues to exist, I feel that it is absolutely necessary for each state to maintain the right to manage all fish and wildlife within its boundaries.

I feel the federal government has failed miserably in its attempts to manage federal lands for the benefit of all people and particularly the sportsman. The park service is a prime example of what I consider to be mismanagement. Big game hunting has proven time and time again that the best way to keep a deer herd or elk herd in control is to allow the hunters to hunt them.

Therefore, I respectfully urge you to do everything within your power to see that federal legislation is passed that will clearly provide states the right to control and manage all wildlife within any state boundary.

Sincerely,

RICHARD D. ANDREWS.

GREAT LAKES COMMISSION,
5104 1st Building, 2200 North Campus Boulevard,
Ann Arbor, Mich., June 19, 1968.

Senator WARREN G. MAGNUSON,
Chairman, Senate Committee on Commerce,
127 Old Senate Office Building, Washington, D.C.

On June 14, 1968 Great Lakes Commission formerly approved resolutions in support of enactment of S. 2951 and S. 3212 which declare national policy reaffirming the rights of the States in the traditional and historic areas of responsibility and jurisdiction of the several States in the management and regulation of fish and resident wildlife.

Request your support and inclusion of this telegram in the record of hearing.

LEONARD J. GOODSELL,
Executive Director.

SPORTSMEN'S COUNCIL, INC.,
Alderwood Manor, Wash., June 15, 1968.

Senator FRANK E. MOSS,
Acting Chairman, Senate Committee on Commerce,
Senate Office Building, Washington, D.C.

DEAR SENATOR MOSS: The Washington State Sportsmen's Council supports Senate Bill 2951.

We feel that it is necessary for the states to have the authority to manage resident fish and wildlife within its borders.

Please make this letter a part of the record.

Sincerely,

ROBERT G. PETTIE,
Chairman, National Affairs Committee.

PUGET SOUND GUN CLUB,
Seattle, Wash., June 13, 1968.

Hon. FRANK E. MOSS,
U.S. Senate, Washington, D.C.

DEAR SENATOR: I firmly believe that Senate Bill 2951 should be passed.

So the management of these resources are done by those most interested and close to the particular species, and thus avoid duplicate management for the good of the game or fish in any particular area.

To many cooks generally spoil the meal.

Yours truly,

FERD NIST, *Secretary.*

The staff counsel now places in the record statements addressed to Senator Frank E. Moss—all in support of S. 2951.

STATE OF MONTANA, DEPARTMENT OF FISH AND GAME,
Helena, Mont., June 6, 1968.

Senator FRANK E. MOSS,
Member, Senate Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR SENATOR MOSS: Please accept this letter as support for Senate bill 2951. The Montana Fish and Game Commission has gone on record as supporting such legislation.

This legislation is extremely important and necessary to assure the states' authorities and prerogatives to manage fish and wildlife species found within their borders. It is particularly important to the western states where a high percentage of the land is in public ownership.

The Commission would like this letter incorporated as a part of the record on the committee hearing to be held June 18–19, 1968, when this bill will be considered.

Sincerely,

FRANK H. DUNKLE,
State Fish and Game Director.

RENO, NEV., *June 14, 1968.*

Senator FRANK E. MOSS,
Room 204, Old Senate Office Building,
Washington, D.C.

Nevada Fish and Game Commission requested favorable action by your committee on SB 2951. If amendment needed to clarify stand taken by the International Association of Game Fish and Conservation Commissioners we offer no obections. However basic concepts of the bill is essential for future harmony between Federal and State conservation agencies.

FRANK W. GROVES,
Director, Nevada Fish and Game Commissioner.

THE RESOURCES AGENCY OF CALIFORNIA,
Sacramento, Calif.

Hon. FRANK E. MOSS,
Member of the Senate,
Senate Commerce Committee,
Washington, D.C.

DEAR SENATOR MOSS: This is to advise you that the State of California endorses the principles involved in the several bills being heard before the Senate Commerce Committee on June 18–19, to reaffirm the rights of the states to regulate and control resident fish and wildlife populations.

It is requested that this statement be incorporated into the record of the Senate Commerce Committee hearings to be held.

Sincerely,

N. B. LIVERMORE, Jr., *Administrator.*

COMMERCE CITY, COLO., *June 12, 1968.*

Hon. FRANK MOSS,
Senator from Utah, Senate Commerce Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR MOSS: I would like to express to your Committee my feelings in support of Senate Bills 2951 and 3212.

As a teacher, and in connection with our conservation courses, I have had personal contact with the men who administer our state wildlife program. The students admire and respect the Officers who come into our schools and present these programs. There is a more personal relationship because we know they are local and state men who do their jobs with pride and deep concern. It is also true that the general public has these same sentiments.

In a more general way, I am concerned that we keep the administration of every program on a local or state level as much as possible. To do so is a step in the right direction of keeping government in the hands of the people. In regard to our wildlife program, I know it would not only be more efficient but also less expensive to have it administered by our State Officers.

For these reasons I hope your Committee will consider carefully all the aspects in connection with supporting Senate Bills 2951 and 3212.

Sincerely,

MRS. NELL W. MILLER.

STATE OF ALASKA DEPARTMENT OF FISH AND GAME,
OFFICE OF THE COMMISSIONER,
June 11, 1968.

Hon. FRANK E. MOSS,
U.S. Senate,
4106 New Senate Office Building,
Washington, D.C.

DEAR SENATOR MOSS: The question of State vs Federal ownership and management responsibilities of resident fish and wildlife is not a new one to us in Alaska. It played a tremendously large role in our successful efforts to obtain statehood status in 1958. We were perhaps unrealistically naive to believe that the obtaining of statehood status would resolve these problems. Events since that time are clearly evident that this has not been the case.

We would like to go on record as strongly supporting S.B. 2951 as proposed by the International Association of Game, Fish and Conservation Commissioners.

It is our position that all species of resident fish and wildlife are held in trust for the people of each state through their official agencies. We are equally firm in our belief that the ownership of land does not include ownership of resident fish and wildlife. Such a doctrine would have extremely adverse and chaotic effect on the sound management of fish and wildlife resources in our state.

We would like to point out that the states are not seeking greater powers in the regulation of these natural resources than they always have believed to possess, and which we in Alaska presumed would be acquired with statehood.

We dutifully solicit and are hopeful we can receive of you and your committee support in the matter.

Sincerely yours,

AUGIE REETZ, *Commissioner.*

HALE, COLORADO, *June 15, 1968.*

SENATOR FRANK MOSS: The members of the Bonny Chapter IWLA express their desire for full support of Senate Bills number 2951 and 3212. The IWLA is concerned with wild life conservation and would like to keep State control of waters and lands.

CLARK ROLOW,
Secretary, Bonny Chapter, IWLA.

PUGET SOUND GUN CLUB,
Seattle, Wash., June 13, 1968.

Hon. FRANK E. MOSS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: I firmly believe that Senate Bill 2951 should be passed.

So the management of these resources are done by those most interested and close to the particular species, and thus avoid duplicate management for the good of the game or fish in any particular area.

Too many cooks generally spoil the meal.

Yours truly,

FERD NIST, *Secretary.*

DEPARTMENT OF WILDLIFE CONSERVATION,
Oklahoma City, Okla., June 11, 1968.

Hon. FRANK EDWARD MOSS,
Member, U.S. Senate,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MOSS: It is my understanding that a hearing will be held on S.B. 2951 on June 18–19.

The enclosed resolution was unanimously passed by the Oklahoma Wildlife Conservation Commission.

Please enter this resolution as part of the hearing record representing the views of our Commission.

Sincerely,

WENDELL BEVER, *Director.*

RESOLUTION

Whereas, by law, history and tradition in the United States the ownership of wildlife has been separated from ownership of land: and

Whereas, fish and wildlife belong to all the people and are held in trust by the several sovereign states: and

Whereas, a Solicitor in the U.S. Department of the Interior issued an opinion December 1, 1964 which challenged this tradition by stating, in effect, that the Federal Government has authority superior to that of the states in managing and regulating all fish and wildlife on Federal lands: and

Whereas, the states do not desire to change the present status of certain laws and concepts which have to do with international traties, rare and endangered species, the Bald Eagle Act, rights of certain Indians and natives of Alaska, control of wildlife on land ceded by the states to the United States, and Federal responsibility for habitat development on Federal lands;

It Is Resolved, Therefore, by the Oklahoma Wildlife Conservation Commission that the Congress be urged to pass legislation reaffirming the states' rights to manage, regulate and control fish and resident wildlife on all lands, including those owned by the Federal Government, with the above mentioned exceptions.

Dated this 6th day of May 1968.

LESLIE VANDERWORK,
Chairman.
JOHN F. HINES,
Secretary.

Attest:

GEORGE L. KNAPP.
HAROLD S. COOKSEY.
FRED P. LEWIS.
ELMER A. VIETH.
JACK B. PARISH.
PAUL ROERER.

SPORTSMEN'S COUNCIL, INC.,
Vancouver, Wash., June 13, 1968.

U.S. Senator FRANK E. MOSS,
Acting Chairman, Senate Committee on Interior and Insular Affairs, Senate Office Building, Washington, D.C.

DEAR SENATOR MOSS: The Washington State Sportsmen's Council, has by resolution, endorsed the rights of the several states to manage resident game and game fish. To that degree, we support S–2951.

As hunter sportsmen, we have had the pleasure of using Bureau of Land Management holdings, U.S. Forest Service property and the areas under the jurisdiction of the Bureau of Sports Fisheries and Wildlife. On these properties we have hunted resident species of wildlife in the seasons specified by our Washington State Department of Game.

The Washington State Department of Game is supported by the license monies garnered from the hunter license fees and special permits. Were federal management of game to become a reality, we are fearful both Department and hunter would suffer. With the federal landlord managing the resident species, this would be a "foot in the door" for the private landowner to demand the same for his property: that of claiming the wildlife on his land as private ownership, and we would find only the people of affluence engaging in hunting. This has bene true in Europe for many years; we neither need nor want this type of management in the United States.

Our Department of Game, as well as the Game Departments of other states, are schooled in game management, and do a commendable job. It is not necessary for someone across the continent to tell either our professionals or us how to set seasons, or where to set them.

It would be literally impossible to employ enough people on a federal basis to manage the game in an adequate fashion: both on the basis of knowledge and on one of economics. Our staff is well aware of areas where over-population is a problem, and more animals require harvest, as well as the areas in which hunting should and must be curtailed.

The Washington State Department of Game has been cited on many occasions,

as being one which could well be emulated. Again, let us reiterate our position: we support S–2951.

Please make this part of the record of the hearing.

Sincerely,

ADAH WERKEMA,
National Affairs Committee Member.

AMERICAN NATIONAL CATTLEMEN'S ASSOCIATION,
Denver, Colo., June 11, 1968.

Hon. FRANK E. MOSS,
4197 New Senate Office Building,
Washington, D.C.

DEAR SENATOR MOSS: I have been informed that S. 2951 and S. 3212 are scheduled for hearings on June 18, 1968. The American National Cattlemen's Association is extremely interested in this issue and strongly feels the the state should retain the rights and privileges over wildlife within their boundaries.

At our annual convention in Oklahoma City, January, 1968, we passed a resolution on this subject. It reads as follows:

"Whereas, there is a move on the part of some agencies of the Federal government to usurp the traditional prerogatives of the States in the control and ownership of fish and resident wildlife; therefore be it

"Resolved, that the American National Cattlemen's Association supports the principle that the individual States are the owners in trust for the people of all fish and resident wildlife within the State and that the States should have full control and management of these resources."

The American National Cattlemen's Association sincerely hopes that there will be favorable action on this legislation. Also, we request that you make this letter a part of the hearing record. Thank you.

Cordially,

C. W. MCMILLAN.

STATE OF WYOMING,
GAME AND FISH COMMISSION,
Cheyenne, June 6, 1968.

Hon. FRANK E. MOSS,
U.S. Senator,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MOSS: This letter concerns a specific problem and a cause which I briefly touched upon in our latest communication. The cause is the age old, traditionally sound proposition that the several states own and have the sole right to control all resident fish and wildlife within their respective territorial boundaries, unless the right was reserved by the United States at the time of the creation of the state, or the state has ceded to the United States exclusive legislative jurisdiction therein, and in the case of treaties, migratory waterfowl, Indians, et cetera.

We have no quarrel with the Federal Government in its rightful domain. It can do many things which the states are unable to do—many things which the states are forbidden to do by the Constitution. These endeavors by the United States, we support in full. We do not support its encroachment upon an area which has been that of the states during the full length of our national life. This area has been totally white—now, it is beginning to turn gray. We shall fight it tooth and toenail until it is again white.

From the time of Solon of Greek-law-giving fame, approximately 600 B. C., down through Justinian, the codifier of the Roman Laws in roughly 500 A. D., down through the European countries and England, has run the unbroken proposition that the state, in England the King, had full authority to control and manage wildlife. (See Geer v. Connecticut (1896) 161 U.S. 519, 40 L ed 793, 16 S Ct 600, for good discussion). Solon said the citizens were neglecting the mechanical arts in favor of the case and prohibitions were placed upon hunting. Blackstone points out that "it follows from the very end and constitution of society that this natural right, as well as many others belonging to man as an individual, may be restrained by positive laws enacted for reasons of the state or for the supposed benefit of the community". (*Geer* case, *supra*). It was the

King's right. He could forbid the people to hunt or fish in any particular place, or at all, if he so desired.

The underlying theory, too lengthy to discuss here, was that wildlife belonged to all of the people in what writers called a "negative community". God created it for all mankind. What each could take and use, was his; what he did not use reverted to all the community.

This theory of wildlife came down through the American Colonies to the earliest states. Each state was sovereign. Retention of their sovereignty was the thing the states fought for so tenaciously at the constitutional convention. The right to control and manage the wildlife within its borders passed to each of the states for the benefit of its citizens. The state was now the King.

During the long, hot summer of the constitutional convention the fight was fierce. Certain rights, duties, and authority had to be delegated to the United States if they were going to join in the creation of a useful Federal government for the benefit of all the states. But those early states gave up their authority and sovereignty most reluctantly, and only after the fullest and most detailed argument and consideration. Even patient Franklin got fearful it would never come off and they would go home without a constitution. At the end, we can see him rising to say: this document is not a perfect document, but it is a sufficient document if the men who administer it are motivated by aims commensurate with those of this document.

The people of that convention finally provided for exclusive legislative jurisdiction in the Federal government over a piece of land for the seat of government, as may, "by Cession of particular States, and the Acceptance of Congress" grant such land for the seat of government. The states had the legislative authority. The Federal government could not get it unless the states ceded it. (Art. 1, Section 8, Clause 17, United States Constitution). That referred to states in being at the time of the convention. After the formation of the Federal government, when a new state was formed and admitted to the union, the Federal government could withhold or reserve unto itself the exclusive legislative jurisdiction over an area of land within the territorial borders of such newly created state.

The Tenth Amendment to the United States Constitution states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people". No place in the Constitution is the control and management of wildlife delegated to the United States. Control and management is not prohibited to the States by it. Control and management had been in the states prior to adoption of the Constitution, and right of control and management was still in the states after the adoption of the Constitution.

In the Constitution, treaty power was given to the United States for obvious reasons. Therefore, a treaty with Great Britain and Canada respecting migratory waterfowl had to be entered into by the United States and not by the State of Missouri and hence Missouri could not enjoin a Federal officer from enforcing the provisions of that treaty in the State of Missouri. Missouri v. Holland (1920) 252 US 416, 64 L ed 641, 40 S Ct 382, 11 ALR 984. And where the United States is the owner of land, as is any rancher in Wyoming, and the deer on its land are so numerous they are destroying the trees of the forest and generally damaging its property and refuse to be driven from the forest, the State of Arizona could not lawfully arrest hunters who were killing the deer in tthe Kaibab Forest under authority and permits of the United States in contravention of the game laws of Arizona. Hunt v. U.S., 278 US 96, adopting the opinion of U.S. v. Hunt, (D.C., Ariz., 1927) 19 F (2) 634. That the state has unquestioned authority to control and manage wildlife within its borders, and has had since the inception of our American Colonies and subsequent states, unless that authority has been ceded to and accepted by the United States, has been the rule and now is the rule. Geer v. Connecticut, supra; State v. McCullagh, 96 Kan 786, 153 P. 557, 11 ALR 980.

24 Am. Jur. 374, Game and Game Laws, Sec. 3, reads in part:

"While originally the ownership of wild game in England was regarded as vested in the King as a personal prerogative, in the course of time it became established that the title of the Crown was only in trust for the benefit of the English people. Upon the independence of the American states, each state, in its sovereign capacity, acquired the titles of the government and of the King of England to the game within its borders in trust for the benefit of its citizens. The adoption of the Federal Constitution did not divest the several states of their title to game; on the contrary, the title and power to regulate the taking

of game remained in each of the several states. Shively v. Bowlby, 152 US 1, 38 L ed 331, 14 S Ct 548; State v. McCullagh, 96 Kan 786, 153 P 557, 11 ALR 980; State v. Sawyer, 113 Me 458, 94 A 886, LRA 1915 F, 1031, Ann Cas 1917 D, 650. Anno: 11 ALR 991. Game within territory acquired by the National Government after the adoption of the Constitution becomes the property of the United States in trust for the benefit of the people of the states subsequently organized out of such territory. Until the organization of such states, the Federal Government has the power of regulating the taking of its game. It may lease the right of taking game from certain districts, North American Commercial Co. v. U.S., 171 US 110, 43 L ed 98, 18 S Ct 817, or may by a treaty with Indian tribe give the members thereof special hunting privileges. But a new state, after its creation, succeeds to the property rights of the Federal Government and becomes invested with the power to regulate the subsequent taking of game, whether by Indians or other inhabitants. Ward v. Race Horse, 163 US 504, 41 L ed 244, 16 S Ct 1076. In this way the people of the original states and those subsequently admitted have become invested with the title to the wild game within their state boundaries without a statutory declaration which would have no force except to make written law out of unwritten law. State v. Pollock, 42 SD 360, 175 NW 557; Acklen v. Thompson, 122 Tenn 43, 126 SW 730, 135 ASR 851; Krenz v. Nichols, 197 Wis 394, 222 NW 300, 62 ALR 466".

With that background, we call to your attention the situation with respect to Wyoming, for it is in our state that we are most particularly interested. What is good for Wyoming, is good for all other states, we venture.

Grand Teton National Park is a good case in point. This was a park formed of land within the boundaries of the State of Wyoming. The State of Wyoming was formed in 1890; Teton Park by Act of Congress September 14, 1950. Wyoming appears not to have ceded any legislative jurisdiction to the United States with respect to Grand Teton National Park, and of course the United States could not reserve any legislative jurisdiction since the state was already in being at the time of the creation of the park. We cite the creative Act, Title 16, Ch. 1, Sec. 406d—1, U.S.C.A.:

"Creation; establishment of boundaries; administration.—For the purpose of including in one national park, for public benefit and enjoyment, the lands within the present Grand Teton National Park and a portion of the lands within the Jackson Hole National Monument, there is established a new 'Grand Teton National Park'. The park shall comprise, subject to valid existing rights, all of the present Grand Teton National Park and all lands of the Jackson Hole National Monument that are not otherwise expressly provided for in sections 406d—1 to 406d—5, 431a, 484m, 673b and 673c of this title, and an order setting forth the boundaries of the park shall be prepared by the Secretary of the Interior and published in the Federal Register. The national park so established shall, so far as consistent with the provisions of said sections, be administered in accordance with the general statutes governing national parks, and shall supersede the present Grand Teton National Park and the Jackson Hole Monument".

Section 406d—2 deals with Rights-of-way; continuation of leases, permits, and licenses; renewal; grazing privileges. Section 406d—3 deals with Compensation for tax losses; limitation on annual amount. Section 406d—4 deals with Acceptance of other lands by Secretary of the Interior, while Section 406d—5 provides for Use for reclamation purposes of certain lands within exterior boundary.

There appears to be no cession by the State of Wyoming to the United States of any legislative jurisdiction, and its creation was after Wyoming's admission.

In Memorandum Opinion No. 36672 issued by the Solicitor of the Department of the Interior, the Solicitor answered this question which was asked of him by the U.S. Fish and Wildlife Service:

"Does the Secretary of the Interior have the authority to promulgate regulations which control the hunting and fishing activities of the general public on land within the refuge system, when such regulations are more restrictive than State Fish and Game Laws?"

His all-inclusive answer was:

"From the foregoing authorities it is apparent that the United States, constitutionally empowered as it is, may gain a proprietary interest in land within a State and, in the exercise of this proprietary interest, has constitutional power to enact laws and regulations controlling and protecting that land, including the persons, inanimate articles of value, and resident species of wildlife situated on such land, and that this authority is superior to that of a State".

A letter addressed to Mr. James LaRue Early, of Denver, Colorado, March 11, 1967, from Secretary Udall includes this statement, and I quote:

"The Federal Government has the right to control, regulate, and manage the wildlife resources on federal lands acquired or reserved for federal purposes".

The philosophy emanating from the Secretary's office has found its way to the lowest administrative levels in the field and the right of the state to manage, regulate and control is being verbally challenged in many areas on the local level.

That statement would appear to take in such areas as Teton National Park in Wyoming, and Bureau of Land Management, U.S. Forest Service, Bureau of Reclamation, Naval Reserve, Corps of Engineers, U.S. Fish and Wildlife Service, and place them directly under the exclusive legislative jurisdiction of the United States without any cession by the State of Wyoming to the federal government, and without any reservation of such rights at the time of admission of Wyoming as a state. In other words, that statement violates all of the safeguards set up by the states at the constitutional convention, not to mention all the uniform recognition given those safeguards over the some 190 intervening years by the federal government and Congress. Such a statement flies in the face of all the statutory provisions of the several states granting to the game and fish commissions of the states complete authority to manage and control wildlife within each states' borders.

No one argues with the right of the Federal Government to legislate with regard to the wildlife on federally owned lands in cases in which exclusive legislative jurisdiction has been ceded to the United States by that state, nor do we argue in cases in which such exclusive authority was reserved to the United States when the state was admitted.

But, to rise up suddenly and out of whole cloth say what the Solicitor said is too much.

We are aware of the constant erosion of the rights and control of the several states over their own affairs in all fields, but this field of control and management of wildlife, other than migratory fowls by treaty, within a state's borders is an old and honored right of the state. It is old and honored because of the negative communitive theory of the wildlife as being given by God to the people for their vital use. We simply cannot now stand by and watch the Solicitor blast away this right in the face of immemorial custom and law. This is one right of the state which stems from antiquity.

To enact legislation stating the states have absolute control and management over the wildlife within the state's borders, save where the state has ceded it to the United States or the United States has reserved it upon admission of the state, is to say nothing new. It is the law now, both unwritten and written. The Federal Administration apparently needs it drawn to the government's attention. Litigation is not the proper method. It is too narrow in decision. Legislative enactment is the seemingly proper way to bring the entire matter to the attention of the Federal Government and its agencies.

There is also a serious question of the effect of such a change, both economical and as to its practical application.

Under the present system, the income to Wyoming from license sales has continued to increase. In 1947, the fees collected were $720,934.50, total fees collected in 1966, $3,775,995.00. During this 20 year period, the department license sales alone was $38,941,086.00.

In a recent study made by the Statistics Department of the University of Wyoming (T. A. Walther and J. W. Birch) a total of $60,043,324.00 was spent by individuals in Wyoming because of their desire to hunt and fish. The secondary effects of this spending amounts to about 39 million dollars, for a total effect of 99+ million dollars upon Wyoming's economy. We should not need to enlarge upon the value of this resource to our state.

From a practical viewpoint, the Wyoming Game and Fish Commission prints (1) regulations for each separate species of big game, and one regulation covering several bird species each year. Picture, if you will, Wyoming with a checkerboard pattern of private, state and federal lands, intermingled in, sometimes, jigsaw puzzle fashion. Imagine the utter confusion of a hunter or fisherman who would try to untangle regulations set by the private sector, the state, the Bureau of Land Management, the U.S. Forest Service, the U.S. Fish and Wildlife Service, the Bureau of Reclamation, the Park Service, the Naval Reserve, the Corps of Engineers, etc. Compound this by writing separate regulations for each species. Imagine the burden of cumbersome material you have in your back pack, then

try to figure out what parcel of federal, state or private land you are on and which regulation applies to what species, etc.

And, if you are unhappy, whom will you call upon to hold responsible if there should be mismanagement, such as over-harvest, under-harvest, etc.

We feel strongly that one state agency can more capably, practically and adequately carry out this responsibility, eliminate buck-passing and place the authority where it justly belongs—in the local government.

Legislation to insure that this right remain with the states will be introduced. We urge your attention and support. The scope of this matter makes it a most vital one.

Sincerely and respectfully yours,

JAMES B. WHITE,
State Game and Fish Commissioner.

6400 PIERCE, ARVADA, COLO., *June 11, 1968.*

Hon. FRANK MOSS,
Senator from Utah, Senate Commerce Committee, Senate Office Building, Washington, D.C.

DEAR SENATOR MOSS: We would like to express our interest in Senate Bills 2951 and 3212. The fish and wildlife in our state, and the management there of, is of vital interest to us. We realize full well the serene pleasure the citizens of our state receive from the pursuits of hunting and fishing. This is only one pleasure, however. The pleasure of seeing and photographing these animals is also very real.

There is still another pleasure that may be even more real. We are pleased and proud of the way our State agency is managing the wildlife. These people are professional men, trained and experienced in their fields. They are doing a good job because this is their State, their home, and their heritage they are managing. They will not allow this heritage to be compromised for self gain; they will work, live, and die in Colorado.

We know our wildlife is in good hands and we want to see it stay there.

We know the honorable men on your Committee will consider all aspects of this proposition and we want to go on record as strongly supporting these bills.

Very truly yours,

Mr. & Mrs. GAIL B. BOYD.

JUNE 8, 1968.

Senator FRANK MOSS,
Senate Commerce Committee,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: I wish to voice my opinion on the matter of the Federal Government taking over the wildlife on Federal lands. We have lost far too many of our states rights already and this is one more that the Federal Government is trying to get from us.

I am certainly in favor of Senate Bills 2951 and 3212.

Please, lets not become a complete slave nation to the Federal Government.

Sincerely,

R. S. REYNOLDS,
398 Oakland Street,
Aurora, Colo.

1105 PITKIN, FORT COLLINS, COLO., *June 10, 1968.*

Senator FRANK MOSS,
Senate Commere Committee,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MOSS: I am strongly in favor of Senate Bills 2951 and 3212 relating to the rights of states to manage resident fish and wildlife within their boundaries. If Federal land management agencies are permitted the prerogative of jurisdiction of wildlife on properties which they control, this will mean that private land owners have the same rights. As a consequence many agencies would attempt to manage wildlife with varying objectives. This would certainly decrease the recreation potential of this resource.

Since I believe that Wildlife belongs to the people, I feel that management for the greatest public good can be done best by individual states and therefore support the senate bills offered by Senators Dominick and Allott.

Sincerely yours,

JACK R. GRIEB.

COLORADO STATE ASSOCIATION OF
COUNTY COMMISSIONERS,
June 10, 1968.

Hon. FRANK A. MOSS,
U.S. Senator from Utah,
Chairman, Senate Commerce Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR MOSS: We are concerned over the continuing trend toward Federal intrusion into the historic areas of responsibility and jurisdiction of the states in the management of fish and resident wildlife. If the Federal Government's claim of authority over fish and resident wildlife on federal lands prevails, the time honored principle of state ownership, regulation and management would be destroyed.

I was informed that two bills have been introduced in the Senate, namely S 2951 and S 3212 and that these bills are presently being considered by your committee. I am also advised that these bills propose to rectify this problem without adversely affecting the responsibility of the Federal Government in the following:

A. International treaties involving migratory birds.

B. The Rare and Endangered Species.

C. The Rights of Indians and Natives of Alaska to hunt fish as established by Treaties or Acts of Congress.

D. The management of lands or control of wildlife species which have been ceded by any state to the United States.

E. The Bald Eagle Act.

We believe it is absolutely imperative for Congress to take prompt action to resolve this jurisdictional controversy by succinctly reaffirming the States' rights to manage, regulate and control fish and resident wildlife within their respective state boundaries.

We urge your Committee's favorable and prompt action to the two Senate bills mentioned above.

Very truly yours,

J. FRED SCHNEIDER.

JOHN A. LOVE, GOVERNOR, STATE OF COLORADO,
DEPARTMENT OF GAME, FISH AND PARKS,
Delta, Colo., June 10, 1968.

Senator FRANK MOSS,
Senate Commerce Committee,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MOSS: As a member of the Colorado Game-Fish-Parks department and also as a private citizen interested in states rights and wildlife management I can not strongly enough urge your support and support of all the members of our congress for Senate Bill 2951 co-sponsored by Senator Gordon Allott, also for Senate Bill 3212 co-sponsored by Senator Peter Dominick.

Very truly yours,

TERRELL B. QUICK,
Route 1, Box 253A, Delta, Colo.

SALT LAKE CITY, UTAH, *June 17, 1968.*

Hon. FRANK E. MOSS,
Acting Chairman, Senate Committee on Commerce,
Room 204, Senate Office Building, Washington, D.C.

Authority of the States to management and control all resident game and fish within their borders along with title to same is again being challenged by the Federal Government. The challenge to these historic State rights comes this

time from the Secretary of the Interior regarding all wildlife species within the borders of Federal land and particularly those lands under the jurisdiction of the Department of the Interior.

There have been other challenges in the history of wildlife management by the States too numerous to relate here but all documents in the records decisions further cemented the claim of the various States concerning ownership and management of fish and wildlife resources. The States management for these resources have run on a progressively even keel until the relatively recent claim of the Interior Secretary.

The summary of these facts will show that under the historic management of fish and wildlife resources by the various States our citizens have greater recreation opportunity in the pursuit of fish and game than ever before in our history and this in spite of the great surge in population and participation in these pursuits.

Utah like many of her sister States is in large part composed of Federal lands with the Secretary's claim in mind one can readily imagine the chaotic results that would be forthcoming in this management field.

The next logical step would be the claim of private landholders to the right to management and with it would go the privilege of the average citizen to fish and/or hunt as we know it today. Similarly management responsibilities of wildlife species would become fragmented and the perpetuation of the wildlife resource would be seriously jeopardized. Actually except for minor but documented incidents relating to individual personality action by Federal employees we in Utah have excellent cooperative programs with the Federal land administrators.

This present legislation would assure a fully cooperative program without even these minor instances of interference and put the State and Federal Governments in a proper partnership where they belong and where the Constitution intended should be.

We respectfully urge the favorable consideration and early passage of this legislation to effectuate such procedure.

We concur in and leave you with this statement by Thomas L. Kimball, executive director of the National Wildlife Federation, "if the Federal's Government's claim to legal jurisdiction over resident game and fish prevails then the private landholders could conceivably claim a similar right. Such a doctrine would lead to complete chaos and confusion in the protection management and restoration of America's fish and wildlife resources."

Respectfully submitted.

J. L. CASEY BROWN,
Administrative Assistant,
Utah State Division, Fish and Game.

SPORTSMEN'S COUNCIL, INC.,
June 15, 1968.

Senator FRANK E. MOSS,
Acting Chairman, Senate Committee on Commerce,
Senate Office Building, Washington, D.C.

DEAR SENATOR MOSS: The Washington State Sportmen's Council supports Senate Bill 2951.

We feel that it is necessary for the states to have the authority to manage resident fish and wildlife within its borders.

Please make this letter a part of the record.

Sincerely,

ROBERT G. PETTIE,
Chairman, National Affairs Committee,
Washington State Sportmen's Council,
3909 Serene Drive, Alderwood Manor, Wash.

CALIFORNIA STATE CHAMBER OF COMMERCE,
455 Capitol Mall, Sacramento, Calif., June 21, 1968.

Hon. FRANK E. MOSS,
U.S. Senate,
Old Senate Office Building, Washington, D.C.

DEAR SENATOR MOSS: We understand that your subcommittee of the Senate Committee on Commerce is holding hearings on S. 2951 and similar measures

to clarify and reaffirm the authority of the states to control, regulate and manage resident species of fish and wildlife within their borders.

Our Statewide Natural Resources Committee has become increasingly concerned with contentions of federal agencies claiming authority over fish and wildlife on federal lands. On May 17th our Board of Directors adopted a policy in support of S. 2951 and similar bills.

There is no need to recite the necessity for enactment of this legislation to you since the issue has been fully identified. We appreciate your interest in this legislation and respectfully request that our support for early enactment of S. 2951 also be made part of the hearing record.

Sincerely,

JOHN T. HAY,
General Manager.

The staff counsel offers for the record a communication from the Great Lakes Commission to Senator Griffin. They support S. 2951 and S. 3212.

ANN ARBOR, MICH., *June 19, 1968.*

At lakes commission formerly approved resolutions in support of inactment of S. 2951 and S. 3212 which declare national policy reaffirming the rights of the States in the traditional and historic areas of responsibility and jurisdiction of the several States in the management and regulation of fish and resident wildlife.

Request your support and inclusion of this telegram in the record of hearing.

Letter and copy of resolution follow:

LEONARD J. GOODSELL,
Executive Director, Great Lakes Commission,
5104 1st Building, 2200 North Campus Boulevard,
Ann Arbor, Mich.

The staff counsel offers for the record a communication, addressed to Senator Magnuson, from Glenard P. Lipscomb, a Member of Congress from California, in which he asks that a copy of a letter he received from Gov. Ronald Reagan from California be included in the record of this hearing.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., May 6, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
5202 New Senate Office Building,
Washington, D.C.

DEAR MR. CHAIRMAN: I am enclosing a copy of a letter which I have received from Governor Reagan of the State of California concerning various measures pending before the Senate Commerce Committee to reaffirm states' rights in the matter of jurisdiction over fish and resident wildlife.

This is being forwarded for the information of your Committee in connection with its consideration of legislation in this field.

Sincerely yours,

GLENARD P. LIPSCOMB,
Member of Congress.

STATE OF CALIFORNIA, GOVERNOR'S OFFICE,
Sacramento, May 1, 1968.

Hon. GLENARD P. LIPSCOMB,
Member of Congress,
House Office Building,
Washington, D.C.

DEAR GLEN: I would very much appreciate your support of measures which have been introduced in Congress to reaffirm states' rights in the matter of jurisdiction over fish and resident wildlife.

You are probably aware that the last few years have reflected increased intrusion of the Federal Government into the historic rights of the states in

these matters. This was first brought to a head by a Department of the Interior solicitor's opinion in December, 1964, which stated that the Federal Government had the right to manage and regulate fish and resident wildlife on Federal lands. This was followed by a statement by the Secretary of the Interior to the same effect.

If the Federal Government should choose to exercise the power it now alleges it has, "to control, regulate, and manage fish and wildlife resources on Federal lands acquired or reserved for Federal purposes", the results would be disastrous.

The Federal Government owns 49 percent of the land in California and large amounts of lands in other states. These federally owned lands are mostly unposted and intermingled with state and private lands. Our citizens and those of other states would be completely confused by the conflict between state and Federal laws if the Federal Government promulgated different regulations.

Furthermore, if the Federal Government decided to require hunting and fishing licenses on Federal lands, it would bankrupt most state conservation departments. At the present time, most fish and wildlife conservation work in the United States is being carried on by the states. If the Federal Government assumed this responsibility, a great expansion of its activities in this field would have to take place.

Historically and traditionally the states have had the authority to manage fish and resident wildlife on Federal lands (with certain exceptions). The states have always contended that the ownership of fish and wildlife does not go with the ownership of land, which the Federal government now alleges. If this were so, other landowners might claim the same right for the same reason.

The Western Governors' Conference in 1966 and the National Governors' Conference in 1967 took action to protect the states' rights in this matter. The International Association of Game, Fish and Conservation Commissioners (representing all 50 states) has strongly advocated the resolution of this conflict by Congress in favor of the states.

Your support of the basic principles contained in the following measures would be of vital importance to the State of California, as well as to a great many other states. S. 2951, S. 3212, H.R. 8377, H.R. 11573, H.R. 11455, H.R. 14215, H.R. 14245, H.R. 14849, H.R. 14598, H.R. 15228, H.R. 15139, H.R. 15362, H.R. 15733, H.R. 15717, H.R. 15745, H.R. 15973.

Sincerely,

RONALD REAGAN,
Governor.

The staff counsel places in the record statements in opposition from the following tribes, bands, and associations:

RED LAKE TRIBAL COUNCIL,
Red Lake Indian Reservation, Bemidji, Minn.

WARREN G. MAGNUSON,
Chairman, Senate Committee on Commerce,
New Senate Office Building,
Washington, D.C.:

The Red Lake Tribal Council, Red Lake Band of Chippewa Indians, adopted resolution 92–68 dated June 12, 1968, strongly opposing any objecting to S. 2951 and S. 3212 and firmly requesting that the Red Lake Band of Chippewa Indians, Red Lake Indian Reservation be specifically excepted from said bills. Statement opposition and objection being forwarded to you.

ROYCE GRAVES, *Secretary.*

RED LAKE TRIBAL COUNCIL,
Red Lake Indian Reservation, Bemidji, Minn.

NEW SENATE OFFICE BUILDING,
U.S. Capitol,
Washington, D.C.:

The Red Lake Tribal Council, Red Lake Band of Chippewa Indians, adopted resolution 92–68 dated June 12, 1968, strongly opposing and objecting to S. 2951 and S. 3212 and firmly requesting that the Red Lake Band of Chippewa Indians Red Lake Indian Reservation be specifically excepted from said bills. Statement of opposition and objection being forwarded to you.

ROYCE GRAVES,
Secretary.

THE SHOSHONE-PAIUTE TRIBES,
DUCK VALLEY INDIAN RESERVATION,
Post Office Box 219, Owyhee, Nev., April 17, 1968.

HON. HOWARD CANNON,
U.S. Senate,
Washington, D.C.

DEAR SIR: Senate Bill No. S. 2951 as proposed by Mr. Bible (for himself, Mr. Cannon and Mr. Church) was presented at the 5th Annual Idaho State Indian Conference held in Boise Idaho on March 28th and 29th. All those in attendance at this conference were unanimously opposed to this bill.

This bill to give the states exclusive rights to conserve, control and manage fish and wildlife would be in direct violation of several tribes treaty rights.

We urge your reconsideration of the above mentioned proposal.

Sincerely yours,

ARTHUR T. MANNING,
Chairman, Shoshone Paiute Business Council and
Chairman, 5th Annual Idaho State Indian Conference.

U.S. SENATE, COMMITTEE ON COMMERCE,
Washington, D.C., May 9, 1968.

MR. ARTHUR T. MANNING,
Chairman, Shoshone Paiute Business Council, Duck Valley Indian Reservation,
Post Office Box 219, Owyhee, Nev.

DEAR MR. MANNING: I have received your communication, April 17, 1968, in which you state that the Shoshone Paiute Business Council of the Fifth Annual Idaho State Indian Conference, held in Boise, March 28 and 29, 1968, were unanimously opposed to the enactment of S. 2951.

S. 2951, the bill to declare and determine the policy of the Congress with respect to the primary authority of the several states to control, regulate, and manage fish and wildlife within their territorial boundaries; to conform to the several States such primary authority and responsibility with respect to the management, regulation, and control of fish and wildlife on lands owned by the United States and to specify the exceptions applicable thereto; and to provide procedure under which Federal agencies may otherwise regulate the taking of fish and game on such lands, has been referred to the Committee on Commerce. A hearing date for this proposal has not as yet been scheduled.

The bill is also opposed by the following:

James Jackson, President of the Quinault Tribal Council, Taholah, Washington.

Royce Graves, Secretary, Red Lake Band of Chippewa Indians, Red Lake, Minnesota 56671.

Miss Pearl Fabre, Secretary, Minnesota Chippewa Tribe, Bemidji, Minnesota 56601.

Vernon Lane, Chairman, Lummi Indian Business Council, Marietta, Washington 98268.

I have instructed the staff of the Committee on Commerce to notify you when a hearing date is decided upon.

Your statement will be brought to the attention of the Committee members to let them know that you unanimously oppose S. 2951.

With warm regards to you and the members of the Shoshone Paiute Business Council, I am

Sincerely yours,

HOWARD W. CANNON, *U.S. Senator.*

TAHOLAH, WASH., *December 4, 1967.*

HON. WARREN G. MAGNUSON,
U.S. Senate,
Washington, D.C.

DEAR SIR: In view of your interest and concern about matters affecting American Indians, as reflected in your past cooperation, I am enclosing two resolutions of the Quinault Tribe for your information and appropriate action.

It is a source of much distress to the Quinault Indians that we are forced to expand most of our energies protecting rights that were ours before the State of Washington existed, and which were guaranteed for us by Treaty. If our neighbors would give us a little respite, perhaps we could do a better job of building a future for our youth, based on that part of our heritage which remains.

The three house bills which are described in the enclosed Resolution No. 67–26 are typical of the continual harassment which the Indian people must endure from people who either do not understand or care to recognize our position. Once we had much. Now we have a little. We only ask that we be allowed the protection of existing law to keep and develop what is our share of this nation's tremendous resources.

Although Resolution No. 67–26 is negative, because we must oppose this legislation, I am also sending to you a copy of our resolution No. 67–25. The latter is the positive evidence that we, as a Tribe of Indians are doing all that we can to upgrade our fishery. Accompanying Resolution No. 67–25, which empowers us to request technical and financial assistance to improve our fisheries, is a copy of our proposal to implement this resolution. We have every reason to believe that this proposal will be funded.

Thank you for your consideration and for whatever support you can offer, I am

Sincerely yours,

JAMES JACKSON, *President.*

RESOLUTION No. 67–26

At a special meeting of the Business Committee of the Quinault Tribe of the state of Washington, held at the village of Taholah, Quinault Indian Reservation, Washington, on the 22 day of November, 1967, the following resolution was duly adpoted by a vote of 3 in favor and 0 against, a quorum being present;

Whereas three bills have been introduced in the House of Representatives of the Congress of the United States (H.R. 8377, H.R. 11455, and H.R. 11573) which, if enacted into law would confer on the several states exclusive jurisdiction over Indian hunting and fishing whether on or off the reservations, and

Whereas the treaty between the United States and the Quinault Tribe of Indians guarantees to said Tribe "the right of taking fish at all usual and accustomed grounds and stations . . . together with the privilege of hunting . . " and,

Whereas said treaty with the Quinault Indians guarantees that a reservation shall be set aside for the exclusive use of the Quinault Tribe,

Whereas the officials of the state of Washington have not respected Indian treaties in the past, having gone on record before the Supreme Court of the state of Washington that said treaties are not binding upon them, and

Whereas the Quinault Tribe has successfully regulated its fishery, including the harvest of salmon and shell fish since 1915, under regulations approved by the Secretary of the Interior; and

Whereas the U.S. Bureau of Sport Fisheries and Wildlife is now cooperating with the Quinault Tribe in a stream management program and in comprehensive plans to improve and develop all fishery resources on the Quinault Indian Reservation according to the best current practices, and

Whereas under Indian rule, the Quinault Reservation streams have not been damaged, diverted or polluted in the manner that has taken place in streams now under state jurisdiction, and

Whereas the imposition of state control of Indians who are seeking to exercise their treaty-based rights of hunting and fishing would jeopardize a major source of food and livelihood which has been available to the
moral, the removal of which would cause great economic hardship and disruption of their traditional way of life, Now, therefore, be it

Resolved, That the Quinault Tribe of the state of Washington is completely opposed to the aforesaid bills or any other legislation which would tend to extend state jurisdiction over Indians who are exercising their treaty rights in taking fish and game; and be it further

Resolved, That the Quinault Tribe go on record that it believes that the proper regulation, conservation, and development of fish and game should be practiced, and that the Indian tribes, with the assistance and advice of Federal and other

agencies, are fully competent to do so with respect to such resources as are now under their control.

Dated this 29 day of November, 1967.

Attest:

(Signed) JAMES JACKSON,
President, Quinault Tribal Council.
MARIAN L. HOLLOWAY,
Secretary, Quinault Tribal Council.

RESOLUTION No. 67–25

At a special meeting of the Tribal Council of the Quinault Tribe of the State of Washington, held at the village of Taholah, Quinault Reservation, Washington, on the 20 day of November, 1967, The following Resolution was duly adopted by a vote of 3 in favor and 0 against, a quorum being present.

Whereas, the Quinault Business Committee is the recognized governing body of the Quinault Reservation; and

Whereas, the quinault Indians depend on the salmon and other fishery resources of the natural waters of the Reservation as a principal source of livelihood; and

Whereas, the Quinault Indians depend on the salmon and other fishery resources of the Reservation; and

Whereas, through agreements with the Bureau of Sport Fisheries and Wildlife receives technical Assistance and hatchery, fish stocks for the protection, study and further development of the resource; and

Whereas, the studies and improvements of the Reservation fisheries benefit the individual Tribal members as well as the sport and commercial fisheries of the Pacific Ocean; and

Whereas, the anadromous fish act of 1965 (79 Stat. 1125;16 USC 757 a.f.) PL 87–304 authorizes the Secretary of the Interior to enter into cooperative agreements with non-Federal interest through the Bureau of Sport Fisheries and Wildlife to provide financial assistance to conduct investigations and surveys and stream clearance to construct and maintain structures for the improvement of feeding and spawning conditions, and other activities beneficial to anadromous fish; and

Whereas, the Tribe owns and manages the Moclips River fish trap (initial cost $39,500,000), which is in need of repair and improvement to facilitate salmon population studies, which are necessary for application of a beneficial fishery management program; and

Whereas, stream clearance work is needed to insure safe migration of spawning salmon, and improvement of spawning and rearing habitat; Now, therefore, be it

Resolved, That the Business Committee of the Tribe hereby apply for financial assistance through and in accordance with, the Anadromous Fish Act to repair and improve the Moclips Fish Trap, conduct salmon population studies, and clear log jams and debris from Moclips River. The duration of such works and studies to continue from January 1, 1968 to June 30, 1970. Total cost amounting to $79,000.00 to be shared on a 50 per centum basis with the Federal Government. The Moclips River Fish Trap will be the Quinault Tribe share for the above duration.

JAMES JACKSON,
President, Qinault Tribal Council.
MARIAN L. HOLLOWAY,
Secretary, Quinault Tribal Council.

U.S. DEPARTMENT OF THE INTERIOR,
FISH AND WILDLIFE SERVICE,
BUREAU OF SPORT FISHERIES AND WILDLIFE,
Washington, D.C., November 20, 1967.

ANADROMOUS FISH PROGRAM PROJECT PROPOSAL

FISH FACILITIES, HABITAT IMPROVEMENT, AND STUDIES: MOCLIPS RIVER

Project duration:
From: January 1, 1968
To: June 30, 1970.

Major overall objectives: To conduct salmon population studies leading to recommendations for necessary spawning escapement, to evaluate natural production and hatchery stocking. To improve salmon spawning and rearing habitat.

Item	Estimated cost	Estimated U.S. share of cost
Research	$23,400	$11,700
Development	[1] 13,600	6,800
Construction	42,000	21,000
Coordination		
Land acquisition		
Total	79,000	39,500

[1] Stream clearance.

The undersigned requests that the proposal detailed in the attachment, which is made a part of this document, be approved pursuant to the Anadromous Fish Act of 1965 (16 U.S.C. 757 a–f), and the rules and regulations of the Secretary of the Interior, 50 CFR 401.

QUINAULT INDIAN TRIBE,
JAMES JACKSON,
President, Tribal Council.

The Projects, as described in this Project Proposal, meet the standards of the Secretary of the Interior, and are found to be consistent with the purposes of the Anadromous Fish Act of 1965. This Project Proposal is hereby approved, subject to any special conditions set forth above.

RED LAKE BAND OF CHIPPEWA INDIANS,
Redlake, Minn., February 26, 1968.

Senator WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR MAGNUSON: To protect the interests of the Red Lake Band of Chippewa Indians, I hereby submit this letter in opposition to proposed legislation consisting of the following bills:

H.R. 8377, Congressman Walker, Apr. 11, 1967 } identical
H.R. 14215, Congressman Long, Nov. 29, 1967 }
H.R. 11245, Congressman Dellenback, Dec. 4, 1967 }
H.R. 11455, Congressman Ullman, July 13, 1967 } identical
H.R. 11573, Congressman Pelly, July 19, 1967 }
H.R. 14598, Congressman Cunningham, Jan. 15, 1968 }
H.R. 14849, Congressman Vander Jagt, Jan. 25, 1968 } identical
H.R. 15139, Congressman Cederberg, Feb. 6, 1968 }
H.R. 15228, Congressman Hutchinson, Feb. 8, 1968 }
S. 2951, Senators Bible, Cannon, and Church, cosponsors Feb. 8, 1968.

The bills would declare title and ownership to the several states of all fish and wildlife, including regulation, management and control, in or on any land or water within the territorial boundaries of the respective states, including lands

owned or controlled by the United States; and repeal all acts or parts of acts that are inconsistent with the bills.

The Red Lake Band of Chippewa Indians considers the proposed legislation as a serious threat to the established Red Lake rights and exclusive title to land and natural resources on the Red Lake Reservation. It is also a threat to the exclusive right of the Red Lake Band of Chippewa Indians to engage in the commercial fishing industry (Title 25, Chapter 1, part 89, U. S. Code of Federal Regulations) on the Red Lakes in Northern Minnesota.

Within the bills, Congress recognizes that the title and ownership of fish and wildlife resides and rests in the several states, established by Court decision, including the U.S. Supreme Court. This is grossly incorrect as far as the Red Lake Band of Chippewa Indians are concerned.

Exclusive Red Lake title and ownership of our land and resources has been recognized by treaties, (13 Stat. 667, Oct. 2, 1863), acts of Congress since 1890 and was affirmed by a decision of the United States Supreme Court in the year 1937 (Minnesota Chippewas vs United States et al Red Lake Band of Chippewa Indians, 310 US No. 228) Under this same decision, the U.S. Supreme Court ruled that though the U.S. Government has power to control and manage the property and affairs of its Indian wards in good faith for their welfare, this power is subject to Constitutional limitations and does not enable the Government to deal with Indian lands and resources as its own. Other U.S. Supreme Court cases to this effect can be found under Lane vs Santa Rosa, 249 U.S. 110, 113; United States vs Creek Nation, 295 U.S. 103, 109, 110; Shoshone Tribe vs United States, 299 U.S. 476, 497.

The first reference to Indians in the series of bills is within H.R. 14598, introduced January 15, 1968, under exceptions, but only with respect to certain species of fish or wildlife expressly named in Indian treaties.

Under the bills in their present form, the Congress, in effect, proposes to ignore the existence of Indian Reservations, legal status, etc. and repeal guaranteed Federal protection of our remaining Tribal lands and resources and throw its Indian wards to the mercy of the State; the Congress proposes to erase all Federal promises, agreements, court decisions and commit yet another act of Federal encroachment on Indian lands and resources gained by force and fraud through the years.

Our exclusive Red Lake title and ownership of land and resources is such that Congress must continue to recognize Red Lake title and ownership and declare the Red Lake Indian Reservation as excepted from the above mentioned bills or any other bill that declares title and ownership of resources to the State.

Let this letter serve as notice to the authors and supporters of the above bills that the Red Lake Band of Chippewa Indians oppose and object to the bills in their entirety and will carry this opposition to appropriate departments and courts if necessary.

Enclosed is Red Lake Tribal Council Resolution No. 18–68, enacted February 8, 1968.

Respectfully submitted.

ROYCE GRAVES, Secretary.

Enclosure.

TRIBAL COUNCIL RED LAKE BAND OF CHIPPEWA INDIANS

RESOLUTION NO. 18–68

Whereas, three bills, H.R. 8377, H.R. 11455 and H.R. 11573 have been introduced, which would provide for conferring on the several States exclusive jurisdiction and responsibility with respect to the management, regulation and control of fish and wildlife on lands owned or controlled by the United States, with no exceptions provided for, and;

Whereas, it is the sense of the Red Lake Tribal Council that said bills would be detrimental to Red Lake as well as Indians throughout the United States; Now, therefore, be it

Resolved, The Red Lake Tribal Council, Red Lake Band of Chippewa Indians, hereby strongly opposes and objects to said bills in their entirety; and be it further

Resolved, That the Red Lake Tribal Council firmly requests that the Red Lake Band of Chippewa Indians, Red Lake Indian Reservation, be specifically excepted from said bills; and be it further

Resolved, That copies of this resolution be sent to Senator Mondale, Representatives Walker, Ullman, and members of the Committee on Merchant Marine and Fisheries.

For: 10; Against: 0.

We do hereby certify that the foregoing resolution was duly presented and enacted upon at the Regular meeting of the Tribal Council held on February 8, 1968, with a quorum present, at the Red Lake Tribal Council Hall, Red Lake, Minnesota.

ROGER A. JOURDAIN, *Chairman.*
ROYCE GRAVES, *Secretary.*

LUMMI INDIAN BUSINESS COUNCIL,
Marietta, Wash., April 23, 1968.

Hon. WARREN G. MAGNUSON,
U.S. Senate,
Washington, D.C.

DEAR MR. MAGNUSON: Reference Senate bill 2951 which proposes to extend all authority to regulate all fishing activity to respective states.

We note that the bill covers shellfish as well as fish, hence all fisheries and wildlife.

Under Section 4 (a) Indian treaties are excluded only if the specie of fish or wildlife is named. In the Point Elliot Treaty we do not note a description of fish specie or wildlife, hence the Point Elliot Treaty would not be excluded.

Further in Section 5 *NO* agency of the United States will make or enforce any fish regulation not in accord with state laws.

We feel this legislation will seriously endanger the Indian regulation of their fisheries on reservations and in their usual and accustomed areas. It has taken many years and terrific expense for the Indians to secure their right to regulate their fisheries. They are making progress and hope to improve fisheries for all. Passage of this bill will be a disaster for the Indian fisheries.

We request that all Indian fisheries and wildlife be specifically reserved and excepted from the bill, including all species of fish, all shellfish and all wildlife, on reservation and in *all* usual and accustomed places.

Sincerely,

VERNON LANE, *Chairman.*

Herewith a communication from Miss Pearl Fabre, Secretary of the Minnesota Chippewa Tribe, addressed to Vice President Hubert H. Humphrey, in which she asks that the opposition of their tribe to S. 2951 and S. 3212 be placed in the record.

BEMIDJI, MINN., *March 11, 1968.*

Vice President HUBERT HUMPHREY,
U.S. Senate, Washington, D.C.:

The Minnesota Chippewa Tribe finds objectionable bills H.R. 15139 and Senate 2951 and all other identical bills which seriously threaten its treaty rights and other rights and ownership of natural resources conferred by Federal legislation and calls on you to personally and vigorously oppose the enactment of such legislation.

PEARL FABRE, *Secretary.*

U.S. SENATE,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C., June 25, 1968.

Mrs. BERTHA MCJOE,
The Muckleshoot Tribe,
604 24th Street SE.,
Auburn, Wash.

DEAR MRS. MCJOE: Your telegram of June 24 regarding S. 2915 and S. 3213 has been referred to the Senate Committee on Commerce, which is presently conducting hearings on these two measures.

I have requested the Commerce Committee to note your opposition to the legislation and to include your telegram in the official file.

Sincerely yours,

HENRY M. JACKSON, *Chairman.*

604 24TH STREET SE., AUBURN, WASH., *June 24, 1968.*

Senator HENRY JACKSON,
Washington, D.C.:

The Muckleshoot Tribe opposes Senate bills 2915 and 3213.

BERTHA MCJOE,
The Muckleshoot Tribe.

NATIONAL CONGRESS OF AMERICAN INDIANS,
Taholah, Wash., June 26, 1968.

WARREN G. MAGNUSON,
Senate Office Building,
Washington, D.C.:

The Quinalt Tribe has no objections to S. 3212 which expressly preserves Indian rights but bitterly objects to S. 2951 which fails to preserve Indian rights.

HELEN MITCHELL, *Recording Secretary.*

QUINALT TRIBE,
Aberdeen, Wash., June 26, 1968.

WARREN G. MAGNUSON,
Senate Office Building,
Washington, D.C.:

The Quinalt Tribe has no objections to S. 3212 which expressly preserves Indian right but bitterly objects to S. 2951 which fails to preserve Indian rights.

JAMES JACKSON, *Chairman.*

UNITED SIOUX TRIBES OF SOUTH DAKOTA,
Pierre, S. Dak., June 26, 1968.

Senator WARREN MAGNUSON,
Senate Office Building,
Washington, D.C.:

United Sioux Tribes of South Dakota are opposed to Senate bill 2951. Reason violates the treaty and agreement with Indians of United States. Its passage would jeopardize agreements treaties in respect to promises made by the United States in other matters with Indian Tribes of the United States.

FRANK DUCHENEAU, *Chairman.*

COLVILLE BUSINESS COUNCIL,
Nespelem, Wash., June 26, 1968.

WARREN G. MAGNUSON,
Senate Commerce Committee,
New Senate Building,
Washington, D.C.:

Colville Business Council is strenuously opposed to passage of Senate bills 2951 and 3212 now under consideration by your committee. If regulatory measures of the fish and wildlife program of the Colville Indian reservation will be assumed by the State upon passage of the bills the Colville Indian reservation is now under State jurisdiction by its own request with exception to fish and wildlife regulations. I firmly believe we are fully capable of administering our own fish and wildlife program on the Colville reservation in conjunction with the Bureau of Sports Fisheries and Wildlife Service as now in effect. Respectfully request the hearings records show that we are not in favor of passage of Senate bills 2951 and 3212 if jurisdiction is conferred upon the State which would include the Colville Indian reservation. Urgently request copies of the hearings on these bills.

Please acknowledge.

NARCISSE NICKOLSON, Jr., *Chairman.*

WHITE MOUNTAIN APACHE TRIBE, WHITE RIVER, ARIZ.,
Holbrook, Ariz., June 26, 1968.

Senator WARREN MAGNUSON,
Chairman, Senate Committee,
Washington, D.C.:

The White Mountain Apache Tribe wishes to go on record as being unalterably opposed to Senate bill S. 2951 or any other measures which jeopardize or infringe

upon the right of American Indians to utilize management and control all fish and wildlife on Indian owned land.

ORNNIE PULE, *Chairman.*

MAKAH TRIBAL COUNCIL,
Seattle, Wash., June 26, 1968.

Senator WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Washington, D.C.:

The Makah Tribal Council wishes to go on record as supporting the position of the Western Washington Intertribal Council in opposing S. 2951, S. 3212, and H.R. 8377 which would have the effect of jeopardizing Indian treaty fishing and hunting rights in this State. The aggressive attitude of Washington State Fish and Game officials toward Indian treaty rights is well known. Therefore these bills can only result in aggravating this longstanding conflict.

LUKE MARKISHTUM, *Acting Chairman.*

WESTERN WASHINGTON INTERTRIBAL COUNCIL,
Seattle, Wash., June 25, 1968.

Senator WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee, Washington, D.C.:

On behalf of the member tribes of the Western Washington Intertribal Council we wish to register our opposition to S. 2951, S. 3212, and H.R. 8377 and any other bills which have as their purpose ceding all Federal interests in fish and wild life resources to the States. These bills make no provision for recognition of Indian treaty rights and are in fact intended to permit the States to act in a manner which would have the effect of abrogating Indian treaty fishing and hunting rights. We urge you not to permit such backdoor attacks on Indian treaties. We further request your committee to schedule further hearings here in the State of Washington so that the affected tribes could present testimony concerning the effect of such legislation. As you know it is a severe financial burden to send representatives to Washington.

BRUCE A. LILKIE, *President.*

KALISPELL TRIBE USK WASHINGTON,
Spokane, Wash.

SENATE COMMERCE COMMITTEE,
New Senate Office Building, Washington, D.C.:

Our tribe opposes both these bills. They would transfer to the State jurisdiction to regulate hunting and fishing on our reservation. Hunting and fishing on this small reservation is essential to our food gathering. The State is traditionally unsympathetic to Indian rights and our tiny tribe would be at great disadvantage as against the great political weight of our white neighbors. We are also vitally interested in being able to hunt and fish on neighboring reservations. The bill should be amended to adequately protect Indian hunting and fishing rights and to exclude Indian reservations.

RAY PIERRE, *Chairman.*

SPOKANE, WASH.

SENATE COMMERCE COMMITTEE,
New Senate Office Building, Washington, D.C.:

Re S. 2951 and S. 3212. Spokane Tribe wants to register its disapproval of captioned bills and any other bills with similar provisions transferring regulatory power over fish and wild life to States. Said bills would jeopardize Indian fishing and hunting rights and the primary rights of the tribes themselves to regulate Indian hunting and fishing within Indian reservations. Our tribe would consider withdrawing its opposition to these bills if amendments are added excluding its application to Indian reservations and other trust lands and adequately protecting against any impairment of Indian hunting and fishing rights.

ALEX SHERWOOD,
Chairman, Spokane Tribe.

COEUR D'ALENE TRIBE, PLUMMER, IDAHO,
Spokane, Wash.

SENATE COMMERCE COMMITTEE,
New Senate Office Building, Washington, D.C.:

Coeur d'Alene Tribe emphatically opposes said bills. If enacted the rights of our tribal members to hunt and fish on our reservation would be impaired. Our tribal jurisdiction and prerogative to regulate our members in exercising those rights would be jeopardized. We have previously registered our opposition to these and similar bills unless there be added adequate provisos protecting Indian hunting and fishing rights and excluding from the application of the bills the various Indian reservations and other Indian trust lands.

OSWALD GEORGE, *Chairman.*

Senator Ervin and Senator Jordan, of North Carolina, ask that we place in the record a communication directed to them from the North Carolina Wildlife Resources Commission in which they announce their support for S. 2951. They also enclose a copy of a letter from Secretary of the Interior Udall, March 11, 1967 (see p. 170), in which he discusses the question of jurisdiction and control of resident wildlife on non-Federal lands:

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., February 23, 1968.

Senator WARREN G. MAGNUSON,
Senate Commerce Committee,
New Senate Office Building,
Washington, D.C.

DEAR MR. CHAIRMAN: Enclosed for your committee's consideration in connection with S. 2951 is a copy of a letter I have received from the Executive Director of the North Carolina Wildlife Resources Commission outlining the support of this Commission for this legislation.

With kindest wishes.

Sincerely yours,

SAM J. ERVIN, Jr.

Enclosure.

STATE OF NORTH CAROLINA,
WILDLIFE RESOURCES COMMISSION,
Raleigh, N.C., February 21, 1968.

Hon. SAM J. ERVIN, Jr.,
U.S. Senator,
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR ERVIN: At its meeting on January 30, 1968 the North Carolina Wildlife Resources Commission asked me to communicate to you its feeling that the several states should retain primary authority to regulate and manage resident wildlife within their territorial boundaries. Our Commission is concerned because the U.S. Department of the Interior, through its Secretary, recently has undertaken to usurp this right on lands acquired by the Federal Government or reserved for Federal purposes within the states. Please refer to the Secretary's letter of March 11, 1967, copy attached.

Attempts by the states on several different occasions through the International Association of Game, Fish and Conservation Commissioners to reach a satisfactory solution to this with the Department of the Interior have been unsuccessful.

On February 8, 1968, S. 2951, sponsored by Senators Bible, Church and Cannon was introduced and referred to Senator Magnuson's Committee on Commerce. It has the support of the Association. This simply reaffirms the rights of the states to manage fish and resident wildlife. While the language may need some minor adjustments, this legislation is sound. The policy it seeks to establish

through Congressional action is clearly in the Nation's and in North Carolina's interest.

Speaking on behalf of the members of the Wildlife Commission as authorized and directed at their last meeting, we would appreciate your able support and help with passage of this bill.

With highest regards and all good wishes.

Respectfully yours,

CLYDE P. PATTON.

U.S. SENATE,
Washington, D.C., February 28, 1968.

Hon. CLYDE P. PATTON,
Executive Director, Wildlife Resources Commission,
Raleigh, N.C.

DEAR CLYDE: Thank you for your February 21 letter indicating the North Carolina Wildlife Resources Commission's endorsement of S. 2951, a bill which would insure the right of states to retain primary authority for management and regulation of resident wildlife.

While I am not a member of the Senate Commerce Committee which will consider this bill, you can be sure I will give the Commission's position full and sympathetic consideration when the legislation comes before the Senate for action.

Meanwhile, I am going to pass your letter along to the committee as evidence of the position our state is taking on this issue. I will also be glad to try to make the necessary arrangements if you or some other representative of the Wildlife Commission wishes to testify or file a formal statement when hearings are scheduled on the bill.

With best personal regards.

Sincerely,

B. EVERETT JORDAN, *U.S. Senator.*

STATE OF NORTH CAROLINA,
WILDLIFE RESOURCES COMMISSION,
Raleigh, N.C., February 21, 1968.

Hon. B. EVERETT JORDAN,
U.S. Senator, New Senate Office Building,
Washington, D.C.

DEAR SENATOR JORDAN: At its meeting on January 30, 1968 the North Carolina Wildlife Resources Commission asked me to communicate to you its feeling that the several states should retain primary authority to regulate and manage resident wildlife within their territorial boundaries. Our Commission is concerned because the U.S. Department of the Interior, through its Secretary, recently has undertaken to usurp this right on lands acquired by the Federal Government or reserved for Federal purposes within the states. Please refer to the Secretary's letter of March 11, 1967, copy attached.

Attempts by the states on several different occasions through the International Association of Game, Fish and Conservation Commissioners to reach a satisfactory solution to this with the Department of the Interior have been unsuccessful.

On February 8, 1968, S. 2951, sponsored by Senators Bible, Church and Cannon was introduced and referred to Senator Magnuson's Committee on Commerce. It has the support of the Association. This simply reaffirms the rights of the states to manage fish and resident wildlife. While the language may need some minor adjustments, this legislation is sound. The policy it seeks to establish through Congressional action is clearly in the Nation's and in North Carolina's interest.

Speaking on behalf of the members of the Wildlife Commission as authorized and directed at their last meeting, we would appreciate your able support and help with passage of this bill.

With highest regards and all good wishes.

Respectfully yours,

CLYDE P. PATTON.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., March 11, 1967.

Mr. JAMES LARUE EARLY,
1235 Washington Street,
Denver, Colo.

DEAR MR. EARLY: We have received your letter of February 26 and the enclosed clipping from the Denver Post relating to jurisdiction over wildlife.

At this point in history a review of the provisions of the Louisiana Purchase relating to wildlife would in our opinion be academic.

The Federal Government has the right to control, regulate, and manage the wildlife resources on Federal lands acquired or reserved for Federal purposes. We do not question the States' jurisdiction to manage and control resident wildlife on non-Federal lands. We believe the conservation effort will be best served by public and private conservation forces putting their energy to support programs which further conservation efforts in the light of that understanding.

We appreciate your inquiry and the attached news item.

Sincerely yours,

STEWART L. UDALL,
Secretary of the Interior.

Senator Metcalf of Montana requests that a communication from the Montana Wildlife Federation be placed in the record of the hearing.

U.S. SENATE,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C., June 13, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
U.S. Senate,
Washington, D.C.

DEAR CHAIRMAN MAGNUSON: I understand that hearings will be held on 18 June on S. 2951, to vest in the states title and ownership of all fish and wildlife and to provide procedure under which Federal agencies may regulate the taking of fish and game on such lands.

I have enclosed a letter dated 8 June which I received from Donald Aldrich, Executive Secretary of the Montana Wildlife Federation. I would appreciate it if you would have this letter included as part of the hearing record on this bill.

Very truly yours,

LEE METCALF.

Enclosure.

MONTANA WILDLIFE FEDERATION,
410 Woodworth Avenue, Missoula, Mont., June 8, 1968.

Hon. LEE METCALF,
U.S. Senate,
Washington, D.C.

DEAR LEE: The Montana Wildlife Federation supports Senate Bill 2951 and would like this letter included in the record of the hearing to be held June 18th and 19th.

We feel that it is necessary for the states to have the authority to manage fish and wildlife within its borders.

Your support of Senate Bill 2951 will be appreciated.

Sincerely,

DONALD ALDRICH,
Executive Secretary,
Montana Wildlife Federation.

A telegram received by Senator Mike Mansfield from the Montana Department of Fish and Game in which they announce their support of S. 2951.

HELENA, MONT., *June 6, 1968.*

Hon. MIKE MANSFIELD,
Majority Leader, U.S. Senate,
Washington, D.C.:

Senate Bill 2951 will be reviewed by the Senate Commerce Committee on June 18 and 19. This bill sets forth in proper terms the authorities of States in the management of resident fish and wild life species. Would appreciate your consideration and support of this bill in the interests of Montana natural resources.

FRANK H. DUNKLE,
State Fish and Game Director.

The staff counsel places in the record communications addressed to Senator Warren G. Magnuson. They are opposed to S. 2951.

SALISBURY, CONN., *April 18, 1968.*

Senator WARREN G. MAGNUSON,
U.S. Senate Commerce Committee,
Washington, D.C.

DEAR SIR: Please vote against S. 2951, in order to preserve the status quo for Federal wildlife protection.

Sincerely yours,

MRS. MAURICE
LEYARELE W. FRUSSIE.

5231 57TH AVENUE S., SEATTLE, WASH., *April 7, 1968.*

Senator WARREN G. MAGNUSON,
Senate Office Building,
Washington, D.C.

DEAR MR. MAGNUSON: I would like to express my opposition to S. 2951 and other bills that would interfere with important Federal conservation programs and laws. I believe the Bur. of Sp. Fish and Wildlife should continue the management of wildlife resources to best protect all, especially migratory and endangered species.

Sincerely,

MRS. F. G. STOPPS.

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5 CEDAR HILL ROAD, WEST SIMSBURY, VT., *April 19, 1968.*

Senator W. G. MAGNUSON,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MAGNUSON: I urge you to do all you can to protect our vanishing wetlands. They are vital for our migratory birds and for fish—a great future source of food. Please hold hearings on H.R. 25.

Sincerely,

Mr. and Mrs. J. W. GORMAN.

LAKEVILLE, CONN., *April 18, 1968.*

Re S. 2951.

Senator WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
U.S. Senate,
Washington, D.C.:

I feel very strongly that this bill should not be passed as it would negate such acts as the Golden Eagle and Bald Eagle Acts.

DORIS R. POMEROY.

FALLS VILLAGE, CONN., *April 18, 1968.*

Senator WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
U.S. Senate,
Washington, D.C.

DEAR SIR: Please vote against bill S. 2951. Among other things it will void our Golden Eagle and Bald Eagle Protection Acts.

FLORENCE T. POWELL.

MILLBROOK GARDEN CLUB,
Millbrook, N.Y., April 19, 1968.

Re S. 2951.

Senator WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
U.S. Senate, Washington, D.C.:

I am against this bill and hope you are too.

Sincerely,

Mrs. CLARENCE K. HOWARD.

VALLEYFIELD FARM,
Dover Plains, N.Y., April 19, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
U.S. Senate, Washington, D.C.:

Please vote against turning over management of our National Parks to the States—Bill S–2951.

Mrs. H. EDW. MARTIN.

POMPANO BEACH, FLA.,
April 18, 1968.

Senator WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR MAGNUSON: I am writing to express my opposition to Senate Bill 2951 which would abolish Federal protection for our wildlife in much of our country.

I feel that it is vitally important for the Federal Government to stay the hand of the spoiler and killer.

Sincerely yours,

W. C. KELLY.

MILLBROOK, N.Y., *April 18, 1968.*

Re S. 2951.

Senator WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Washington, D.C.:

Please vote against the above bill.

Mrs. DARYL PARSHALL.

SALISBURY, CONN., *May 18, 1968.*

Re S. 2951.

Hon. WARREN MAGNUSON,
Senate Commerce Committee,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MAGNUSON: Please vote against Bill S. 2951 in order to preserve the status quo for federal wild life protection.

Thank you kindly.

Sincerely yours,

RUBY E. HOWELL.

P.O. Box 55, Walnut Creek, Calif., *May 10, 1968.*

Hon. Warren G. Magnuson,
Chairman, Senate Commerce Committee,
Washington, D.C.

Dear Sir: Please vote no on bill S. 2951.

Rhodus MacKamey.

P.O. Box 55, Walnut Creek, Calif., *May 10, 1968.*

Hon. Warren G. Magnuson,
Chairman, Senate Commerce Committee,
U.S. Senate,
Washington, D.C.:

Vote no on S. 2951.

Mrs. B. H. MacKamey.

1869 Pasadena Glen, Pasadena, Calif.

Senator Warren G. Magnuson,
Washington, D.C.

Dear Senator: Wildlife is a national resource, a heritage larger than State F & G politics whose maneuvers are, alas, after petty politics—please work to retain Federal control in these matters where Federal lands are involved. Put down S. 322 & S. 2951, please.

Sincerely,

Barbara Horton.

Lakeville, Conn.,
June 17, 1968.

Senator Warren Magnuson,
Chairman, Senate Commerce Committee,
Senate Office Building,
Washington, D.C.:

Urge opposition S2951 and S3212 and request this message be part of hearing record.

Joyce Leubuscher.

Lakeville, Conn.,
June 17, 1968.

Senator Warren Magnuson,
Chairman, Senate Commerce Committee,
Senate Office Building,
Washington, D.C.:

Urge opposition S2951 and S3212 and request this message be part of hearing record.

Housatonic Audubon Society.

Sharon, Conn.,
June 17, 1968.

Senator Warren Magnuson,
Chairman, Senate Commerce Committee,
Senate Office Building,
Washington, D.C.:

Urge opposition S2951 and S3212 and request this message be part of hearing record.

Roswell Hart.

1505 East Cheery Lynn Road, Phoenix, Ariz.,
June 19, 1968.

Senator Warren Magnuson,
Chairman, Senate Commerce Committee,
Washington, D.C.:

Re "States Rights" claimed by proponents Senate Bill 3212 and 2951; the concept of National Parks is based on national, public, ownership of all wild life on National Park, therefore "States Rights" interpreted in context of these

two bills represents selfish over reach by a few western States, heedless of rights of our more silent sister States. Depending on you to help defeat these two bills.

PEGGY MAHONEY SPAW.

15810 SOUTH PARK, SOUTH HOLLAND, ILL., *July 16, 1968*

Senator WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Washington, D.C.

DEAR SENATOR MAGNUSON: Perhaps my letter is too late but I should like to express view in regard to the "states rights wildlife bill" (S. 2951). I believe it goes too far; it would make the National Park Service vulnerable to state and hunter pressure for public hunting in the national parks. It would repeal federal laws protecting bald and golden eagles.

Please do all you can to defeat this bill. We have enough destruction going on without adding to it.

Respectfully yours,

HELEN MEIER.

MEDICAL SQUARE NO. 22, 1601 NORTH TUCSON BOULEVARD,
TUCSON, ARIZ., *May 4, 1968.*

Senator WARREN MAGNUSON,
Chairman, Senate Commerce Committee,
Washington, D.C.

DEAR SENATOR: As conservation representative of the Pinn County Medical Society, I wish to protest, for the society, the so called "States rights wildlife Bills" S. 2951 and S. 3212.

This legislation, sponsored by the state game departments goes too far. These and similar bills, in the House, make the National Park Service too vulnerable to state and hunter pressure for public hunting in the National Parks. They also threaten the National Wildlife refuges by undermining the authority of the Bureau of Sports fisheries and wildlife. These bills also nullify and weaken essential parts of the Endangered Species Preservation Act of 1966.

We urge that you help to defeat these bills.

Sincerely,

RAYMOND F. BOCK, M.D., *Conservation Representative.*

2502 EAST LEE,
Tucson, Ariz., May 2, 1968.

Senator WARREN G. MAGNUSON,
Senate Office Building,
Washington, D.C.

HONORABLE SIR: I am writing as a member of the National Audubon Society to urge you to oppose bill S. 2951 introduced at the request of the Game and Fish Commissioners. I understand that there have been more than one dozen identical or similar bills introduced in the House, notably H.R. 8377, H.R. 11455, H.R. 14598, and S. 29511.

These bills have been closely studied by the National Audubon Society, and while it is in sympathy with supporting the regulating and licensing of non-migratory game species, it feels that the legislation in these bills goes too far and will do a grave dis-service to conservation, and pose a dangerous threat to some very important federal conservation programs.

The proposed law could lead to hunting in National Parks, cripple the administration of National Wildlife Refuges, nullify much of the recently enacted Endangered Species Act, and repeal the law that protects the American Eagle.

I feel very strongly that this bill should not pass in its present form and am urging you to vote against it.

Respectfully,

MAY WATROUS.

176 EAST 77TH STREET,
New York, N.Y., April 27, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
U.S. Senate, Washington, D.C.

SIR: The New York Times in a small news article has mentioned bill S. 2951 with respect to States rights over fish and wildlife.

I write to you not only as an individual but also as a member of numerous outdoor organizations and Cochairman for Conservation of the Linnaean Society of New York.

We would urge you to recommend defeat of this bill; that your committee not report it out to the Senate.

Administration of the National Wildlife Refuges and the Parks is already difficult. This bill would further complicate the task.

Section 2 paragraph 5 of it, for example, would remove from the Federal authority "regulation, management and control" of fish and wildlife.

This would negate important legislation that has made possible the recovery of the egret, assistance to the whooping crane. The prevention of hunting in the wildlife refuges has been an invaluable aid to waterfowl, especially.

Not only should this bill be prevented from becoming law but legislation, now, against insecticides should be hastened. Man as an animal is not yet proven immune to these poisons.

Very truly yours,

RICHARD B. SICHEL.

P.O. Box 125, ATLAS, MICH., *April 11, 1968.*

Hon. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR MAGNUSON: This is to register my opposition to S. 2951 for at least the following reasons:

1. It could establish a dangerous precedent for public hunting in the National Parks.
2. It would tend impede the normal activities of the Bureau of Sports Fisheries and Wildlife.
3. It would tend to nullify portions of the Endangered Species Act of 1966.
4. It would apparently repeal the Bald Eagle Act of 1940, and the Golden Eagle Act of 1962.

We cannot afford to allow even one of the above mentioned four things to happen.

Sincerely,

EDWARD M. BRIGHAM, III.

8009 BROOKLYN AVENUE, NE.,
SEATTLE, WASH., *April 18, 1968.*

THE CHAIRMAN,
Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR SIR: I am deeply concerned over the implications of Senate Bills 2951, 3212, and similar bills pertaining to State authority over wildlife on Federal lands within the various States.

It would appear that the actual—though not the stated—purpose of the advocates of such legislation is to permit hunting in National Parks and National Monuments.

This I strongly protest. The preservation of the indigneous wildlife, as a part of the ecology of the entire Park or Monument, is essential to the purposes for which these lands have been dedicated.

If as occasionally happens, a limited number of some species of animal must be eliminated, Park personnel manage this with the least possible disruption to the herd and at times and places where Park visitors are not endangered.

Were hunting permitted generally, as under State laws, the uninjured animals would become so wary that visitors would seldom if ever have the opportunity of seeing them at close range. (Now, as you know, people greatly enjoy seeing

deer, elk, moose, bear, etc. in the National Park—as is possible almost nowhere else.) Additionally, shooting with the high-powered rifles necessary for hunting this type of game would pose a real hazard to Park visitors, particularly those using the "back country." As it is, they must, if they value their safety, stay out of the National Forests, including Wilderness, Wild, and Primitive Areas, during the splendid autumn weather—lest a trigger-happy hunter shoot first and look afterward.

If bills such as 2951 and S. 3212 are to be seriously considered, they should, at the very minimum, be amended specifically to continue exclusion of National Parks and National Monuments from any State jurisdiction over hunting and fishing.

Sincerely yours,

GRACE KENT.

5225 NORTH CAMPBELL AVENUE, TUCSON, ARIZ., *May 6, 1968.*

WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
U.S. Senate,
Washington, D.C.:

Ernestly urge that House and Senate reject bills S. 3212, H.R. 1145, H.R. 8377 and other similar bills. Not only will these proposed bills repeal needed bills such as the bald eagle at PLU. Its amendment but balance between Federal and State control of wildlife and lands will be seriously upset. We in Arizona are alarmed at dangerous results if above bills pass. Thank you so much.

Mrs. BOYD HUNT.

PRESQUE ISLE AUDUBON SOCIETY,
CONSERVATION COMMITTEE,
East First Street, Waterford, Pa., April 19, 1968.

Hon. WARREN G. MAGNUSON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MAGNUSON: We are concerned with two Senate Bills, S. 2951 and S. 3212, and several similar or identical House Bills including H.R. 8377, H.R. 11455, and H.R. 14598, which if passed would constitute a serious threat to a number of important Federal conservation programs and laws.

Although we support the states licensing and regulating non-migratory game species as they do now, and agree that hunting or fishing done on Federal lands should be in accordance with state conservation laws, we cannot go further than that.

These bills would open the way to hunting in National Parks and Wildlife Refuges which some states are already pressing for. They would nullify much of the Endangered Species Act of 1966 and the Bald Eagle and Golden Eagle Acts of 1940 and 1962. Our predatory wildlife—many species already endangered—would be subject to further exploitation. Hawks (including eagles) and owls, for instance, although in fact *are* migratory, were unfortunately not included in treaties with Canada and Mexico. Several species are threatened with extinction and all should be protected by Federal law.

In the interest of progress in wildlife conservation, we urge you to oppose S. 2951, H.R. 8377 and other similar proposals.

Very truly yours,

Mrs. JAMES STULL, *Chairman.*

SOUTH BEND AUDUBON SOCIETY,
706 North Mason Street, Mishawaka, Ind., April 24, 1968.

Re: S–2951

Hon. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Senate Office Building,
Washington, D.C.

DEAR SIR: The far reaching implications of S. 2951 are of great concern. We would appreciate your help in defeating this bill through an unfavorable report from your Committee.

Pressure at the State level for hunting on National Park, National Wildlife Refuges and National Forest Lands, etc., would be too great for states to deny. This would snowball into wide open hunting on all Federal lands. Also, the negation of the Endangered Species Act of 1964, Bald Eagle Act of 1940 and Golden Eagle Act of 1962 is unthinkable.

Would you please include this letter as part of the record.

Very truly yours,

JUDITH A. IRONS.
HARRY D. IRONS.

FOND DU LAC COUNTY CONSERVATION ALLIANCE,
150 Warner Street, Fond du Lac, Wis., April 8, 1968.

Senator WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Senate Office Building,
Washington, D.C.

DEAR MR. MAGNUSON: I am writing to you concerning Bill S. 2951 introduced by the International Association of Game, Fish and Conservation Commissioners. A dozen or more identical bills have also been introduced in the House, among them H.R. 8377, H.R. 11455, H.R. 14598 and S. 3212. This bill is a very destructive bill as it concerns this country's wildlife and refuges. It literally emasculates the federal government's authority to manage the game resources in federal lands. Under this bill, they must comply with the desires of the state and gain the state's permission before they will be allowed to proceed with game management.

The bill also repeals important and progressive legislation such as the Endangered Species Act of 1966, the Bald Eagle Act of 1940 and the Golden Eagle Act of 1962.

I will soon be moving from Wisconsin to the central midwest United States as a field representative of several States for the National Audubon Society. I expect, therefore, that I will be corresponding with you from time to time concerning various issues. In the past I have worked very hard in Wisconsin to try to resolve conflictions between the state and federal agencies, especially as it concerns our Canada goose problem in Wisconsin. The legislation under discussion, however, only adds to the conflictions which already exist. This also makes our game resources on federal lands very vulnerable to the emotional pressures which can be generated on the state level.

The Association of Game, Fish and Conservation Commissioners are denying that the intent of their bill is to repeal the various acts mentioned above. They also state that it is the farthest thing from their mind to usurp the federal government's privilege on managing game in the federal refuges. Despite these claims, however, the Association is continuing to push for support of the legislation and the legislation has not been changed and clarified in such a way as to prevent these changes and conflictions.

I hope that we can depend upon you to actively oppose this legislation.

Sincerely,

JOHN L. FRANSON, *Secretary.*

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245 BEVERLY HILLS ROAD, FORT LEE, N.J., *June 3, 1968.*

Hon. WARREN G. MAGNUSON,
Senate Commerce Committee,
Senate Building,
Washington, D.C.

DEAR SENATOR MAGNUSON: I am writing with regard to the states' rights wildlife bills S. 2951 and S. 3212. These bills would probably open the National Parks to public hunting, would cripple the Bureau of Sports Fisheries and Wildlife in the management of wildlife refuges, would repeal federal laws protecting golden and bald eagles, and would nullify essential parts of the Endangered Species Preservation Act of 1966.

I urge you not to support them unless amended so as not to destroy or damage important federal conservation laws and programs.

Respectfully yours,

BLANCHE GARY.

DUPAGE AUDUBON SOCIETY,
455 West 38th Street, Downers Grove, Ill., April 8, 1968.

Re S. 2951.

Senator WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MAGNUSON: We strongly urge the above bill be defeated for the following reasons:

1. Some Western State game departments and their sportsmen allies have long wanted to pry the National Parks open to public hunting. If this bill were to pass, it would make the National Parks extremely vulnerable to such pressures. If the National Park Service needed to reduce a herd of deer or elk, as it has had to do from time to time through live-trapping or through shooting by its own rangers, it could do so only by permission of the State. The State could say, "we're sorry Mr. Park Service, but, the only way we'll let you reduce your elk herd is through public hunting."

2. The bureau of Sport Fisheries and Wildlife would be in exactly the same helpless position with respect to wildlife management on the 317 National Wildlife Refuges. It would have to go, hat in hand, seeking State permission even to capture and remove deer or turkey from one refuge to another.

3. This bill would, by virtue of being later legislation, repeal or nullify much of the Endangered Species Act of 1966. It would repeal parts of several special acts of Congress that were passed in the creation of particular refuges.

4. Note the "exceptions" written into Sec. 4 of the bill. It would not apply to the species expressly named in the Migratory Bird Treaties with Canada and Mexico. The raptors, although most of them are migratory, were not named in the treaties. Therefore, passage of S. 2951 or any similar bill would repeal the Bald Eagle Act of 1940. It would also repeal the Golden Eagle Act of 1962.

The States have ceded exclusive jurisdiction over all or portions of only 23 of the 67 National Parks and National Monuments.

No State has ever ceded or granted any species of fish or wildlife to the United States. Sec. 4(c) sounds like an invitation to the States to "cede" non-revenue producers or troublesome animals such as the predators, thereby relieving them any responsibility for protecting such species.

Nothing in the bill is said about NOT wanting to cripple or invade the National Parks and National Wildlife Refuges.

We cannot too strongly urge opposition and defeat of this bill.

Thanking you, we remain,

Respectfully yours,

ANNE STUKALO,
Mrs. ANDREW STUKALO,
Chairman, Conservation Committee.

3D YALE ROAD, RURAL ROUTE 2, STORRS, CONN.,
April 11, 1968.

Hon. WARREN G. MAGNUSON,
U.S. Senate Commerce Committee,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MAGNUSON: I am writing with regard to two bills, S. 2951 and S. 3212. I am to an extent sympathetic to certain of the objectives of these bills in that I support the right of state wildlife agencies to regulate and license the hunting of non-migratory game species on federal lands. The bill, however, seems to be so sweeping as to endanger many of the accomplishments which conservationists have worked for over many years; it seems rather like burning a building to rid it of termites. In particular, these bills would in effect repeal or nullify much of the Bald Eagle Act of 1940, the Golden Eagle Act of 1962 and the Endangered Species Act of 1966, in addition to hindering the Park Service and the Bureau of Sport Fisheries and Wildlife in their efforts to manage and protect wildlife on federal lands.

I most strongly urge that these bills in their present forms be defeated unless extensively amended to specifically protect the status of conservation acts already passed and to insure the unhindered continuation of the present progres-

sive programs of the several federal agencies concerned with National Parks and National Wildlife Refuges. Surely the legitimate interests of the state wildlife agencies can be insured without opening a Pandora's box of possible exploitation and manipulation of our national heritage.

Thank you for your consideration of this matter.

Very truly yours,

RONALD N. MCELHANEY.

1869 PASADENA GLEN ROAD,
Pasadena, Calif., April 16, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Commerce Committee,
Washington, D.C.

DEAR SENATOR MAGNUSON: In a sense, the shared control of wildlife by state and federal agencies gives America something of a checks and balances system in this vital area. It is something which should at all cost be preserved for our national well being; thus S2951 is a bill badly conceived and dangerous in many ways, particularly to several of our endangered species.

May I register with you my firm opposition to this bill and others of its ilk, which are conceived for personal power achievement not for the benefit of American wildlife.

Sincerely,

BARBARA HORTON
Mrs. Melvin A.

CONSERVATION FEDERATION OF TEXAS,
909 Reliance Life Building, Dallas, Tex., April 10, 1968.

Senator WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MAGNUSON: S. 2951 is a very bad bill.

It would subject the National Park Service and Bureau of Sports Fisheries and Wildlife to state interference with their game management.

It would nullify the uniform protection afforded in the Endangered Species Act of 1966.

It would impliedly repeal the Bald Eagle Act of 1940 and the Golden Eagle Act of 1962.

Furthermore, I personally feel that we are never going to achieve adequate comprehensive planning and control of our living species and the land and water they occupy until we accomplish such planning and control on a national, and in some instances, international, basis. Any bill to freeze controls on a state level is contrary to the trend of comprehensive environmental planning.

Please do what you can to prevent S. 2951, and any bill like it, from becoming law.

Sincerely yours,

EDWARD C. FRITZ,
Chairman, Conservation Committee.

GIFFORD, WOODY, CARTER & HAYS,
COUNSELLORS AT LAW,
One Wall Street, New York, N.Y., April 17, 1968.

Re Senate Commerce Committee.

Hon. WARREN G. MAGNUSON,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR MAGNUSON: You are undoubtedly aware of the opposition to Senate Bill 2951, so I shall not repeat the arguments against its passage. I do hope, however, that the bill will not have your Committee's approval.

Very truly yours,

DONALD C. HAYS.

PIEDMONT BIRD CLUB,
1100 Buckingham Road, Greensboro, N.C., March 11, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR MAGNUSON: At the request of the International Association of Game, Fish and Conservation Commissioners, a bill, S. 2951, has been introduced in the U.S. Senate by Senator Alan Bible; and similar bills have been introduced in the House, including H.R. 8377 by Rep. Johnny Walker, H.R. 11455 by Rep. A. Ullman, and H.R. 14598 by Glenn Cunningham.

This is a bill that would, in effect, take the management of National Park wildlife out of the hands of the Park Service; take the management of National Wildlife Refuge wildlife out of the hands of the Bureau of Sport Fisheries and Wildlife; repeal or nullify much of the Rare and Endangered Species Act, and repeal parts of several special acts of Congress that were passed in the creation of particular refuges; repeal the Bald Eagle Act of 1940; repeal the Golden Eagle Act of 1962; and initiate other backward steps too involved to discuss here.

The International Association of Game, Fish and Conservation Commissioners, whose members are heads of the State fish and game departments, fear that the Federal government might take over the right to regulate hunting and fishing and the right to license sportsmen on Public Domain and National Forest lands, threatening the existence of the State wildlife agencies which depend on the revenues from the licenses.

Their fears are understandable. However, the bill they would like to see passed goes too far in the other direction. It constitutes a dangerous threat to several important Federal conservation programs and laws.

The International Association has said that it "does not desire to change the present status of certain laws and concepts" which concern the Rare and Endangered Species Act and the Bald Eagle Act, but it has not said that it does not desire to cripple or invade the National Parks and National Wildlife Refuges. Neither has it offered any revisions or amendments to its bill, to show that it does not intend these threats.

Please vote against this ill-conceived measure. We consider it, in the light of past history, to be *not* in the best interest of the states or the nation.

Sincerely yours,

Mrs. ROBERT E. MCCOY,
Conservation Committee.

RESOLUTION

Whereas the Pelican Island Audubon Society of Indian River County, Florida, has adopted a resolution in their monthly meeting, May 9, 1968, covering a Bill S–2951, introduced into the United States Senate at the request of the International Association of Game, Fish and Conservation Commissioners, which is poorly conceived and does not fully comprehend the many and varied aspects involved in the protection, management and control of fish and wildlife resources of the United States;

Whereas this bill does not sufficiently differentiate between resident and migratory species;

Whereas it leaves open to the States' decision the fate of many species which are not migratory but are endangered, e.g., Golden eagle, Bald eagle, alligator, crocodile, Key deer and undoubtedly many others;

Whereas it could lead to fifty (50) different decisions as to how fish and wildlife would be managed in the National Parks, Refuges, etc.;

Whereas management, in the ecological sense, means managing all facets of a given habitat to benefit certain species. This could mean 'managing' of habitat through manipulation, and not just by fishing and hunting. Thus the State of Florida could claim to be managing the fish and wildlife populations of Everglades National Park by managing the water supplied to the Park from the north. If deer were the object of 'management' then cut the water off. If fish, or fish-eating birds were the object of management, then turn the water on. This subject has many ramifications: be it

Resolved by the Pelican Island Audubon Society, That they strongly oppose the passing of this Bill as so written, be it also

Resolved, That the above applies to H.R. 8377 by Rep. Johnny Walker (N.M.),

H.R. 11455 by Rep. Al Ullman (Oreg.) and H.R. 14598 by Rep. Glenn Cunningham (Nebr.).

MABEL MICHAEL,
President, Pelican Island Audubon Society, Inc.,
Vero Beach, Fla.

NATCHAUG ORNITHOLOGICAL SOCIETY,
30 Knollwood Acres, Storrs, Conn., May 13, 1968.

Mr. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MAGNUSON: The Natchaug Ornithological Society of Storrs, Connecticut has instructed me to write to you, as Chairman of the Senate Commerce Committee, concerning Senate bill S. 2951.

We believe that there are several dangers in this bill and other similar bills which have been introduced. We believe in States rights in the field of conservation but definitely feel that the legislation presently being sponsored by the State Game Departments goes beyond these rights. We urge you to consider the damage passage of such a bill would do. For example it would make the National Park Service vulnerable to unfair pressures in the National Parks. It would cripple management practices in the National Wildlife Refuges. Furthermore, it would repeal the important Federal laws which protect eagles and would nullify parts of the Endangered Species Preservation Act of 1966.

We feel this bill in its present form must be defeated; otherwise the set back to conservation in this country will be drastic. This is true for similar bills such as S. 3212 and S. 2951.

Sincerely yours,

ELLEN L. DOUBLEDAY, *Secretary.*

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072 GREEN STREET, MARTINEZ, CALIF., *May 14, 1968.*

WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Senate Office Building,
Washington, D.C.

DEAR MR. MAGNUSON: The Fish and Game Commission of the State of California is another example of such Commissions which is supported by the hunters and fishers of the state, and therefore is the tool of the "harvesters" of wildlife. Fish and Game men have been talking to groups throughout the State ever since their Five Year Plan was published, persuading the people that shooting in government parks will be a good thing.

If S. 2951 passes, it will open all of the national parks in California to men with guns killing wildlife, defeating in a horrible way the purpose of parks and sanctuaries and wildlife refuges the people entrusted their government to preserve and protect for them.

The answer to the necessity of killing a surplus of deer in national parks is written in "The Study of Wildlife Problems in National Parks" by Dr. Starker Leopold, Chairman of the Special Advisory Board on Wildlife Management for the Secretary of the Interior.

The DuPonts, the Winchesters and the huge armament firms will have all the money and men necessary to bring pressure upon your Committee, while the families throughout the land who depend upon the parks for their acquaintance with the birds and the animals they cannot find elsewhere, do not even know the threat which has presented itself in Congress—90% of them do not. People no longer cut down trees and saplings for their convenience. The men with guns are as much out-dated in their demands to shoot the fast disappearing wild animals. Once let loose in an area where wildlife have lived unafraid of men, they won't confine their bullets to deer—the lust to kill is too great! In any case, what of the effect of the guns on the animals in the area? Would a European government consider so betraying the trust of its people and turning over protected areas to hunters? The idea is preposterous and sadly typical of the United States in its barbarous use of guns.

For the sake of the non-hunting American public and for the study and enjoyment purposes for which protective areas have been established, please defeat S. 2591.

Sincerely,

Mrs. Florence Klinger.

Florida Audubon Society,
Maitland, Fla., May 6, 1968.

Hon. Warren G. Magnuson,
Chairman, Senate Commerce Committee,
Senate Office Building,
Washington, D.C.

Dear Senator Magnuson: We would like to express our doubts as to the desirability of S. 2951 and similar bills (H.R. 8377, H.R. 11455, H.R. 14598, and S. 3212) to be considered by your Committee. These would strengthen control of wildlife on national public lands by state game and fish commissions.

The National Parks, National Wildlife Refuges and National Forests should be allowed to make their own decisions in the matter of wildlife management without needing permission of state agencies. Imposing state control on these areas could interfere with endangered species programs, research and with transporting wildlife from one refuge to another.

These bills would also weaken or repeal such active legislation as the Endangered Species Act of 1966, the Golden Eagle Act of 1962, and the Bald Eagle Act of 1940. The last is especially important for Florida, where we have more active nests of our national bird, the bald eagle, than has any other state with the exception of Alaska.

Therefore, as there are many other more essential conservation matters to be enacted (such as H.R. 11618), we urge your opposition to the bills enumerated in the first paragraph.

Sincerely,

M. P. Duryea, *President.*

Collins, N.Y., *May 13, 1968.*

Senator Warren G. Magnuson,
Chairman, Senate Commerce Commission,
Senate Office Building,
Washington, D.C.

Dear Sir: It is with deep concern for the preservation of our National Parks that I am writing you to urge that you do not support the many bills introduced by the International Association of Fish and Game and Conservation Commissioners which would open the parks to public hunting and fishing. I feel that the passing of these bills would certainly lead to the eventual destruction of the parks and would make them a dangerous place for the public at a time when the parks are the most attractive to many people. Please do not support these bills. The parks should remain a place for the preservation of our rapidly diminishing wild life and should be left under the jurisdiction of the Federal Government and protection of it for all time. Thank you.

Respectfully yours,

Mr. and Mrs. Alton E. Herkel.

Bache & Co.,
Phoenix, Ariz., May 17, 1968.

Hon. Warren G. Magnuson,
U.S. Senate,
Washington, D.C.

Dear Sir: I would like to go on record with you in representing both the membership of Maricopa Audubon Society as well as this writer that we are vehemently opposed to the Fannin-Bible Senate Bill 3212 and all similar/related senate bills.

Yours truly,

Maricopa Audubon Society,
Clemens Titzck, III, *President.*

Tucson, Ariz., *May 13, 1968.*

Dear Mr. Magnuson: It has come to my attention that Senate Bill 2951 is now before your committee. Being an ardent conservationist, I should like to call to your attention some of the features of this bill which must be changed:

First—It will open National Parks and Monuments to hunting—something the so-called sportsmen have been trying to get for a long time. Hunters are, for the most part, trigger-happy. Thus they will endanger the lives of sight-seeing visitors.

Second—It will *repeal* the *Bald Eagle Act* of 1940 and the *Golden Eagle Act* of 1962. How long did it take us to get you to pass those two acts?

Third—It will repeal or nullify much of the Endangered Species Act of 1966. It will *repeal parts* of *several special acts* passed to *create particular refuges*—Refuges have a very "tenuous" lease on life at best. The *Army Engineers* have just *grabbed* about *half* of Imperial Refuge on the *Colorado River* without a by-your leave to anybody. Can't *anybody* do anything about the Army Engineers? They've become *most* irresponsible, thanks to Mr. Roosevelt and Breton Summerville!

Fourth—It will *completely* tie the hands of the Bureau of Sport Fisheries and Wildlife. Every move they make will have to be approved by the state in which one of the 317 National Wildlife Refuges is located.

Fifth—Sec. 4(c) sounds as if the States will be encouraged to "cede" non-revenue producers or troublesome animals, such as predators, to the jurisdiction of the *Federal* Government, thereby relieving the states of any responsibility for protecting them!

Sixth—It is *not enough* that the *International Association* of *Game*, *Fish*, and *Conservation Commissioners* should publish a *letter* of *intent*. Its President Walter T. Shannon says it is not the intent of the group to seek to change present laws governing Rare Endangered Species and the Bald Eagle Act—Ha! yet they have *changed* NOT ONE WORD of S. 2951! AND LAST BUT NOT LEAST—Most states are *ill-equipped* to *protect* their wildlife—In Arizona, for instance, *two men* must stretch their "protection" for *hundreds* of *miles* around Tucson.

Now all this hullabaloo got added impetus from a *Test Case* to be presented to the Supreme Court—This is what it's all about:

The State of New Mexico has "ceded" the management of wildlife in Carlsbad Caverns National Park to the National Park Service—a Research Biologist, with *permission from his Washington bosses*, felt that a study of the deer in Park was necessary for intelligent management of the herd or herds—The State of New Mexico said he *had no right to do research* on the herd—The Park Service said the research was *necessary* for *effective* management—was a part of management and so it would make a test case of it. The case was heard by the New Mexico Supreme Court which handed down this verdict—"The National Park Service has no authority to do research" or words to that effect.

Since New Mexico Fish and Game Commission made no move to find out why the deer were dying I can't see what they were bellyaching about.

Sincerely,

LILLIAN S. PINGRY.

5605 WEXFORD RD., BALTIMORE, MD., *May 15, 1968.*

Senator WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Washington, D.C.

DEAR SENATOR MAGNUSON: I am strongly opposed to S. 2951, a bill that would give the States virtually exclusive rights over wildlife.

Wildlife is sorely pressed on all sides in the modern world. It would be a tragedy if the Federal Government were to forego its rights to help it.

This bill would annul very hopeful legislation such as the Bald Eagle Protection Act and the Endangered Species Act.

It would also ultimately lead to hunting in the National Parks. Hunting may have its place, but I feel strongly that it is not in the National Parks. I keenly wish for myself and for my family that these be kept as places where we can go to see wildlife close and unafraid.

Please do all you can to defeat this bill.

Yours sincerely,

EILEEN SPRING.

UNIVERSITY OF CALIFORNIA, RIVERSIDE,
DEPARTMENT OF ANTHROPOLOGY,
Riverside, Calif., May 13, 1968.

Senator WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
U.S. Senate,
Washington, D.C.

DEAR SIR: I understand that your Committee is now studying the bill S. 2951, Senator Bible's bill to give control of Federal land to the states and to give wildlife protection to the states. This bill must be defeated, for reasons given by all interested conservation groups. It seriously endangers all our wildife and wild lands.

Sincerely,

EUGENE N. ANDERSON, Jr.

INDIAN RIVER AUDUBON SOCIETY,
BREVARD COUNTY, FLA.,
911 Bali Road, Cocoa Beach, Fla., April 24, 1968.

Senator WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Washington, D.C.

DEAR SIR: I am writing with regard to certain proposals under consideration by the Senate Commerce Committee and the House Committee on Merchant Marine and Fisheries, which are intended to define Congressional policy with regard to the authority of the several States to regulate and control fish and wildlife species within their territorial boundaries.

After reading S. 2951 (Bible, Cannon & Church) it seems evident to me that this proposed legislation could, if adopted by The Congress, create situations which would be extremely detrimental to several important Federal conservation programs which have been approved by the Congress and are strongly supported by the majority of the people of this country. For example, the protective features of such significant laws as The Bald Eagle Act of 1940, The Golden Eagle Act of 1962 and portions of the Endangered Species Act and the Migratory Bird Treaties would be repealed by the provisions of this proposed legislation.

Furthermore, the provisions of this bill, as well as other similar bills such as, S. 3212, H.R. 8377 and H.R. 11455, could seriously hamper, or even nullify, necessary conservation programs currently being carried out by the Federal Government. Certainly, some functions of the National Park Service and the Bureau of Sport Fisheries and Wildlife would be seriously compromised if this bill were enacted into law.

The rights and authority of the several States to manage, regulate and control resident game species within their boundaries are well documented under existing law and related court decisions, and hence, no further clarification or declarations are required through new legislation.

I believe, therefore, that the referenced bills are both unnecessary and potentially detrimental to established and vital Federal conservation policies and I thus urge that the subject proposed legislation be rejected.

Respectfully yours,

KARL F. EICHHORN, Jr., *President.*

BURLINGTON, VT., *June 16, 1968.*

Senator WARREN G. MAGNUSON,
Senate Commerce Committee, Senate Office Building, Washington, D.C.:

We strongly oppose S. 2951 and S. 3212 which would put control of National Park Wildlife in State hands. Please add this message to record of your hearing.

GREEN MOUNTAIN AUDUBON SOCIETY,
LAURENCE P. HOWE, *President.*

LOS GATOS, CALIF., *June 15, 1968.*

Senator WARREN G. MAGNUSON,
Chairman, Senate Amendment Committee,
Senate Office Building, Washington, D.C.:

We wish to express opposition to bills S. 2951 and S. 3212 on grounds that natures Bureau of Sports Fisheries and Wildlife Management give better chances

for survival of endangered species and all migratory wild fowl species. Request this message be made part of the hearing record.

LLOYD and EVELYN H. CASE,
20537 Verde Vista Lane, Saratoga, Calif.

SPACE 10,
310 E. Philadelphia St., Ontario, Calif., June 14, 1968.

Subject: S. 2951, S. 3212.

Senator WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR MAGNUSON: For the sake of more efficient management of wildlife areas, I believe it is necessary to defeat these two bills. I hope you and your committee will work toward this end.

Please include this letter as a part of the hearing record on S. 2951 and S. 3212.

Very sincerely yours,

(Miss) ELIZABETH SCHRADER.

ROSELAND, FLA., *June 17, 1968.*

Senator WARREN G. MAGNUSON,
Senate Office Building, Washington, D.C.

DEAR SENATOR MAGNUSON: The Pelican Island Audubon Society passed a resolution at their May meeting supporting the National Audubon Society's position on the "states rights bill," S. 2951 and S. 3212.

I have not a copy of the resolution, as I am at our summer residence, but we would like to go on record as opposing these bills as they are so written.

Sincerely yours,

KATHERINE BAISDEN,
Mrs. Frank Baisden,
Publicity Chairman, Pelican Island Audubon Society, Vero Beach, Fla.

UNIVERSITY OF ARKANSAS MEDICAL CENTER,
Little Rock, June 17, 1968.

Re S2951 and S3212.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MAGNUSON: I would like to express my *opposition* to the "States Rights" control of wildlife management. If such is passed they could ruin the halfway decent attempts that have been made in wildlife management. If everything is left to state control, it would be too prone to small local political pressure.

Thank you very much for your consideration.

Sincerely yours,

HOWARD K. SUZUKI, Ph. D.,
Chairman, Arkansas Conservation Council.

2860 DELAWARE ST., OAKLAND, CALIF.,
June 17, 1968.

Senator WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MAGNUSON: I am opposed to the so-called "States Rights" wildlife bills, S. 2951 and S. 3212, because of the jeopardy involved to Federal protection of American and golden eagles and certain other endangered birds and mammals.

As a professional naturalist and conservationist I have investigated both sides of the controversy which led to this legislation. I am convinced that we must have better bills or the necessary amendments to these bills to safeguard the species

mentioned above . . . as well as traffic between states in endangered animals . . . even down to alligators and other reptiles.

We shall note and appreciate your full attention to working out some better legislation than that offered in the above bills as presently written.

Please have this statement entered in the current hearings.

Sincerely yours,

PAUL F. COVEL.

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64 NORTH WRIGHT STREET, ALICE, TEX.,
June 15, 1968.

WARREN G. MAGNUSON: Please oppose bills S. 2951 and S. 3212. We feel they are not good.

Include this message as part of the hearing record.

RICHARD O. ALBERT, M.D.

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160 NINTH STREET, BAYWOOD PARK, CALIF., *June 18, 1968.*

Senator WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Washington, D.C.

DEAR SENATOR MAGNUSON: We believe that the regulation of migratory game birds is the responsibility of the Department of the Interior under the migratory bird treaties to which United States is party with Canada and Mexico.

We have recently read the proposed legislation, S. 2951, the so-called "states' rights wildlife bill" introduced by Senator Alan Bible of Nevada, and the similar S. 3212 by Senator Paul J. Fannin of Arizona which have been referred to the Senate Commerce Committee. *We believe these measures should be defeated* unless amended so as not to destroy or damage important conservation laws of the Federal Government. Further, we oppose the repeal of federal laws protecting bald and golden eagles, and any nullification of the Endangered Species Preservation Act of 1966.

It appears that if passed this legislation would make the National Park Service vulnerable to state and hunter pressure for public hunting in the national parks. This would defeat part of the purpose for which national parks were established.

Very truly yours,

CHARLES K. and FRANCES N. TAUBERT.

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730 LUISITA STREET, MORRO BAY, CALIF., *June 18, 1968.*

HON. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Senate Office Building, Washington, D.C.

DEAR SIR: I respectfully urge that you and your committee *oppose* S. 2951 and S. 3212.

It seems to me that we are defeating the whole purpose of our conservation of the Public Domain and National Forest lands if we allow the States to control hunting and fishing on these lands and to administrate and regulate licenses.

Sincerely yours,

VERNON F. DAVEY.

SAN DIEGO STATE COLLEGE,
San Diego, Calif., June 17, 1968.

Senator WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR MAGNUSON: I would like to register my opposition to Senate bills #2951 and #3212. It appears to me that passage of these bills would seriously handicap the State wildlife agencies who are dependent on revenues from hunting and fishing licenses. It also seems to me that it might threaten the national parks to which many sportsmen are anxious to gain access for hunting. Hunting is incompatible with the uses to which national parks are dedicated and could easily endanger the lives of the visitors.

I will appreciate anything that you might do to prevent the passage of the above bills.

Sincerely,

JAMES E. CROUCH.

ALLARD, SHELTON & O'CONNOR,
ATTORNEYS AT LAW,
Pomona, Calif., June 17, 1968.

Re S. 2951 and S. 3212.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Senate Office Building,
Washington, D.C.

MY DEAR SENATOR MAGNUSON: I understand that you will hold hearings on the above mentioned Senate bills which are variations of the "states' rights" wildlife bill.

While it is true that states ought to have some control over wildlife within their borders, the proposed bills are simply too broad and will nullify or undermine much worthwhile legislation which Congress has previously passed. Moreover, pressure on our wildlife in all areas is increasing rather than decreasing; and it would hardly seem to be appropriate to repeal federal legislation which was passed at a time when protection was even less critical than it is now.

I hope that this legislation will never get to the floor of the Senate; but, if it does, I hope that it will not be passed.

I request that this message be made a part of the hearing record on the above mentioned bills.

Sincerely yours,

FERDINAND F. FERNANDEZ.

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151 SANTA LUCIA, BAGWOOD PARK, CALIF.

Sen. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MAGNUSON: We wish to urge you to oppose Senate Bills 2951 and 3212.

By preventing the federal government from regulation of hunting and fishing in national parks and national forest lands these bills would subject these areas to local agencies, vulnerable to local interests and destroy much of the valuable conservation work carried out by the Federal Government. We feel that the national interest should be placed ahead of local, usually commercial interests.

LAURENS D. MASON,
MRS. HARRIETT T. MASON.

2434 SOUTH COLUMBIA STREET, OLYMPIA, WASH., *June 17, 1968.*

Re S. 2951 and S. 3212.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Senate Office Building,
Washington, D.C.

DEAR MR. CHAIRMAN: The Olympia Audubon Society herewith wishes to go on record with your committee as completely opposed to the above two senate bills for the reason that they are unnecessary, will turn back the clock conservation-wise one hundred years, and are nothing more or less than a subterfuge to enable the State Game Departments to invade all Federally owned land for the senseless slaughter of the wildlife therein.

We pray that you and your committee will call a halt to this foolishness.

Respectfully submitted.

OLYMPIA AUDUBON SOCIETY,
J. M. PETERSON, *President.*

GENTLEMEN: Just thought you might like to have this, insofar as we promised our constituent that we would send you a copy.

Thank you very much.

ELLEN CAMNER (Office of Congressman J. H. Burke of Florida).

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801 NORTHEAST 17TH COURT, FORT LAUDERDALE, FLA., *April 27,1968.*

Representative J. HERBERT BURKE,
Longworth Building,
Washington, D.C.

DEAR CONGRESSMAN BURKE: We are writing to express our opposition to the passage of Senate Bill 2951 which seeks to remove existing federal controls protecting wild life and controlling hunting in national preserves.

We feel that such controls properly belong under the federal jurisdiction and that allowing more local governmental units to take over this function may have a detrimental effect in that smaller more local government is more susceptible to local pressures not in the best interests of conservation. The smaller financial resources of the smaller governments also make enforcement more than likely less stringent.

We ask that you use your influence in this direction and appreciate your help.

Respectfully,

ROGER D. GERMAIN
MRS. SALLY I. GERMAIN.

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200 NORTH HALIFAX DRIVE, ORMOND BEACH, FLA., *June 15, 1968.*

Senator WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR MAGNUSON: May I please respectfully request that the following facts and opinions be part of the hearing record on S. 2951 and S. 3212?

It would be a calamitous mistake to give the various states the right to exclusive control of wildlife within their territorial boundaries. Such legislation would only end up permitting hunting within our national park (people with cameras have "rights" too). It would interfere with the Bureau of Sport Fisheries and Wildlife to manage national refuges. It would prevent any constructive work to save the bald eagle and it would nullify essential parts of the Endangered Species Preservation Act of 1966.

Local game wardens neither are trained to protect wildlife or else can't be bothered. Recently near here, one shot a bear "by mistake". Nearby wildlife refuges, run by the state, are the *last* places one would take children in hopes of seeing any animals or birds; *everything* has been killed off. One can see more wildlife along a busy thorofare like I–95 or in the cemetery that in the state parks like Tomoka or Washington Oaks.

I trust the committee will defeat this so-called states rights measure. Thank you very much.

Sincerely yours,

MRS. F. W. VICHERT.

JEFFERSON AUDUBON SOCIETY,
2404 West 47th Avenue, Pine Bluff, Ark., June 16, 1968.

Senator WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR MAGNUSON: The Audubon Society is opposed to the two versions of the "States Rights" wildlife bills, S. 2591 and S. 3212.

We feel that this legislation is unnecessary in that it will produce more problems and friction than already exists. We have no quarrel with state control of resident wildlife as it is now practiced and see no reason for this proposed legislation.

We strongly object to the fact that these bills would remove protection from endangered species.

We think the problems which resulted in the proposal of this legislation can best be solved at the conference table by men of good will—professional wildlife people and sportsmen and conservationists dedicated to the wise use of our natural resources.

We request that this communication be made a part of the hearing record.

Sincerely yours,

JANE E. STERN, *President.*

5615 MCADOO AVENUE, SACRAMENTO, CALIF., *June 15, 1968.*

Senator WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Senate Office Building, Washington, D.C.

Subject: S. 2951 and S. 3212—"States Rights" wildlife bill.

DEAR SENATOR MAGNUSON: Many conservationists in our area of Sacramento would like to oppose S. 2951 and S. 3212.

Will you please make this letter a part of the hearing record.

Thank you.

Yours for conservation,

JACK DENNISON,
Past President Sacramento Audubon Society and now Conservation Chairman.
OLIVETTE P. DENNISON,
Past President River Park Garden Club; Curator, Sacramento Audubon Society.

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254 HEDSTROM DRIVE, BUFFALO, N.Y., *June 16, 1968.*

Hon. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR MAGNUSON: "States Rights" wildlife bills S. 2951 and S. 3212 are potentially a setback to wildlife conservation. These bills in their present forms would destroy the Bald Eagle Act of 1940, the Golden Eagle Act of 1962 and the Endangered Species Act of 1966. In addition these bills in their present forms potentially could cripple the effective operation of our National Park Service and the wildlife management of our National Wildlife Refuges.

Please make this letter a part of the hearing record on S. 2951 and S. 3212 as opposing these bills.

Yours truly,

ROBERT E. HULL,
Vice President, Buffalo Audubon Society.

2360 INMAN, STOCKTON, CALIF., *June 16, 1968.*

Senator WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Senate Office Building, Washington, D.C.

DEAR MR. MAGNUSON: The Stockton Audubon Society strongly opposes the passage of S. 2951 and S. 3212.

We understand the precarious financial position of our state fish and game departments. It is unfair that the work of these dedicated people should be constantly jeopardized by the threat of federal usurping of their licensing powers.

However, the two bills mentioned are unacceptable to thoughtful conservationists because of their harmful effects on the Rare and Endangered Species Act, the Bald Eagle Act of 1940, and the Golden Eagle Act of 1962.

It is inconceivable to me that fish and game commissioners, whom I have always considered to be conservationists of the highest order, could espouse the passage of such harmful legislation.

Conceivably, given the right set of circumstances, S. 2951 or S. 3212 could be used as a tool to pry open the national parks to public hunting. This sickening possibility violates the basic philosophy upon which our National Park System was founded.

How are we to make progress toward worthy conservation goals if we work at cross purposes?

Surely, legislation can be drafted which would allay the fears of the International Association of Game, Fish, and Conservation Commissioners without the destruction of important and necessary laws already in existence.

If and when such legislation is proposed, the Stockton Audubon Society pledges its support.

Please see that this letter is made a part of the hearing record on this matter.

Sincerely yours,

RICHARD C. BROWN,
President, Stockton Audubon Society.

AUDUBON, PA., *June 14, 1968.*

Re S. 2951 and S. 3212.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: The "States Rights" Wildlife Bill is of great concern to conservationists throughout the land. Rapidly dwindling species and continuous pressure from sportsmen to gun to the limit are forcing an issue: only Federal control and enforcement of law will insure preservation of many of our endangered species.

Therefore, I ask you to go on record at the forthcoming hearing as being *opposed* to Senate Bills 2951 and 3212.

Further, I request that my personal statement of *opposition* to said bills be recorded in the hearing record.

I am sure that neither you nor your colleagues wish to see our national bird, the Bald Eagle, become extinct. But this may be the future for this bird as well as the Golden Eagle and numerous other species if these bills are passed with the immediate repeal of Federal protection now afforded the eagles.

Sincerely,

EDWARD W. GRAHAM.

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56 EAST GREGORY, KANSAS CITY, MO., *June 15, 1968.*

Senator WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: I urge *defeat* of the "states rights" wildlife bills, S. 2951 and S. 3212. While I am a supporter of state control over hunting of resident game, I am opposed to any program of taking away federal control over migratory game (North Dakota ducks and Missouri ducks, too) and especially the danger that certain states could prevent proper management of National Wildlife Refuges, repeal federal laws protecting eagles, and damage important federal conservation laws and programs.

In these days of highly mobile populations, federal laws to safeguard all wildlife, laws passed by the representatives of *all* of the people, and based on adequate research by a federal crew of the top wildlife experts of the nation, are necessary so that wherever we move we will be able to enjoy the recreation and sport from proper management of our national resources.

Please include my statement as part of the hearing record on these bills.

Sincerely,

RICHARD G. DAWSON.

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503 SOUTH LOS ROBLES AVENUE, PASADENA, CALIF., *June 14, 1968.*

Senator WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR MAGNUSON: As the newly elected President of the Pasadena Audubon Society, a branch of the National Audubon Society, I wish to strongly oppose the passage of S. 2951 and S. 3212.

I understand that this may be put on record at the hearings on June 18th and 19th.

Sincerely yours,

ELIZABETH S. MANNING.

U. S. SENATE,
COMMITTEE ON AGRICULTURE AND FORESTRY,
Washington, D.C., June 17, 1968.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MAGGIE: I understand your Committee is conducting hearings on S. 2951 and S. 3212.

On behalf of the Green Mountain Audubon Society, I request that the enclosed telegram be made a part of the record of your hearings.

Sincerely yours,

GEORGE D. AIKEN.

BURLINGTON, VT., *June 17, 1968.*

Senator GEORGE AIKEN,
Senate Office Building, Washington, D.C.:

We strongly oppose S. 2951 and S. 3212 which would put control of National Park Wildlife in State hands. Please add this message to record of your hearing.

GREEN MOUNTAIN AUDUBON SOCIETY,
LAURENCE P. HOWE, *President.*

5502 MARKLAND DRIVE, LOS ANGELES, CALIF., *June 21, 1968.*

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
Senate Office Building, Washington, D.C.

MY DEAR MR. MAGNUSON: It has just come to my attention that Hearings have been held in the immediate past regarding S. 2951 and S. 3212—regarding state authority over wildlife.

As an American with deep concern for a living heritage, I respectfully request that the Committee reject these "state rights" proposals and submit the enclosed brief statement for the record of the Hearing.

Sincerely yours,

BEULA EDMISTON.

SHALL PARK WILDLIFE BE SACRIFICED TO THE KILLERS?

(By Walter S. Boardman)

It is quite natural to find a growing pressure from those who gain pleasure from killing of defenseless creatures to open state and national parks to their gratification. Opportunities for satisfaction of this primitive urge have been greatly limited by past excesses and there is need for new outlets. Once there were the passenger pigeons and the buffalo upon which the killer could satisfy his desire, but the pigeon is gone and the buffalo are too few to provide opportunities for more than an elite few.

Animals in the parks offer a temporary source of gratification. In many cases these wild creatures have lost some of the fear of man that protects their counterparts outside the sanctuaries. They are thus currently easier to find and shoot. Furthermore, the park road systems make it possible to ride comfortably to a spot where a kill can be enjoyed without the effort of walking more than a very short distance, if at all. Pursuit of wildlife into the remote regions of private, Bureau of Land Management and Forest Service lands can be quite burdensome.

The writer is aware that he is using forbidden words to state the case. Hunting is never slaughter, or even kill. It is harvest and you must hasten to explain that it is really for the victim's own good. It is so much better for a deer to crawl away to die from an ugly wound than from natural causes, especially old age. Incidentally, even the least civilized armies use hard-nosed bullets. The mushroom type of missile is strictly outlawed because of the suffering it produces, but every hunter's catalog extols this vicious quality in the 'sporting' ammunition sold for hunting. It is about time that this cruel amusement is regarded as what it is.

Parks and other refuges constitute but a small fraction of the open lands where the hunter can seek pleasure. Why should not this small percentage be left for the majority of all people who like to observe, study and photograph wild-

life? To open the parks for the hunting season is to virtually eliminate the prized species for observation and enjoyment during the entire year. If the hunting fraternity must have freedom to shoot everything in sight, then perhaps it is time for a good hard look at the whole bloody business. Maybe there is more relation between the killing of wildlife for the fun of it and the killing of people in the streets than some have thought. Perhaps it is time to give full backing to the greater restrictions upon the distribution of firearms that have been advocated.

Many of us have hoped that in the slowly growing respect for all life that seems possible, the hunting problem might resolve itself. If, however, the hunters' lobby is to take an aggressive stand for the expansion of their pleasure into the parks and sanctuaries, then a strong stand must be mounted by the humanitarians of this nation. *Dr. Walter S. Boardman* retired early from a brilliant career in teaching and administration to devote himself fully to the cause of nature preservation. While Executive Director of *The Nature Conservancy* for 5 years, he expanded its natural area "Living Museum" program. He was the 8th man to hike the full length of the Appalachian Trail and still personally maintains a goodly section of its most remote part. Dr. and Mrs. Boardman live in Washington, D.C. where he is a tower of strength in matters of conservation. He is a consultant to the *Defenders of Wildlife* and the *National Parks Assn.*

—BEULA EDMISTON.

THE LAST SANCTUARIES—ARE THEY INVIOLATE? BY BEULA EDMISTON

Our National Parks, the last citadels of our living heritage, are threatened. Not only by too many footsteps, too many roads, and too many visitor accommodations, they are threatened by the invasion of a totally incompatible instrument of death and destruction—the gun.

Since its lethal blast shatters the silence, ravages the tranquil natural scene, and endangers the visitor while wreaking death upon the creatures which are the parklands' chiefest treasure, the complacent choose to think it is impossible.

Impossible? Take a long, hard look at tht tawdry pleas of the gunners that they be allowed to "harvest" the "surplus crops" of "game" in our National Parks. Consider some of the bills before Congress: H.R. 8377, H.R. 1145, and H.R. 11573—would put control of wildlife on all federal lands under state control—so state by state, our National Parks could fall prey to the hunting fraternity. (and S. 2951 and S. 3212)

State Parks, aren't they inviolate? Take my state, California, for example. We esteem our parks, vote bonds, and take pride in the personal restraint of most of their users. Yet only last fall the Director "explored" the idea of turning some of them over for hunting preserves to bring in the children and teach them the "sport of hunting." After a storm of protest, the Director advises that in response to public reaction, "It is generally agreed and I accept these conclusions that developing hunting preserves such as found in other countries throughout the world is not a proper responsibility of state government."

No one who cherishes his living heritage can afford to sit idly by. America's parklands, the last sanctuaries for wildlife and those who enjoy it—alive, are threatened. Bil Gilbert (Sat. Evening Post, Oct. 21, 1967) is right, "Hunting is a Dirty Business!"

Speak out! Only then as Ansel Adams eloquently states in *These We Inherit—the Parklands of America*, "With reverence for life, and with restraint enough to leave some things as they are, we can continue approaching, and perhaps can attain, a new society at last—one which is proportionate to nature."

LAW OFFICES OF MCKAY, PANNER, JOHNSON & MARCEAU,
Bend, Oreg., July 9, 1968,

Re S. 2951 and S. 3212.

Hon. MARK O. HATFIELD,
Senate of the United States,
Washington, D.C.

DEAR SENATOR: The above mentioned two bills relate to the granting of jurisdiction to the states in the control, regulation and management of fish and wildlife on lands of the United States.

The Confederated Tribes of the Warm Springs Reservation of Oregon are quite concerned that Indian reservations and in particular the Warm Springs Indian Reservation be excluded from the operation of these bills. There is pres-

ently language in both of the bills purporting to recognize the Indians treaty rights. Neither of the bills contains language sufficient to insure the continued jurisdiction of the Indian reservations in the United States Government. We would respectfully request that the bills be amended to exclude Indian reservations from their operation.

At the present time, the United States Fish and Wildlife Service is actively engaged in a program to assist the Indian tribes in the control, regulation and management of fish and wildlife within the reservations. By treaty, the Indians have the exclusive right to fish and hunt on the reservation in most cases. This is the situation at Warm Springs. To transfer regulation and control of the fish and wildlife to the states under such circumstances would result in a situation where the state had no legal rights and therefore a questionable interest in the management and regulation.

I don't believe it was the intention of the proposed bills to include Indian reservations within their scope, but I am concerned that the bills as they are now written would include Indian reservations.

Unfortunately, we understand there was a hearing scheduled on S. 2951 last month but because of a failure to receive advance notice it was impossible for the tribe to have a representative at the hearings. We respectfully request that this letter be made a part of the record of the hearings and that we be given an opportunity to be heard further in the event that the committee is considering the inclusion of Indian reservations within the operation of the proposed bills.

Thank you very much for your assistance in this matter.

Would you keep us advised as to the status of these bills or any others on the same subject?

Best wishes.

Very truly yours,

OWEN M. PANNER,
Attorney, Confederated Tribes of the Warm Springs Reservation of Oregon.

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